The Financial Institution **Employee's Guide** to Deposit Insurance

employee's guide

FDIC Federal Deposit Insurance Corporation

FDIC
Federal Deposit Insurance Corporation
Washington, DC 20429

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REVISED GUIDE TO DEPOSIT INSURANCE

TO: CHIEF EXECUTIVE OFFICER, SENIOR OPERATIONS OFFICER AND TRAINING OFFICER

SUBJECT: Revision of *The Financial Institution Employee's Guide to Deposit Insurance*

Enclosed is a revised version of the FDIC's publication *The Financial Institution Employee's Guide to Deposit Insurance*. It is a comprehensive document explaining the FDIC's deposit insurance rules in a non-technical way, and providing background and instructional materials on deposit insurance. This guide includes the amendments to the deposit insurance rules that became effective July 1, 1998, and April 1, 1999.

Each FDIC-insured financial institution should ensure that its staff provides accurate and complete information about FDIC insurance coverage to its depositors. Bank and thrift employees who deal directly with depositors should understand the rules that govern deposit insurance coverage well enough to explain them clearly and accurately.

This publication is a helpful guide to the deposit insurance rules for financial institution training staff, operations and savings officers, and others responsible for disseminating deposit insurance information at financial institutions. The guide includes instructional materials designed to assist insured institutions in developing in-house training programs on deposit insurance, including a set of tests on calculating deposit insurance coverage.

The enclosed revised guide is not copyrighted and may be duplicated. The guide is also available on the FDIC's Web page (www.fdic.gov) in PDF format.

For more information, please contact the FDIC's Division of Compliance and Consumer Affairs at 1-800-934-3342.

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Enclosure

Distribution: All FDIC-Insured Banks and Savings Associations

employee guide

The Financial Institution Employee's Guide to Deposit Insurance

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The Financial Institution Employee's Guide to Deposit Insurance

Foreword

This handbook was originally developed by the Federal Deposit Insurance Corporation (FDIC) as a reference guide for employees of insured financial institutions who attended one of the FDIC's National Deposit Insurance Seminars during the Spring/Summer of 1995. It was subsequently revised to improve clarity and readability. The revisions are a result of changes to the deposit insurance regulations in July 1998 and April 1999.

This manual contains all of the material covered in the seminar series, and is a helpful guide to the deposit insurance rules for financial institution training staff, operations and savings officers, and others responsible for dissemination of deposit insurance information at financial institutions. The guide explains the FDIC's rules for deposit insurance coverage in a concise and non-technical way. The manual does not provide legal interpretations of the FDIC's regulations on insurance coverage. The FDIC Legal Division can provide information on FDIC Advisory Opinions and other official staff commentary on regulations. The Legal Division can be contacted at:

FDIC
Legal Division
550 17th Street, N.W.
Washington, D.C. 20429

Also available are special instructional materials designed to assist insured institutions in developing an in-house training program on deposit insurance, including a set of problems and tests on the deposit insurance rules and calculation of deposit insurance coverage to check the knowledge of trainees.

Each financial institution that bears the FDIC logo on its door has a responsibility to ensure that it provides accurate and complete information about FDIC insurance coverage to its depositors. Bank and thrift employees who deal directly with depositors must understand the rules that govern deposit insurance coverage well enough to be able to explain them clearly and accurately.

Introduction

About This Guide

This volume describes the FDIC's rules and regulations for insurance coverage of accounts held by depositors at FDIC-insured financial institutions. It is intended to be a reference manual for employees of insured institutions who respond to questions from depositors about FDIC deposit insurance coverage.

Limitations of This Guide

Although this guide provides a thorough discussion of the requirements for FDIC's deposit insurance, it does not provide an exhaustive description of every rule affecting federal deposit insurance coverage. Similarly, it does not provide legal interpretations of the laws and regulations pertaining to FDIC deposit insurance coverage.

For more detail about the technical aspects of the FDIC's deposit insurance regulations, refer to the Federal Deposit Insurance Act and the Rules and Regulations for Insurance of Deposit Accounts. (A copy of the Rules and Regulations for Insurance of Deposit Accounts is provided in the Appendix.)

Disclaimer for Users of This Guide

Depositors should be advised that no person, by any representation or interpretation, may affect the extent of insurance coverage provided under the Federal Deposit Insurance Act and the Rules and Regulations for Insurance of Deposit Accounts.

Effective Date

This guide describes the FDIC deposit insurance rules in effect when the Guide was revised in 1999. Some information in this manual may become obsolete if the laws and regulations defining FDIC insurance coverage are amended after publication of this volume.

For Additional Information

To determine whether there have been statutory or regulatory changes that affect the insurance coverage described in this manual, call the FDIC's Deposit Insurance Hotline at the toll-free telephone number listed below.

The FDIC Division of Compliance and Consumer Affairs operates a toll-free Deposit Insurance Call Center that depositors and financial institution employees may call. Deposit Insurance Specialists are available to respond to your questions every week day from 9:00 a.m. to 5:00 p.m., Eastern Time. In addition, pre-recorded information is available 24 hours a day, seven days a week. A separate toll-free number is available for consumers who require a Telephonic Device for the Deaf (TDD). To contact the FDIC Deposit Insurance Call Center, call:

1-877-275-3342 or 1-877-ASK-FDIC
1-800-925-4618 (TDD) 1-202-942-3147 (TDD)

You may also request copies of printed materials describing FDIC insurance coverage by calling the Hotline on weekdays during the hours of 9:00 a.m. to 5:00 p.m. Eastern Time. Or, write to the following address:

Federal Deposit Insurance Corporation
Division of Compliance and Consumer Affairs
550 17th Street, NW
Room 1730 PA7014
Washington, D.C. 20429

Information on deposit insurance and other FDIC programs is also available via the Internet at the following addresses:

World Wide Web: http://www.fdic.gov/

Insurance Information on the Internet

To further help consumers and bankers learn about deposit insurance, and to provide information about the insurance coverage of specific groups of accounts, the FDIC has developed the Electronic Deposit Insurance Estimator (EDIE). The EDIE system is located on the FDIC's Internet Web Site (www.fdic.gov) and consolidates all of the deposit insurance information available on the site in one easy-to-access location.

EDIE is an interactive Internet application that allows consumers or bankers to enter information about an account or group of accounts at an FDIC-insured institution, and receive back a report that states whether the funds are fully insured. If any funds are uninsured, EDIE will identify them and explain why the funds are not covered. A person does not need to know the deposit insurance rules in order to use EDIE. The program asks simple questions about the names (ownership) and balances of accounts, then furnishes a report. Assisting users along the way is a red-haired, green-eyed helper, "EDIE." EDIE provides definitions of terms, examples, and other important information to make the system easy to use. To protect consumer's privacy, no identifying information such as account numbers, social security numbers or bank names is asked.

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Chapter 1

FDIC Insurance Basics

FDIC's Deposit Insurance Program

The FDIC insures deposits in most banks and savings institutions in the United States. Bank deposits are insured by the FDIC's Bank Insurance Fund (BIF), while savings institutions' deposits are covered by the FDIC's Savings Association Insurance Fund (SAIF). The rules governing insurance of deposits of institutions insured by the BIF and SAIF are the same.

FDIC-insured institutions must display an official sign at each teller window or teller station. There are separate official signs for the SAIF and BIF funds.

Basic Insurance Limit

The amount of insurance coverage provided to depositors of each institution insured by BIF and SAIF is the same: $100,000 to the owner(s) of the funds in the account, including **principal and interest**. Any depositor who places funds with an insured institution is covered, regardless of citizenship or place of residence.

Coverage Based on Ownership Rights and Capacities

FDIC deposit insurance coverage is based on the concept of ownership rights and capacities. Funds held in different ownership categories are insured separately from each other.

There are different requirements that must be met before depositors may qualify for insurance coverage under each of the account ownership categories.

Categories of ownership rights and capacities recognized under the FDIC's deposit insurance regulations, and the requirements for qualifying for insurance coverage under each category, are discussed in Chapter 3.

Types of Deposits That Are Insured

All types of deposits held in insured institutions are covered by FDIC insurance including:

- Passbook, Savings, and Christmas Club Accounts,
- Time Deposits, including Certificates of Deposit (CDs),
- Money Market Deposit Accounts, Checking Accounts, and Demand Deposit Accounts,
- Negotiable Order of Withdrawal (NOW) Accounts,
- Retirement accounts consisting of cash on deposit at a bank or savings institution,
- Official Checks, such as Cashiers Checks, Money Orders, Officers Checks, and Outstanding Drafts.

Certified checks, letters of credit, and travelers' checks, for which the insured institution is primarily liable, also are insured when issued in exchange for money or its equivalent, or for a charge against a deposit account.

What Is Not Insured?

Many financial institutions also offer their customers a range of investment accounts that do not qualify as deposits and, thus, are not covered by FDIC insurance. Examples of non-deposit investment products that are not covered by FDIC deposit insurance include:

- Investments in mutual funds (including money market mutual funds and mutual funds that invest in stocks, bonds, and other securities).
- U.S. Treasury bills, notes, and bonds purchased through an insured institution.

  Note: Although Treasury securities are not covered by federal deposit insurance, payments of interest and principal (including redemption proceeds) on those securities that are deposited into an investor's deposit account at an insured institution are covered by FDIC insurance up to the $100,000 limit.

  Also, while U.S. Treasury securities are not insured by the FDIC, they are backed by the full faith and credit of the U.S. Government, which is the strongest guarantee an invest or can get.
- Annuities (which are underwritten by insurance companies but sold at some institutions).
- Stocks, bonds or other securities, or other non-deposit investment products, whether purchased through a bank or through an affiliated broker/dealer.
- Contents of a safe deposit box maintained by the institution.
- Funds lost by the insured institution due to robbery, theft, fraud, embezzlement, or natural disaster. (These funds usually are covered by the insured institution's blanket bond insurance policy.)

Interagency Policy Statement on Non-Deposit Investment Products

The four federal financial regulatory agencies – the Board of Governors of the Federal Reserve, the FDIC, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision – have issued a policy statement regarding retail sales of non-deposit investment products. This interagency policy statement, dated February 15, 1994, outlines steps that institutions offering non-deposit investment products should take to ensure that customers are informed that such products are not FDIC insured. A copy of the interagency statement is provided in the Appendix.

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Chapter 2

General Principles of Insurance Coverage

1. Insurance is Provided Per Insured Institution

Individually chartered institutions are insured separately from each other, even if they are affiliated through common ownership, such as a holding company.

Separate insurance coverage for each separately chartered and incorporated institution means that all deposit accounts –

- Maintained by a depositor at the same insured depository institution
- Are insured separately from, and without regard to, other accounts that the same depositor maintains at another separately chartered and insured depository institution.

Treatment of Accounts Held in Different Branches of the Same Insured Institution
Accounts of a depositor that are maintained in the same right and capacity at different branches or offices of the same insured institution are not separately insured. They are added together and insured up to the insurance limit in accordance with the requirements for ownership under the applicable account ownership category.

2. Deposit Insurance is Based on Account Ownership Categories

The FDIC's rules and regulations for deposit insurance coverage recognize several different categories of "owner-ship rights and capacities." These ownership categories are:

- Single Ownership Accounts
- Joint Ownership Accounts
- Revocable Trust Accounts
- Irrevocable Trust Accounts
- Accounts of a Corporation, Partnership, or Unincorporated Association
- Retirement and Other Employee Benefit Plan Accounts
- Public Unit Accounts

Each of these ownership categories has specific require-ments which must be met in order to receive separate insurance under the category. If an account fails to meet these requirements, the funds may be considered, for deposit insurance purposes, to belong to another category– usually the single ownership category– and the funds are added together with any other funds that the depositor has in that same ownership category and insured to $100,000.

3. Funds Held in the Same Right and Capacity in the Same Insured Institution are Added Together

All types of deposits in an insured institution that are owned in the same right and capacity (that is, in the same account ownership category), by or for the benefit of a particular depositor or depositors, are added together and insured in accordance with the FDIC's insurance rules applicable to the particular account ownership category.

Important! Because the FDIC always looks at the right and capacity in which funds are held, **insurance coverage is not increased by merely dividing funds held in the same ownership capacity among different accounts or types of deposits at the same insured institution.**

Similarly, **insurance coverage is not increased by using different social security or tax identification numbers.**

4. Effect of State and Local Law

Deposit insurance is for the benefit of the owner or owners of the funds on deposit. Consequently, ownership of deposited funds under state law is a necessary condition for deposit insurance coverage.

Ownership under state law, however, is only one factor in determining the extent of deposit insurance coverage available for a particular deposit account.

Other factors include, **but are not limited to**:

- the deposit account records of the insured financial institution,
- other requirements established in the deposit insurance regulations.

5. Evidence of Ownership Based on Insured Institution's Deposit Account Records

When determining the amount of insurance coverage of an insured account, the FDIC relies on the insured institution's deposit account records to determine whether the owner(s) of the account is entitled to deposit insurance coverage. The FDIC presumes that the funds in an account are actually owned in the manner indicated on the deposit account records.

The FDIC uses the deposit account records of the institution to determine both the identity of the owner(s) and the right and capacity in which the funds are held.

Deposit account records include:

- Signature cards,
- Certificates of deposit or passbooks,
- Account ledgers and computer records that relate to the bank's deposit taking function,

- Corporate resolutions authorizing accounts in the possession of the bank and other books and records of the bank.

For the purpose of determining legal ownership of accounts, deposit account records do not include:

- Account statements,
- Deposit slips,
- Items deposited and canceled checks.

6. Accounts Held by an Institution in a Fiduciary Capacity

When an institution holds funds as an agent, nominee, guardian, custodian, trustee, conservator, or other fiduciary capacity, and places them in a **deposit account** at the institution, the interest of each principal or beneficiary in such an account will be added to other accounts maintained by or for that person in the same right and capacity at the institution, and the total of that interest will be insured up to $100,000 in the aggregate.

Exception:
When an institution acts as a trustee under an **irrevocable trust**, established pursuant to a statute or written trust agreement, each beneficiary's interest will continue to be separately insured up to $100,000.

Deposit insurance does not apply to stocks, bonds or other securities, or property held by an insured institution's trust department in a custodial capacity. An institution holding **non-deposit** assets in safekeeping for its customer is obligated to keep those assets separate from its own assets. The custodial assets thus remain the property of the trust department customer and are considered neither assets nor deposits of the institution.

7. Foreign Deposits

Foreign Depositors With Funds in Insured Institutions
Any person or entity that maintains deposits in an insured institution is entitled to deposit insurance coverage. Insurance coverage is provided regardless of whether or not the depositor is a citizen or resident of, or resides in, the United States.

Insured Deposits Denominated in a Foreign Currency
Deposit insurance coverage is provided for deposits in an insured institution that are denominated in a foreign currency. Deposit insurance for such deposits will be determined in the amount of U.S. dollars that is equivalent in value to the amount of the deposit denominated in the foreign currency. If an insured institution fails, the value of the deposit will be determined using the rate of exchange as of the date the institution is closed.

8. Insurance Coverage When an Insured Institution Merges Into Another Insured Institution

When the deposits of one insured financial institution are acquired by another insured financial institution, the newly acquired deposits are separately insured from any other funds a depositor may already have at the acquiring institution **for a set period of time**. This "grace" period is intended to give depositors an opportunity to restructure their accounts in case the transaction results in the depositor having funds in excess of the insurance limit at one insured institution.

Separate Insurance Coverage is Provided as Follows:

Non-Time Deposits:
Separately insured for six months after the date of the merger.

Time Deposits:
Separately insured until the earliest maturity date or six months after the merger date, whichever occurs **later,** subject to the following:

A. Time deposits that mature within the first six months and are renewed –

for the same dollar amount (with or without accrued interest added to the principal amount), and

for the same term as the original deposit,

–are insured until the first maturity date **after** the expiration of the six-month period.

B. Time deposits that mature within six months, but are not renewed or retained as demand deposits, are insured until the end of the six-month period.

9. The Effect of Changes in Family Relationships on Deposit Insurance Coverage

Major events that change the nature of family relationships, such as the death of a spouse or a divorce, can affect insurance coverage. When an account holder dies, for example, insurance on some types of accounts can be affected by the resulting change in ownership. Most often, the effect is to reduce the amount of insurance coverage that applies to a family's accounts. For this reason, it is important that depositors be encouraged to review the insurance coverage on their accounts whenever there is a major change in their family situation.

Starting July 1, 1998, for six months after the death of a deposit owner, the FDIC will insure that person's accounts as if he or she were still alive. During this "grace period," the insurance coverage of the deposit owner's accounts will not change unless the accounts are restructured by those authorized to do so. The FDIC applies the grace period only if its application would increase, rather than decrease, deposit insurance coverage.

Two examples illustrate this point:

Example A:
Susan Jones has an interest in three accounts at the same insured institution as follows:

Account 1	Susan Jones (individual)	$100,000
Account 2	Susan and John Jones (joint)	$200,000
Account 3	John Jones POD to Susan Jones	$100,000

When the accounts were opened, each was insured in a separate ownership category, resulting in a total of $400,000 in insurance coverage. Unexpectedly, John Jones, Susan's husband, dies. With his death, the right and capacity in which the funds are owned changes. Accounts 1, 2 and 3 now all contain funds that are owned by Susan in the single ownership category. If the institution fails before Susan restructures her accounts, she will be entitled to only $100,000 in insurance, leaving $300,000 (plus earned interest) **uninsured**.

Example B:
In this example, Susan and John are divorced. Here are the accounts that the family has established in one insured institution:

Account 1	John Jones (individual)	$100,000
Account 2	Susan and John Jones (joint)	$200,000
Account 3	John Jones POD to Susan Jones	$100,000

In this example, the insurance coverage of Accounts 1 and 2 is unaffected by the divorce. However, since Susan is no longer John's spouse, Susan is not a qualified beneficiary for a payable on death account. Consequently, following the divorce, Account 3 will fail as a testamentary account, and the funds in the account will be insured as John's individual funds. If the institution fails before John restructures his accounts, Accounts 1 and 3 will be added together and insured together as John's individual funds. Since the total in the two accounts is $200,000, $100,000 (plus earned interest) will be **uninsured.**

Chapter 3

Account Ownership Categories

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Chapter 3

Account Ownership Categories

Single Ownership Accounts

Definition

Single ownership accounts are funds owned by a natural person. A natural person is defined as “a human being.”

Insurance Limit

All funds owned by one person and deposited in single ownership accounts in an insured institution are added together and insured up to $100,000.

Types of Single Ownership Accounts

There are several types of accounts that are insured in the single ownership category. These include:

- Individual Accounts,
- Sole Proprietorship Accounts, including accounts titled “Doing Business As” or DBA,
- Accounts Held in the Name of a Decedent, or by Executors or Administrators of a Decedent's Estate,
- Convenience Accounts,
- Single Name Accounts Containing Community Property Funds,
- Accounts Held on Behalf of Others Pursuant to a Fiduciary Relationship,
- Accounts That Fail to Qualify for Insurance in Other Account Ownership Categories.

Individual Accounts

Individual accounts are established and controlled solely by the person who owns the funds in the account.

Example:
If a depositor has a $72,000 money market deposit account, a $10,000 checking account, and a $22,000 certificate of deposit, all titled in the name of Susan Jones, what amount of Susan's deposits is insured?

- Since all three accounts are individual accounts, the funds are added together, giving Susan a total of $104,000 in single ownership funds.
- The insurance limit of $100,000 is applied, and Susan is left with $4,000, plus any earned interest, uninsured.

Sole Proprietorship Accounts

A sole proprietorship is a business wholly owned by one person, in contrast to a business that is incorporated or owned by a partnership. Sole proprietorship accounts are often identified by the informality of the account title. Some examples of sole proprietorship account titles are: "John Doe DBA (Doing Business As) Perfect Portraits," or "Jane Smith, Business Account." Such titles do not include an indication of incorporation (e.g., ABC, Inc. or XYZ, Ltd.).

Funds owned by a sole proprietorship are insured as the single ownership funds of the person who owns the business, are added to any other single ownership funds of the sole proprietor, and are insured up to $100,000 in the aggregate. Thus, even though a person who is the sole owner of an unincorporated business opens a separate account in the name of his business, **the business account is not separately insured from his personal accounts at the same institution.**

Important! In some cases, a sole proprietorship may have more than one signatory on the account. If both signers have the authority to withdraw funds from the account, without clear evidence in the deposit account records that only one person is the owner of the funds, the account could be determined to be insured in the joint ownership category.

Decedent Accounts

Funds deposited by an executor or administrator for the estate of a deceased person are added together with other funds held in the name of the deceased person, and the total is insured up to $100,000.

Note that decedent and decedent estate account coverage does not apply to testamentary accounts where, upon the death of the owner, the funds belong to a named beneficiary(ies). Similarly, this account category differs from joint accounts (joint tenancy with right of survivorship), where the death of one owner results in full ownership of the funds by the survivor(s). However, in the case of a joint account held as tenants in common, the portion of the account owned by the deceased person could be insured as decedent funds.

For the life of the estate, funds belonging to the estate of the deceased, whether held in the name of the deceased or the executor or administrator of the estate, are insured separately from funds owned by the executor, administrator, or any beneficiary of the estate.

As is the case with any fiduciary account, the fiduciary capacity of the executor or administrator must be disclosed in the institution's deposit account records. An executor or administrator should title the account in a way that clearly discloses the actual capacity in which the funds are held.

Convenience Accounts

If a person owns and deposits funds in an account titled in his or her own name, but then gives another person the right to withdraw funds from the account, the account will be insured as a joint ownership account unless:

- withdrawals from the account are permitted pursuant to a valid Power of Attorney, or
- it is clearly indicated in the deposit account records, to the satisfaction of the FDIC, that the funds are owned by one person and the other signer is authorized to withdraw funds only on behalf of the owner.

If the deposit account records clearly indicate that the second signer is not a co-owner, the account will be insured as single ownership funds.

A Power of Attorney does not affect insurance coverage for the owner of the funds or the person holding the Power of Attorney in any way.

Community Property Funds

Some states are “community property” states. This means that most property or funds owned by one spouse are legally considered to be jointly owned by both spouses. Despite this joint – or community – ownership, funds deposited in one owner's name are insured as the single ownership funds of that owner, regardless of whether the account contains funds that qualify as community property under state law.

Fiduciary Accounts Held for an Individual

If funds are deposited on behalf of an individual by an agent, nominee, guardian, custodian, or conservator, and the deposit account records reflect the fiduciary relationship, funds in the account will be insured as the single ownership funds of the principal, added to any other single ownership funds the principal may have on deposit at the institution, and insured to $100,000. A later section of this Chapter is devoted exclusively to accounts established on behalf of others pursuant to a fiduciary relationship.

Accounts held by a custodian for a minor under the state Uniform Gifts to Minors Act (UGMA) are insured under the single ownership category. Refer to the section on accounts held pursuant to a fiduciary relationship.

Accounts that Fail to Qualify for Coverage in Other Ownership Categories

Each insurance ownership category specifies certain qualifying requirements that must be met in order to obtain insurance coverage. When these conditions are not met, the funds often revert to the single ownership category for calculation of insurance coverage. The specific qualifying requirements for each category are discussed in their respective sections of this Chapter.

Disclosure Rules

The deposit account records must clearly and accurately reflect the actual ownership of the funds on deposit. This is particularly important when dealing with single ownership accounts that are:

- owned by one person but have more than one person authorized to withdraw funds from the account, or
- established pursuant to formal or informal fiduciary relationships.

Joint Ownership Accounts

Definition

Joint ownership accounts are funds held in the names of two or more natural persons.

Insurance Limit

A co-owner’s funds in joint ownership accounts are insured up to $100,000, separately from any single ownership or other types of accounts of the owners if each co-owner:

- has equal withdrawal rights to the account, and
- personally signs an account signature card.

Exception:
Personal signatures are not required if the account is a certificate of deposit, a negotiable instrument, or is set up by an agent.

If these requirements are not met, the account will fail to qualify for coverage under the joint ownership category, and will be insured as the single ownership funds of the account holders.

The Rules for Calculating Coverage on Multiple Joint Accounts

The ownership interests of each co-owner in all qualifying joint accounts are added together and insured up to $100,000.

In other words, no person can have more than $100,000 in his/her interests in all joint accounts at an institution.

Rearranging Order of Names on an Account Does Not Increase Coverage

The insurance coverage of joint ownership accounts is not increased by rearranging the owners' names, by changing the styling of their names, or by opening more than one joint account for the same combination of individuals at the same institution. Alternating use of “or,” “and,” or “and/or” to separate the names of co-owners in a joint account title also does not affect the amount of insurance coverage provided.

Using Multiple Social Security Numbers and Tax ID Numbers Does Not Increase Coverage

Since insurance coverage is not determined by social security number or tax identification number, using different social security numbers or tax ID numbers on multiple accounts held by the same co-owners will not increase insurance coverage.

Any account with more than one authorized signatory will be insured as a joint account, **unless** deposit account records clearly indicate that the funds are owned by only one person and that the other signatory (such as a Power of Attorney) is for convenience or accessibility only.

Disclosure Rules

Funds held by an agent for joint owners (regardless of the relationship) may be insured under the joint ownership account category, **only if** the recordkeeping requirements for fiduciary accounts (discussed later in this Chapter) are met.

Example of Insurance Coverage Under the Joint Account Ownership Category

Consider a group of three joint accounts held in this manner:

Account	**Owners**	**Balance**
Number 1	Chris and Pat	$ 90,000
Number 2	Pat or Chris	30,000
Number 3	Chris, Pat and Lee	240,000
Total		**$ 360,000**

Summary: The insurance determination process resulted in this coverage:

Owner	**Insured**	**Uninsured**
Chris	$100,000	$ 40,000 + interest
Pat	100,000	40,000 + interest
Lee	80,000	0
Total	**$280,000**	**$ 80,000 + interest**

Example of Insurance for Joint Ownership Accounts

Four qualifying joint accounts are owned by A, B, C and D, as follows:

Account	**Owners**	**Balance**
Number 1	A and B	$ 100,000
Number 2	B and A	$ 25,000
Number 3	A , B and C	$ 75,000
Number 4	D and A	$ 80,000

Each owner's ownership interests in these four joint accounts follow:

A's Ownership Interest		
1/2 of the balance in account Number 1	$	50,000
1/2 of the balance in account Number 2	$	12,500
1/3 of the balance in account Number 3	$	25,000
1/2 of the balance in account Number 4	$	40,000
Total of A's ownership interest	**$**	**127,500**

A's ownership interest in the joint account category is limited to $100,000, so $27,500 is uninsured.

B's Ownership Interest		
1/2 of the balance in account Number 1	$	50,000
1/2 of the balance in account Number 2	$	12,500
1/3 of the balance in account Number 3	$	25,000
Total of B's ownership interest	**$**	**87,500**

B's ownership interest in the joint account category is $87,500. That amount is less than the $100,000 maximum, so it is fully insured.

C's Ownership Interest		
1/3 of the balance in account Number 3	$	25,000
Total of C's ownership interest	**$**	**25,000**

C's ownership interest in the joint account category is $25,000. That amount is less than the $100,000 maximum, so it is fully insured.

D's Ownership Interest		
1/2 of the balance in account Number 4	$	40,000
Total of D's ownership interest	**$**	**40,000**

D's ownership interest in the joint account category is $40,000. That amount is less than the $100,000 maximum, so it is fully insured.

Summary of Insurance Coverage

	Insured	**Uninsured**
A	$100,000	$ 27,500
B	$ 87,500	-0-
C	$ 25,000	-0-
D	$ 40,000	-0-
Total	**$252,500**	**$ 27,500**

Revocable Trust Accounts

Definition

The term “revocable trust account” refers to any account that evidences an intention that, upon the death of the owner, the funds will pass to a named beneficiary(ies). Revocable trust accounts are also known as:

- Testamentary accounts,
- Totten trusts, and
- “Payable-on-death” accounts.

Insurance Limit

Revocable trust accounts are insured up to $100,000 per grantor (owner) for each qualified beneficiary.

If two or more grantors are named on a revocable trust account, each grantor is presumed to own an equal share unless the deposit account records indicate otherwise.

If two or more qualifying beneficiaries are named on a revocable trust account, each beneficiary is presumed to have an equal interest unless the deposit account records indicate otherwise.

Kinship Requirement for Qualified Beneficiaries

A depositor generally may name anyone as beneficiary to a testamentary account. **However, separate deposit insurance coverage is available only when the specified relationship requirement is met, and the beneficiary is named specifically in the account documentation.**

A qualified beneficiary is a **parent, sibling, spouse, child, or grandchild of the owner**. Step-children, step-grandchildren, adopted children, and adopted grandchildren also qualify as beneficiaries of revocable trust accounts.

Funds in a revocable trust account that names any person who is not the owner's parent, sibling, spouse, child or grandchild, are not eligible for separate insurance coverage under the revocable trust category. The named beneficiary must be the owner’s parent, brother, sister, spouse, child, or grandchild. (“Child” includes a biological child, adopted child, and stepchild of the owner. “Grandchild” includes a biological child, adopted child, and stepchild of any of the owner’s children. “Parent” includes a biological parent, adoptive parent, and stepparent of the owner. “Brother” includes a full brother, half brother, brother through adoption, and stepbrother. “Sister” includes a full sister, half sister, sister through adoption, and stepsister.)

Funds in a testamentary account held for the benefit of niece, nephew, or friend, do **not** meet the relationship requirements, and are **not** insured under the revocable trust account category.

Funds held in a testamentary trust account that names a beneficiary other than a parent, sibling, spouse, child or grandchild will be treated for insurance purposes as the single ownership funds of the owner(s). These funds will be added to any other single ownership funds held by the depositor at the same insured institution, and the total insured up to $100,000.

Examples of Insurance Calculation for Revocable Trust Accounts:

A. Testamentary funds held by a parent for the benefit of three named children are insured up to $300,000. Testamentary funds held by both parents for three children would be insured up to $600,000.

These funds could be in one account or in several accounts, so long as each owner-to-beneficiary relationship does not exceed $100,000 at one institution.

B. Consider the example of an account titled "Carol ITF her daughter and friend." (Assume that Carol has no other funds at the institution.)

Carol's funds would be insured to $100,000 as testamentary funds for her daughter's beneficial interest and to an additional $100,000 in Carol's single ownership category for her friend's interest.

When Spouses are Both Grantors and Beneficiaries

When account holders establish a testamentary account naming themselves as the sole beneficiaries (e.g., Husband and Wife ITF Husband and Wife), the account is insured as a joint ownership account.

However, when the husband establishes an account in which he holds funds in trust for his wife, and the wife establishes a **separate** account in which she holds funds in trust for her husband, the husband's funds are insured up to $100,000 and the wife's funds are separately insured up to $100,000.

Death of an Account Holder or Beneficiary

Important! If a joint account with a right of survivorship is held by two co-owners and one of them dies, all of the funds are then owned by the surviving account holder. As a result of the co-owner's death, the insurance coverage of the account is reduced by $100,000 **for each qualified beneficiary**.

Starting July 1, 1998, for six months after the death of a deposit owner, the FDIC will insure that person's accounts as if he or she were still alive. During this "grace period," the insurance coverage of the deposit owner's accounts will not change unless the accounts are restructured by those authorized to do so. The FDIC applies the grace period only if its application would increase, rather than decrease, deposit insurance coverage.

Also, when both grantor(s) of a revocable trust die, the funds in the account are insured as the single ownership funds of the beneficiary. If there are multiple beneficiaries, the funds are insured as joint ownership funds.

If a beneficiary dies before the owner(s), the amount of deposit insurance available on the account will be reduced by $100,000 per owner.

Defeating Contingencies

Important! Upon the death of the owner of the account, the qualifying beneficiary must have a vested interest in the trust. Most written revocable trust documents (living trusts) contain contingencies or restrictions that disqualify the account from revocable trust insurance coverage. For this reason, legal review of the trust agreement and evaluation of its provisions may be necessary to determine the amount of insurance coverage on accounts that contain funds that are tied to a revocable trust agreement.

Revocable "Living" Trusts

A living trust, also known as an "inter vivos" trust, requires special review to determine whether it qualifies for insurance coverage under the revocable trust category. Although an account established pursuant to a living trust can sometimes be insured as a testamentary account, all of the qualifying requirements must be met. **Living trusts usually fail to meet the requirement that the funds belong to the named beneficiary upon the death of the grantor, and thus fail to qualify for coverage under the revocable trust account category.**

Evaluation of whether a living trust meets the requirements for insurance as a testamentary account is a complex matter that generally will require the assistance of legal counsel. Depositors with questions about insurance coverage of their living trusts should be encouraged to consult their attorney for advice. (See FDIC guidelines in the Appendix.)

When a revocable living trust fails to meet the special requirements for separate insurance coverage of testamentary accounts, the trust funds are insured as the single ownership funds of the grantor(s). Consequently, funds deposited under the provisions of a revocable living trust will be added to any other single ownership funds of the grantor and the total will be insured up to $100,000.

If a revocable living trust has been created by more than one grantor, funds deposited pursuant to the trust will also be treated as the single ownership funds of each such grantor. Thus, the trust funds will be divided between the grantors, added to any other single ownership funds of each such grantor, and the sum will be insured up to $100,000 per owner.

Disclosure Rules

The deposit account records of the insured institution or the trust document must disclose the name of each beneficiary of the account.

The trust account title must include terms such as "in trust for," "as trustee for," or "payable-on-death to." An acronym for these terms, such as "ITF," "ATF," or "POD," may be used in lieu of these statements.

Accounts of a Corporation, Partnership or Unincorporated Association

Definition

Accounts that contain the funds of a corporation, partnership or unincorporated association.

A "corporation" is an organization that is incorporated under the laws of the state in which it is located.

A "partnership" is an association of two or more persons or entities formed to carry on, as co-owners, an unincorporated business engaged for profit.

An "unincorporated association," is an association of two or more persons formed for some religious, educational, charitable, social, or non-commercial purpose.

Important! Accounts of a sole proprietorship are **not** covered under this account category. Sole proprietorship accounts are insured as the single ownership funds of the sole proprietor.

Insurance Limit

Funds owned by a corporation, partnership, or unincorporated association are insured under this category up to $100,000, provided that the entity is engaged in an **"independent activity."** The term "independent activity" means that the entity that owns the insured funds is operated **primarily** for a business purpose other than to increase deposit insurance coverage.

Funds in accounts of corporations, partnerships, and unincorporated associations that are not engaged in an independent activity will be considered to be owned by the person or persons who own the corporation or who comprise the partnership or unincorporated association.

Funds held in a Corporation, Partnership or Unincorporated Association Account are insured separately from the personal funds of the owner(s) or officials of the entity.

Example:
The president of a corporation could hold a joint ownership account with her husband at the same institution where the corporation's funds are deposited. The single account and the corporate account are separately insured to $100,000 each.

Separately Insured Entities Must Be Separately Incorporated	Corporations must be **separately incorporated** to receive separate insurance coverage. If a corporation has divisions that are not separately incorporated, funds deposited by those divisions are not separately insured even if the deposit accounts are designated for different purposes. Corporate stockholders, officers, employees, and employee benefit plan participants can hold their personal deposits at the same depository institution where the corporate funds are deposited. Their personal funds will be insured according to the "right and capacity" in which they are held, separately from those of the corporation.
Partnership Accounts	Insurance coverage of the funds owned by a partnership is separate from insurance provided for the personal funds of the partners.
Unincorporated Association Accounts	Funds held by an unincorporated association are insured separately from the personal funds of the association's officers and members.
Disclosure rules	As with any type of account, care should be taken to ensure that the deposit account records accurately reflect the actual ownership of the funds. If an account is established by an agent, nominee, or another acting on behalf of a corporation, partnership, or unincorporated association, the recordkeeping requirements for fiduciary accounts must also be met.

Irrevocable Trust Accounts

Definition

Irrevocable Trust Accounts are established by statute or a written trust agreement in which the settlor (the creator of the trust) contributes funds and/or property and relinquishes all power to revoke the trust.

Insurance Limit

In order to be separately insured under the Irrevocable Trust Account category:

- the trust agreement must be valid under state law,
- the existence of the trust relationship must be disclosed on the deposit account records of the institution, and
- the beneficiary's interest in the trust account must be **"ascertainable"** and **"non-contingent."**

(Contingent interests are separately insured in this category but only up to $100,000 for all contingent interests in the same irrevocable trust.)

A **non-contingent trust interest** means that the identity of the beneficiary(ies) and his (their) ownership interest(s) in the account can be determined without evaluation of contingencies other than life expectancy. When a beneficiary's interest in an irrevocable trust can be determined without evaluation of a contingency other than life expectancy, the beneficiary is considered to have an ascertainable interest in the trust.

The "non-contingent" ownership interest of each beneficiary in an irrevocable trust account is insured up to $100,000, separately from any other accounts held by the settlor, trustee, or any beneficiary at the same depository institution.

Disclosure Rules

Irrevocable Trust Account coverage will only apply if the following recordkeeping requirements are met:

- the deposit account records must disclose the existence of the trust relationship, preferably in the account title,
- the identities of the beneficiaries must be ascertainable either from the records of the institution or the records of the account holder (trustee), maintained in good faith and in the regular course of business, and
- the interests of the beneficiaries must be ascertainable and non-contingent.

Note: Irrevocable trust coverage is available on contingent trusts, but only to $100,000 per trust. Similarly, unascertainable and/or contingent interests within a trust are aggregated and insured to a total of $100,000 per trust.

Retirement and Other Employee Benefit Plan Accounts

Definition

Retirement and other Employee Benefit Plan Accounts consist of funds from pension, profit sharing, deferred compensation or other employee benefit plans. Employee Benefit Plans are any plans that qualify under section 3(3) of the Employee Retirement Income Security Act of 1974.

Types of Retirement and Employee Benefit Plans

Types of Retirement and Employee Benefit Plans covered by this category are:

- **Defined Contribution Plans,** in which each participant has one or more accounts made up of contributions from the participant and/or the employer.
- **Defined Benefit Plans**, in which the employer is obligated to pay a retired employee a certain benefit amount, which is often based on the employee's years of service and salary at the time of retirement.
- **Employee Welfare Plans or Welfare Benefit Plans,** which are established by an employer or union in order to provide employees with medical, health, hospitalization benefits, or income, in the event of sickness, accident, or death. Welfare plans generally are funded through a trust.
- **"Section 457" Plans,** which are a type of deferred compensation plan account for employees of state and local governments and non-profit organizations.
- **Individual Retirement Accounts** (IRA), which qualify under section 408 of the Internal Revenue Code of 1954. Contributions to the account are made by the individual (or his or her spouse) based upon earned income.
- **Keogh Accounts**, which qualify under 401(d) of the Internal Revenue Code of 1954. The words "Keogh" or "HR10" usually will appear in the title of the employee benefit plan. This type of plan allows the employer to make contributions to an individual's retirement account.

Note: IRAs ordinarily are not considered Employee Benefit Plans, but could be if established by an Employer for an Employee.

Insurance Limit	Deposits of retirement and employee benefit plans generally are insured up to $100,000 per each participant's interest in the plan if: • each participant has an **ascertainable** and **non-contingent** interest in the plan, • the insured institution meets certain **capital requirements**, and • the FDIC **disclosure rules** for fiduciary accounts are satisfied. The short-hand expression for this type of coverage is "pass through" insurance, meaning that the insurance "passes through" the plan to each participant who has an interest in the plan.
Ascertainable and Non-Contingent Trust Interests	A **non-contingent trust interest** means that the identity of each beneficiary and her ownership interest(s) in the account can be determined without evaluation of contingencies other than life expectancy. When an employee's interest in an employee benefit plan account can be determined without evaluation of a contingency other than life expectancy, the employee is considered to have an **ascertainable interest** in the trust. Employees' interests that are not ascertainable (or capable of determination) are insured up to a maximum of $100,000 in the aggregate. This factor often applies to funds deposited by many health and welfare plans.
Capital Requirements for Insurance Coverage of Retirement and Employee Benefit Plan Accounts	The amount of insurance coverage available for retirement and other employee benefit plan accounts is based upon the capital level of the insured bank or thrift where the deposits are made. In order for "pass through" coverage to be provided, the insured institution must be able to accept "brokered deposits" under section 29 of the Federal Deposit Insurance Act. In order to accept brokered deposits, the institution must meet certain capital requirements at the time the employee benefit plan deposits are accepted.

An institution may accept brokered deposits **only** if the institution's prompt corrective action ("PCA") category is:

- "well capitalized," or
- "adequately capitalized" and the institution has obtained a waiver from the FDIC to accept brokered deposits.

Exception:
There is one other way in which insurance can be provided for up to $100,000 per plan participant instead of per plan. If an institution is adequately capitalized, but does not have a waiver to accept brokered deposits, and the depositor obtains a written notice from the institution **at the time that a deposit is made** into an employee benefit plan, then pass-through insurance coverage will be provided **for that deposit**. The notice must indicate that the deposit is eligible for "pass through" coverage; furthermore, the institutions must meet each applicable standard.

Source of the Plan's Funds

For insurance purposes, it does not matter whether the funds are derived from:

- employee contributions made on a before-tax or after-tax basis, or
- employer contributions or rollover contributions.

All non-contingent interests of participants are considered to be fully vested for insurance purposes. However, only the present vested interest of employees in IRAs, self-directed Keogh Plans, 457 Plans, and self-directed defined contribution plans will be taken into account for deposit insurance calculations.

Aggregation of Interests Held by the Same Beneficiary in Multiple Plans Established by the Same Organization

Assuming that an employee benefit plan account is entitled to "pass-through" coverage, any interests of the same participant in any other employee benefit plan established by the same employer or employee organization (e.g., a union) and deposited in the same institution are combined and insured up to a total of $100,000.

For example, if a company deposits funds of both pension and profit-sharing plans at the same depository institution, the ownership interests of a participant in both plans would be added together and insured up to $100,000.

Aggregation of IRA, Keogh Accounts, and Other Self-Directed Plans

Important! A depositor's interests in IRAs and self-directed Keoghs are not separately insured from each other. A depositor's IRA and self-directed Keogh deposits in the same insured institution are aggregated when determining deposit insurance coverage. In addition, the same depositor's interests in "section 457 plan accounts" and self-directed defined contribution plan accounts (like 401(k) plans) are added to the depositor's aggregated IRA and self-directed Keogh account funds held at the same insured institution.

The total of all these retirement funds is insured to a limit of $100,000 per insured institution.

Note: This aggregation rule applies only to funds deposited in IRAs, self-directed Keoghs, 457 plans and self-directed defined contribution plans that were made, renewed or rolled-over on or after December 19, 1993. There is a "grandfather provision" for deposits that pre-date the December 19, 1993, effective date of this rule.

Disclosure Rules

Each of the following disclosure rules must be satisfied in order to qualify for insurance coverage under this account category:

- The deposit account records of the depository institution must expressly disclose that the funds are those of an employee benefit plan.

- The account holder must maintain records that disclose the identities and interests of plan participants.

Capital Disclosure Requirements

Insured institutions must make certain disclosures of capital information to existing and prospective employee benefit plan depositors. **The disclosures do not alter the existing deposit insurance coverage**. Rather, the disclosures are designed to reduce depositor uncertainty about whether employee benefit plan deposits are eligible for per-participant insurance coverage and to alert employee benefit plan depositors when "pass-through" coverage is no longer available.

The following disclosure requirements became effective on July 1, 1995:

1. The depositor of an existing employee benefit plan account may request a written statement from an insured institution indicating:

    - the institution's prompt corrective action ("PCA") category and capital ratios, and

    - a statement of whether, in the institution's judgment, employee benefit plan account deposits would qualify for pass-through insurance.

2. Whenever an employee benefit plan account that might be eligible for "pass-through" insurance is opened, the insured institution must give the depositor:

   - written disclosure of the institution's PCA category,
   - the requirements for "pass-through" insurance, and
   - a statement of whether, in the institution's judgment, the deposits would qualify for pass-through insurance.

3. Within 10 business days of when new, renewed, or rolled over employee benefit plan deposits placed with an institution will no longer be eligible for "pass-through" insurance, the institution must send a written notice to all affected depositors:

   - indicating the institution's new PCA category, and
   - stating that any new, renewed or rolled over employee benefit plan deposits will not qualify for "pass-through" insurance.

Accounts Held on Behalf of Others Pursuant to a Fiduciary Relationship

Definition

This category applies to accounts established by a third party for the benefit of another party(ies). Fiduciary relationships include, but are not limited to, arrangements involving:

- a trustee
- a guardian
- an agent
- an executor
- a nominee
- a custodian

Insurance Limit

These accounts are insured to the same extent as if the funds were deposited directly by, and in the name of, the actual owner(s) of the deposits. Funds deposited by an agent, trustee, guardian, custodian, or conservator, on behalf of another person(s), are insured as the funds of the owner(s), provided the disclosure rules described on the next pages are met.

Trust Accounts	Trust Accounts are discussed in the sections dealing with Revocable and Irrevocable Trust Accounts.
Agency Accounts	An account held in the name of an agent on behalf of a principal is insured as the funds of the principal. The funds are added together with any other funds that the principal owns in the same right and capacity at the insured institution, either directly or through an agent, and insured to the same extent as if the funds had been placed directly by the principal(s). The principal(s) may be one person, several persons who own the funds jointly, a corporation, a partnership, or an unincorporated association. Brokered deposits are generally insured as agency accounts. **Example:** Tom Smith has single ownership account for $100,000 at ABC Savings Bank. His broker has placed $50,000 of his funds at the same institution. His single ownership funds and the funds placed at the institution by his broker on his behalf are added together and insured to $100,000, leaving Tom with $50,000 plus earned interest uninsured.
Guardian, Custodian or Conservator Accounts	Funds held by a guardian, custodian, or conservator for the benefit of his or her ward are treated as the single ownership funds of the ward, provided that the necessary disclosure rules are satisfied This category includes funds invested on behalf of a minor under the **Uniform Gifts to Minors Act.** The Uniform Gifts to Minors Act is a state law that allows an adult to make an irrevocable gift to a minor. Funds given to a minor by this method are held in the name of a custodian for the benefit of the minor. Funds deposited for the benefit of a minor under the Uniform Gift to Minors Act **(or the Uniform Transfers to Minors Act)** are considered the single ownership funds of the minor and, thus, are insured under the single ownership category up to $100,000. **Example:** An account held as "Jane Jones, guardian for Susan Brown, minor," is added together with any other accounts owned by Susan at the same institution, and the total is insured up to $100,000.
Accounts Held by a Fiduciary on Behalf of Two or More Persons	Accounts containing funds held by a fiduciary on behalf of two or more persons who own the funds jointly are insured as a joint ownership account. **Important!** The requirement that the co-owners of the account must personally sign the signature card does not apply to joint accounts established by a fiduciary.

Mortgage Servicing Accounts

Mortgage servicing accounts are custodial accounts that contain escrow funds paid by the borrower (mortgagor) to a lender (mortgagee). There are two common types of mortgage servicing accounts:

"P&I" Accounts, which contain that portion of the borrower's loan payment that is applied to pay off the principal and interest balance on the mortgage loan;

"T&I" Accounts, which contain that portion of the borrower's loan payment that is applied towards the payment of taxes and insurance on the mortgaged property.

A "T&I" account related to a property for which there is only one borrower is insured as the borrower's single ownership funds. "T&I" accounts related to a property that has two or more co-borrowers is insured under the joint account category.

Mortgage servicing accounts holding "P&I" payments are insured as the funds of the lender, usually in the corporate account category. Usually a lender's monthly P&I payments, from many borrowers, are deposited at one institution. Even though the payments are made by many borrowers, the P&I funds belong to the lender when they are paid, and thus are insured to only $100,000 in the aggregate.

Disclosure Rules

An account may be insured to a person other than the named account holder only if the deposit account records of the insured institution expressly disclose, by way of specific references, that the account is held by someone other that the actual owner of the funds pursuant to a fiduciary relationship.

Important! No claim for insurance based on a fiduciary relationship will be recognized in the absence of disclosure of the relationship in the deposit account records of the insured institution. Even if the funds in the account are held by a fiduciary for another's benefit, if the relationship is not disclosed in the institution's deposit account records, the account will be added together with any other accounts owned by the fiduciary in its corporate or single ownership capacity, and insured up to $100,000.

If the account is held on behalf of a trust, and there is no disclosure of the trust relationship, the account is insured as the single ownership funds of the trustee(s), with each trustee treated as the owner of an equal share of the account. This amount is added to any other single ownership funds held by the trustee, and the total insured to $100,000.

This disclosure requirement serves two purposes: when an institution fails, it puts the FDIC on notice of large potential insurance claims; it also minimizes the risk that a depositor may make a claim for additional insurance coverage based on relationships fabricated after an institution fails.

Details of Fiduciary Relationships

If the deposit account records of the insured institution disclose the existence of a relationship that might provide a basis for additional insurance coverage, the details of the relationship and the interests of other parties in the account must be ascertainable from either:

- the deposit account records of the insured institution, or
- records maintained, in good faith and in the regular course of business, by the depositor or by some person or entity that had undertaken to maintain such records for the depositor.

Disclosure of Multi-Tier Fiduciary Relationships

Fiduciary accounts may involve multiple levels of relationships. For example, an agent may hold funds directly for one or more principals. Alternatively, one agent, "A," may hold funds as nominee for "B," who in turn holds the funds as agent for "C," who is an agent for "D." In deposit accounts involving multiple levels of fiduciary relationships, there are two alternative methods of satisfying the FDIC's disclosure rules in order to obtain insurance coverage for the interests of the true beneficial owners of the funds:

Option 1:

a. Indicate on the deposit account records the existence of each and every level of the fiduciary relationship, **and**

b. Disclose, at each level, the name(s) and interests of the person(s) on whose behalf the party at each level is acting.

Option 2:

a. Expressly indicate on the deposit account records that the depositor is acting in a fiduciary capacity on behalf of certain persons or entities who may, in turn, be acting in a fiduciary capacity for others,

b. Disclose the existence of additional levels of fiduciary relationships in records maintained, in good faith and in the normal course of business, by parties at subsequent levels, **and**

c. Disclose at each of the levels the names and interests of the persons on whose behalf the party at that level is acting.

No person or entity in the chain of parties will be permitted to claim that they are acting in a fiduciary capacity for others unless the possible existence of such a relationship is revealed at some previous level in the chain.

When Records Fail to Disclose the Fiduciary Relationship

If the records of the failed institution do not disclose that an account is held pursuant to a fiduciary relationship, the account will be insured to the named party as single ownership or corporate funds.

If the account is held on behalf of a trust and there is no disclosure of a fiduciary relationship, the account is insured as the single ownership funds of the trustee(s), with each trustee treated as the owner of an equal pro rata share of the account.

Evidence of Ownership Needed For Negotiable Deposit Instruments

Ownership of a deposit does not have to appear on the deposit account records when the original item presented is a negotiable deposit instrument. The FDIC will insure the deposit to the person to whom the instrument was negotiated, even though the insured institution's deposit account records do not disclose the name of the owner of the funds.

The owner must provide affirmative proof that the instrument was negotiated to substantiate the claim for deposit insurance. Negotiable deposit instruments that qualify for this exception **may** include, but are not limited to:

- certificates of deposit
- negotiable drafts
- negotiable cashier's or officer's checks
- negotiable certified checks
- negotiable traveler's checks
- letters of credit.

Public Unit Funds

Definition

Public Unit Accounts contain funds owned by cities, counties, states, or other government entities of the United States and deposited by an official custodian.

Insurance Limit

Insurance coverage of a Public Unit Account differs from that of a corporate account in that the coverage extends to the official custodian of the funds belonging to the public unit, rather than the public unit itself. Each official custodian of time and savings accounts (including interest-bearing NOW accounts) of a public unit is insured up to $100,000.

In addition, demand deposits maintained in an insured institution in the same state as the public unit are separately insured up to $100,000. Consequently, the same official custodian may receive up to $200,000 in insurance coverage – $100,000 in time and savings deposits and $100,000 in demand deposits – provided the funds are held in an insured institution located in the same state as the public unit.

Public unit funds maintained in any out-of-state institution – whether time, savings or demand deposits – are limited to a maximum of $100,000 per official custodian.

Official Custodian

One person may serve as official custodian of the funds of many public units. Also, a public unit may be served by two or more official custodians all of whom would have separate insurance coverage for the funds in their control. The official custodian must have plenary authority, including control, over the funds owned by the public unit. Similarly, if the exercise of authority or control over the funds of a public unit requires action by or the consent of two or more "custodians," they will be treated as one official custodian for the purpose of deposit insurance.

Separate Insurance for Political Subdivisions

If a public unit has political subdivisions, the funds of each subdivision will be separately insured if each subdivision:

- was created under express authorization of law,
- has some functions of government delegated to it by law, and
- can exercise exclusive control over funds for its exclusive use.

Disclosure Rules

The deposit account records must indicate that the account contains funds of a public unit.

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Chapter 4

When an Insured Institution Fails

When an Insured Institution Fails

FDIC Acts to Protect Depositors

If an FDIC-insured institution experiences such severe financial difficulty that it must be closed by its chartering authority, the FDIC takes action immediately to protect the institution's insured depositors.

When Insured Deposits Are Moved to a New FDIC-Insured Institution

In most cases, the FDIC will protect depositors by arranging for another FDIC-insured institution to take the insured deposits of the failed institution. When this happens, depositors usually have access to their insured funds on the next regular business day, and at the same office location.

In some cases, the new institution may choose to lower interest rates after notice to affected depositors. Whenever this happens, depositors may withdraw funds in certificates of deposit without paying an early withdrawal penalty.

Depositors' accounts at the new institution continue to be FDIC-insured. Also, if a depositor already had funds on deposit at the new institution when the failed institution was closed, his funds from the failed institution will be insured separately from his existing accounts at the new institution for a set period of time — usually six months.

Direct Payment of Insurance to Depositors

When the FDIC is unable to arrange for another insured institution to take the failed bank's deposits, the FDIC pays insurance directly to each depositor by check. Payment begins within a few days after an institution fails, and the process can be handled easily by mail. Local depositors may have the option of picking up their insurance payment checks at one of the institution's offices, usually during the first week after the closing.

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Chapter 5

In-House Seminar Materials

How to Conduct an In-House Deposit Insurance Seminar for Your Institution's Employees

Every insured institution has a responsibility to ensure that any of its employees who have direct contact with depositors or who provide account advice to depositors are adequately trained about the FDIC's deposit insurance rules. Such training should provide a thorough explanation of the deposit insurance rules, including the requirements to qualify for insurance coverage under the different account ownership categories. In addition, an effective training program should provide employees with the opportunity to receive training on a regular basis to update them on changes to the insurance rules or just to "refresh" their knowledge.

The FDIC is committed to supporting insured institutions' efforts to provide adequate deposit insurance training to their employees. The FDIC's Division of Compliance and Consumer Affairs and Legal Division have prepared this manual to assist insured institutions in developing an in-house training program on FDIC deposit insurance coverage. This manual includes:

1. Draft Script for Bank and Thrift Managers on the FDIC Deposit Insurance Rules

The script provides, in an oral presentation format, the basic material that should be covered in a training program designed to provide a general overview of the deposit insurance rules. The script does not cover all the deposit insurance regulations and related requirements, but instead focuses on the types of accounts routinely encountered at insured institutions.

2. Sample Overheads

This section contains the text for sample overheads to be used during a training presentation on the deposit insurance rules. The overheads were designed to complement the training script. The hard copies in this Chapter can be converted quite easily into transparencies for an overhead projector.

3. Tests for Trainees

To test employees' knowledge of what they learned at the training session, the following materials are provided:

- 3 Joint Account Worksheets

Target Audience

The target audience for this course is financial institution employees who respond to routine questions about deposit insurance from customers. These individuals generally include branch managers, platform assistants, new accounts personnel, and tellers.

Additional Materials Needed

In addition to the materials provided in this manual, you will need the following materials to conduct your own in-house training program on deposit insurance:

- Copies of the FDIC's **revised** Financial Institution Employee's Guide to Deposit Insurance
- A classroom supplied with an overhead projector, screen, flip chart easel and pads, and magic markers
- Plenty of masking tape so completed flip chart pages may be posted

A supply of the FDIC's brochures titled *"Your Insured Deposit"* This pamphlet is available for free and in bulk to all FDIC-insured institutions. To obtain a supply of these brochures, write to:

FDIC Warehouse
550 17th Street, NW
Washington, DC 20429-0002

Or Fax a request on your institution's letterhead to:

703-516-5201

Additional Assistance Available From FDIC

The FDIC maintains a toll-free Hotline to answer deposit insurance questions from the general public and institution staff. To contact the Deposit Insurance Hotline, call:

1-800-934-3342 or 1-202-942-3100
1-800-925-4618 or 1-202-942-3147 (TDD)

The FDIC also provides written responses to letters via both US Mail and the Internet. To obtain a written reply to a question about FDIC deposit insurance, write to:

Federal Deposit Insurance Corporation
Division of Compliance and Consumer Affairs
550 17th Street, N.W.
Washington, DC 20429-0002

Information on deposit insurance and consumer rights can also be found on the Internet at the following address:

Web page: http://www.fdic.gov.

Draft Script for Bank and Thrift Managers

Today, we'll discuss the deposit insurance rules in detail to give you an effective working knowledge of the rules that are critical to protecting our customers' funds while maximizing the funds that can be deposited with us with full insurance protection.

FDIC Deposit Insurance Basics

The FDIC insures deposits in most banks and savings institutions. Deposits in commercial banks are insured by the FDIC's Bank Insurance Fund, the BIF, and deposits in savings institutions are insured by the Savings Association Insurance Fund, the SAIF.

The FDIC pays deposit insurance to an institution's customers when a depository institution fails and must be closed by its chartering authority. Federal deposit insurance does not cover loss of deposits by fire, theft or fraud. Federal deposit insurance also does not cover the contents of safe deposit boxes.

The basic FDIC insurance limit for a depositor, regardless of citizenship or country of residence, is $100,000. In calculating the amount of an insured deposit, the principal is added to any interest earned as of the date of the institution's failure, including the amount of interest that would have been paid on that day had the institution not failed.

The deposit insurance limit applies to funds held in each federally insured institution without regard to deposits held in other federally insured institutions. If a depositor's accounts contain funds owned in the same ownership category in two or more **branches** of the same institution, however, they would be added together – or **aggregated**– for insurance calculation. If a parent company owns several FDIC-insured institutions, deposits at each institution are separately insured – despite the common ownership of the institutions – **so long as each institution is separately chartered.**

FDIC deposit insurance is governed by the principle that deposits maintained by the same person in the same right and capacity are added together and insured up to $100,000. Examples of accounts held in different rights and capacities are a single ownership account, a joint account and a trust account. All types of deposits – whether they are certificates of deposit, checking accounts, savings accounts, money market or NOW accounts – are added together for the purpose of calculating insurance if they are held in the same name in the same ownership category, and in the same institution.

Categories of Deposit Insurance

There are several separately insured account ownership categories. In each category, there are specific requirements that must be met to qualify for coverage under that category. If an account fails to meet the requirements for separate coverage in a particular account ownership category, the funds are usually insured to $100,000 as the owner's single ownership funds.

The first $100,000 that an individual or a couple holds in an FDIC-insured institution is always insured. To qualify for FDIC insurance in excess of $100,000, certain requirements must be met. We'll review each of the categories and the related requirements that must be met in each one.

Single Ownership Category

A thorough understanding of the single ownership category is essential to protecting the funds of depositors who want to keep more than $100,000 with us. Several types of accounts that you probably see each day fall within the single ownership category.

- The most common type is the **Individual, or Single Ownership account** – funds owned by an individual, not a couple, trust, or corporation. The combination of all single ownership accounts owned by the same person and deposited at the same institution in the name of that person is insured up to $100,000, including principal and any earned interest.

For example, if a depositor has a $22,000 money market deposit account, a $10,000 checking account and a $72,000 certificate of deposit, these accounts are added together for insurance purposes, and the total – $104,000 – is insured up to $100,000 – leaving $4,000 uninsured.

If more than one person has the right to withdraw funds from a single ownership account, the account will be insured as a **joint ownership** account **unless** one of these two situations exists:

- One person owns the funds and the other signatories hold only a Power of Attorney. That is, they are not owners but can **act** on the owner's behalf.

- Or, one person owns the funds and the account records clearly indicate that the other signatories are only “authorized signers” for convenience purposes.

Thus, if the account records clearly indicate that the other signers are not co-owners, the account will be insured as the sole owner's single ownership funds.

Next, let's look at funds owned by a **sole proprietorship** and deposited in the name of the business. Funds of a sole proprietorship are insured as the single ownership funds of the person who owns the business. Thus, the deposits are added to any other single ownership accounts of the sole proprietor and the total is insured up to $100,000. A sole proprietorship is defined in the FDIC's deposit insurance regulations as a form of business in which one person owns all the assets of the business, in contrast to a partnership or a corporation.

Many small family businesses are informal "Mom and Pop shops" with both Mom and Pop signing the signature card. Unless there is **affirmative evidence** in the account records that one person is an authorized signer only and not an owner, these accounts are insured as either joint accounts or partnership accounts if the **state law** requirements for establishing a partnership are met. If the account satisfies the FDIC's requirements for joint accounts, the coverage would be $100,000 for the interest of each co-owners (in aggregation with the same person's interest in other joint accounts at the same institution The coverage for the funds hold —a partnership is $100,000; — the coverage for funds held by a person in a single ownership capacity is $100,000.

It's important to decide which category the business account belongs to, because only then will you know what other accounts are added to it to calculate the FDIC insurance coverage.

Another type of single ownership account is one that **holds community property in one spouse's name.** In a community property state, some funds held in the name of one spouse are considered to be legally owned by both. The deposit insurance regulations state that an account in the name of one spouse is insured as the single ownership funds of that person only, **regardless of whether the funds are owned as community property under state law.**

When an account holder dies, any single ownership accounts held in the **decedent's name** and any accounts held in the name of the decedent's **estate** will be insured together for up to $100,000. Decedent and decedent estate funds are insured separately from any personal funds of the executor or administrator of the estate and from any personal funds of the beneficiaries of the estate for the life of the estate.

An executor of an estate should title accounts in a way that discloses the **actual capacity** in which the funds are held, such as "Jane Smith, Executor of Ann Perry's Estate." If the account is titled in the executor's name only, without indicating the fiduciary capacity in which s/he is acting, the funds of the estate will not be separately insured from the executor's personal funds at the same institution.

Mortgage servicing accounts are escrow accounts maintained by a mortgage servicer acting in a custodial capacity for various borrowers, known as mortgagors. When a mortgage servicing account holds taxes and insurance (T&I) premiums paid by mortgagors, the interest of each mortgagor in the T&I portion of the account is insured to $100,000, as if it were the single ownership funds of that mortgagor.

If two mortgagors are joint borrowers and, thus, pay their taxes and insurance premiums into the account jointly, their interest in the T&I portion of the mortgage servicer's account is insured as if it were their **joint account**, and would be added together with any other joint ownership accounts held by the same owners at the same institution.

The taxes and insurance premiums are treated differently, on the basis of ownership, from the principal and interest payments. Although a mortgagor probably makes monthly payments to a mortgage servicer to cover annual tax and insurance bills, the money still belongs to the mortgagor until the annual payments are actually made by the mortgage servicer. However, as soon as the mortgagor makes her monthly mortgage payment, the principal and interest portions become the property of the lender and are insured immediately as the lender's funds, usually in the corporate account category, which provides coverage of up to $100,000 in one institution.

The amount of a single month's T&I might be fairly insignificant compared to the $100,000 insurance limit, but by the tenth or eleventh month, the total of the T&I payments accumulated in a borrower's mortgage servicing account can amount to an appreciable figure, which might put the balance over the $100,000 limit, especially if the borrower has other single ownership accounts in the same institution as the mortgage servicer.

Although most of us don't have over $100,000 on deposit, think about how many of the depositors who do hold jumbo CDs may also have mortgages. This is the group of customers we'll be protecting by our awareness of how this rule works.

Now, let's review for a minute. We're talking about the different types of accounts that are either **single ownership accounts** or that may sometimes be insured as if they were in the single ownership category. We've talked about single ownership accounts that are in the form of **individual accounts**, those that are funds belonging to a **sole proprietorship, community property funds** held in one spouse's name, **decedent accounts** and decedent estate accounts.

We've also talked about **mortgage servicing accounts,** which are fiduciary, rather than single ownership, accounts. However, the T&I portions of these mortgage servicing accounts can be treated as single ownership accounts for deposit insurance purposes if the owner of the T&I payments is a single individual.

All of the types of accounts we've described are deposited directly by the owner except for decedent estate accounts and mortgage servicing accounts. These last two types are deposited by **someone who acts in a fiduciary capacity**, handling funds that **belong** to someone else. These fiduciary accounts are **insured to the actual owner** (or to the owner's estate) in the owner's single ownership capacity if:

- the owner is deemed to be an individual for insurance purposes, and
- certain disclosure rules are satisfied.

The disclosure rules are that the title of the account must indicate that the funds are being held in a fiduciary capacity, and either the institution's deposit account records or the records maintained in the normal course of business by the account holder – the agent who is acting for the owner – or someone who is acting on the agent's behalf such as a CPA – must reveal the owner's identity and ownership amount.

Funds deposited by an agent on behalf of an owner are insured as the funds of the owner, whether the owner is an individual or an entity such as a corporation. If the owner is an individual, the insurance will be up to $100,000 in the single ownership category. If an agent deposits funds for more than one owner (as opposed to jointly owned funds held by an agent), each owner's funds will be insured up to $100,000 if the disclosure rules are satisfied. The requirements, again, are that:

- the agent's fiduciary capacity must be disclosed in the account title, and
- the deposit account records or records maintained in the normal course of business by the agent, or someone acting for the agent, must show the names and interests of each owner of the funds.

If both of these requirements are met, the funds of each owner are separately insured. However, the funds are added together with any other single ownership funds the principal holds at the same institution, and the total is insured up to $100,000.

Funds held by an agent for any joint owners, regardless of their relationship, are insured as their joint ownership funds if:

- the disclosure rules for agent accounts are satisfied, and
- the requirements of the joint ownership category are met.

The requirements for insurance coverage as a joint account are that:

- the joint owners must be two or more natural persons – not corporations or any other legal entity, and
- each owner must possess equal withdrawal rights.

If these joint account requirements are met, the interest of each consumer is aggregated with that person's interests in other joint accounts at the same institution and insured up to $100,000.

Funds deposited by an agent such as a guardian or custodian are insured as if they are the sole owner's single ownership funds if certain disclosure rules are satisfied. For example, let's look at an account titled "Jane Jones, guardian for Susan Brown, minor."

Regardless of whether Jane is Susan's court-appointed guardian, the funds in this account are added together with any other accounts owned by Susan (the minor) at the same institution, and her total is insured up to $100,000. Thus, funds held in accordance with the **Uniform Gifts to Minors Act** are insured up to $100,000 as if they were the minor's single ownership funds.

Another type of agent who will often ask about the FDIC's insurance coverage of money deposited with us might be a rental agent or a law firm. The rental agent usually establishes an account to hold rental security deposits. The law firm usually opens accounts to hold clients' deposits. When their business with the client is completed, the deposit money might be returned to the client. It might become the law firm's money or, in the case of the rental agent's security deposits, some of the funds in the account might become the funds of the apartment complex owner if a tenant's security deposit is forfeited.

For example, if the FDIC went into a failed institution to determine insurance, it might see from the title of an account that ABC Rental Agent is holding funds for the residents of the East Village Complex. This disclosure of the agent's fiduciary capacity could be made through a variety of phrasings, e.g., "ABC Rental as Agent Account." The disclosure requirement is satisfied if the account title reveals that someone is depositing funds that belong to someone else. This allows the deposit insurance to "pass through" from the agent to the actual owner. In this way, the agent can deposit far more than $100,000 and the funds will be insured up to $100,000 for each owner, but **only if**:

- proper disclosure is made in the title, and
- the agent keeps records that identify each owner and the amount owned by each.

Again, remember that the amount deposited by an agent and owned jointly by Jane and Jim Smith will be added together with any other joint ownership accounts Jane or Jim hold at the same institution.

Likewise, if an agent has deposited funds for an apartment complex owner that is a corporation or a partnership, the total of all deposits owned by the corporation or partnership at the same institution will be insured to $100,000.

Let's think about how the disclosure rules for agent accounts actually work. Consider what happens when a tenant vacates an apartment and the rental agent finds so much damage that the security deposit can't be returned. The rental agent should immediately change her records to show that the tenant's security deposit is now owned by the complex owner.

The agent wouldn't actually rush into the bank to withdraw the amount of the security deposit from the rental agent's escrow account and deposit it into the complex owner's account.

Instead, the FDIC would review the agent's records to determine which party actually owned what amount at the time the institution was closed.

Another interesting variety of agent account is that in which a law firm holds its clients' funds in so-called "**attorney trust accounts.**" Many states have laws that require this vesting. However, these deposits are insured by the FDIC as funds held by an agent, rather than as trust funds. Funds deposited by a law firm on behalf of clients are insured up to $100,000 as the funds of each actual owner if the disclosure and disclosure rules are satisfied. Vesting such as "Smith & Jones Attorney Trust Account" will satisfy the requirement that the agent must disclose the fiduciary capacity in the account title.

Another type of account that may be added together with single ownership funds for calculation of deposit insurance is an account that **fails to qualify** for separate insurance coverage in other account ownership categories. Accounts that often fail to receive separate insurance are:

- joint accounts that don't show each owner's signature on the signature card, and

- two types of revocable trust accounts—

  The first is the "**payable-on-death**" (or POD) account that names a **beneficiary who doesn't qualify** as the owner's spouse, child, grandchild, parent or sibling. In this case, the non-qualifying beneficiary's interest is insured as the owner's individually-owned funds.

  The second is "**Living**" or "**Family**" trusts, which, due to defeating contingencies within the trust document, rarely qualify for separate insurance. (i.e., separate from the owner's individually-owned funds).

Sometimes, part of an account will qualify for separate coverage and another part will fail to meet the requirements and, as a result, will be insured as if that portion of the funds was individually owned.

Joint Ownership Accounts

Now we'll discuss joint ownership accounts. The FDIC's deposit insurance rules specify three requirements that must be met for an account to qualify for separate coverage as a joint account. If all three conditions are satisfied, the insurance coverage is separate from any accounts that are insured in the other account ownership categories. Separate coverage means that the insurance provided for a joint account is in addition to coverage provided for one co-owner's single ownership account or trust funds held in the same institution.

Let me give a quick example: If Lucy had an account in her name alone in any FDIC-insured institution, it is insured up to $100,000. In the same institution, Lucy and her husband could have a joint ownership account insured up to $200,000 – for a total of $300,000 in this one institution. But, if their joint account failed to meet one of the require-ments for separate coverage as a joint account, it would, instead, be insured as each owner's individually owned funds. If Lucy's husband had no other individually owned funds at the same institution, his half of the non-qualifying joint account would be insured; but Lucy does have an account in her name alone, so her half of the failed joint account would be uninsured.

Now, let's see what the three requirements are for separate coverage as a joint account:

- First, a joint account must be held in the names of two or more natural persons –meaning not corporations or other legal entities.

- Second, each co-owner must personally sign a deposit account signature card unless the account is a CD, a negotiable instrument or an account set up by an agent or nominee.

- The third requirement is that each owner must be able to withdraw on the same basis. If one co-owner can withdraw on only her signature while another co-owner requires two signatures, that would be unequal – and the account would not qualify for separate coverage as a joint account.

A question you might ask at this point is: Should the title be "Jean and Don" or "Jean **or** Don"? Whether the co-owners' names are joined by "and" or "or" doesn't affect deposit insurance unless both terms are used in the same account title to indicate unequal withdrawal rights. For instance, if the title "Jean and Don or Ruth" means to our institution that Jean, Don and Ruth have different withdrawal conditions, their account would fail to meet the requirements for joint account coverage.

Another common question: Should the social security number of the first person named in the title be reported to IRS? The social security number reported for a deposit account doesn't affect the deposit insurance coverage of the account. A joint account – by definition – has two or more co-owners, but IRS allows only one social security number to be reported for each account, so the tax reporting number is never an accurate guide to joint account ownership.

A joint tenancy with right of survivorship is the most common type of joint ownership. It allows each co-owner to withdraw funds, and the account will belong to the surviving owner or owners upon the death of any joint tenant. The FDIC will presume that a joint account is a joint tenancy with right of survivorship unless the deposit account records of the institution state otherwise.

Tenants by the entirety own joint accounts in much the same manner but must be a husband and wife. Upon the death of one, the funds belong to the survivor.

Another type of joint ownership is a tenancy in common. Tenants in common may have unequal ownership in an account that is under their joint control. Each co-owner's percentage of ownership is usually based on the amount that owner originally contributed to the account. If the deposit account records don't specify the percentage owned by each, the regulations say that it will be calculated as equal ownership. If one owner of a tenancy in common account dies, the amount he owned doesn't pass to the surviving owner but, instead, becomes part of his estate.

A **community property account** can be another type of joint ownership if the account is titled in both spouses' names. There are eight states that have community property laws. Upon the death of one spouse, half of the community property belongs to the survivor and the other half belongs to the deceased spouse's estate. Be aware that an account titled in only one spouse's name will be insured as that person's individually-owned account even if the account contains community property funds.

Now, let's talk a bit about what happens when a joint account fails to qualify for separate joint ownership coverage. Then we'll calculate insurance of some qualified joint accounts. The FDIC will presume that deposited funds are actually owned in the manner indicated in our deposit account records, so long as the records are clear and not ambiguous. For this purpose of determining insurance, the FDIC considers our deposit account records as including account ledgers, signature cards, certificates of deposit, passbooks and certain computer records – if each of these types of records is actually maintained in the institution rather than by the account holder.

If the FDIC has reason to believe that actual ownership is misrepresented in the institution's records, the FDIC may consider all other available evidence in determining insurance coverage. This means that our records must be absolutely accurate for our customers' protection. Whenever you change an account styling, either at rollover or another time, you must be very thorough in making the change on all of our records.

Review of Joint Account Example
Refer to Joint Account Overheads

Revocable Trust Accounts

Now, let's look at a third separately insured category, the revocable trust category, which provides separate coverage for payable-on-death and other revocable trust accounts if certain requirements are met:

- First, the terms "Payable-on-Death", "As Trustee For", or "In Trust For" or something similar (or their acronyms) must be used **in the account title** to show that upon death of the owner, the account will belong to a named beneficiary. If the account is based on a written trust document, a title as simple as “Jones Family Trust” or “Jones Trust” may be used but the written trust agreement must actually provide that the funds shall belong upon the death of the owner to the beneficiary.

- Second, the beneficiary must be the owner’s parent, sibling, spouse, child or grandchild.
- Third, the beneficiary(ies) must be listed by name in the institution's deposit account records.

If these three requirements are satisfied, a depositor could hold funds in a revocable trust account that would be insured up to $100,000 for each parent, sibling, spouse, child or grandchild named as a beneficiary. If, for example, a woman names her husband and two children, she could have $300,000 in a single revocable trust account that is fully insured separately from the $100,000 she has insured in her single name accounts at the same institution. Similarly, she can have another $100,000 for her share in her joint ownership accounts. We can see from the calculation that she and her husband could deposit $600,000 into a payable-on-death account co-owned by the two of them in trust for their three named children.

What if one of our depositors names her niece as her beneficiary? Since one requirement for a revocable trust account to be separately insured is that the beneficiary must be her parent, sibling, spouse, child or grandchild, an account held for her niece’s benefit would not qualify for separate coverage as a revocable trust account. Instead, it would be treated as if it is the depositor’s single ownership account and it is added with any other single ownership accounts she holds at the same institution, and the total amount is insured up to $100,000.

A living trust, also known as an “inter vivos” trust, requires special review to determine whether it qualifies for insurance coverage under the revocable trust category. Although an account established pursuant to a living trust can sometimes be insured as a revocable trust account, all of the qualifying requirements must be met. Living trusts usually fail to meet the requirement that the funds must belong to the named beneficiary upon the death of the grantor, and thus fail to qualify for coverage under the revocable trust account category.

Evaluation of whether a living trust meets the requirements for insurance as a revocable trust account is a complex matter that generally will require the assistance of legal counsel. Depositors with questions about insurance coverage of their living trusts should be encouraged to consult their attorney for advice. The FDIC has a set of interpretive guidelines that institution staff can obtain for depositors.

When a revocable living trust fails to meet the special requirements for separate insurance coverage of testamentary funds, the trust funds are insured as the single ownership funds of the grantor(s). Consequently, funds deposited under the provisions of a revocable living trust will be added to any other single ownership funds of the grantor and the total will be insured up to $100,000.

Corporate, Partnership and Unincorporated Association Funds

The funds of a corporation, partnership or unincorporated association engaged in any "**independent activity**" are added together and insured up to a total of $100,000, including principal and any earned interest. Independent activity means that the entity is operated primarily for some purpose other than to increase deposit insurance.

Corporations must be separately incorporated to receive separate insurance coverage. If a corporation has divisions that are not separately incorporated, funds deposited by those divisions are not separately insured even if the deposit accounts are designated for different purposes. All funds deposited in the same institution and owned by the same corporation are added together and insured up to $100,000.

Corporate stockholders, officers, employees and employee benefit plan participants can hold their personal deposits at the same depository institution where the corporate funds are deposited. The personal funds will be insured according to the "right and capacity" in which they are held.

Insurance coverage of the funds owned by a **partnership** is separate from insurance provided for personal funds of individual partners. All funds deposited in the same institution and owned by the same partnership are added together and insured up to $100,000. Funds owned by a partnership that are merely designated for different purposes are not separately insured.

Funds held by **unincorporated associations** are insured separately from personal funds of their members, so long as the independent activity requirement is met. As with corporate and partnership accounts, all funds held by the unincorporated association, even if designated for different uses, are aggregated and insured up to $100,000 total.

Irrevocable Trust Accounts

Irrevocable trust funds are established pursuant to an irrevocable trust, such as a will or another written instrument, by which the settlor (grantor) contributes funds and/or property without retaining the power to revoke the trust.

There are several requirements that must be met in order for trust funds to qualify for insurance under the FDIC's irrevocable trust account category. The "non-contingent" ownership interest of each beneficiary in an irrevocable trust account is insured up to $100,000, separately from any other accounts held by the settlor, trustee or any beneficiary at the same depository institution if three conditions are met:

- The trust agreement must be valid under state law.
- The existence of the trust relationship must be disclosed in the deposit account records of the institution, preferably in the account title.
- The identity of each beneficiary and the value of the beneficiary's ownership interest must be ascertainable from the records of the trustee or of the institution.

Contingent trust interests
If the identity or ownership interests of the beneficiaries cannot be determined without evaluation of contingencies other than life expectancy, insurance coverage is limited to $100,000 (including interest earned on the account) for all such contingent interests in the applicable trust.

Employee Benefit Plan Funds

"Pass-through" insurance coverage
The insurance coverage for retirement and other employee benefit plan accounts is based upon the capital level of the insured bank or thrift where the deposits are made. Deposits of retirement and employee benefit plans (including so-called "section 457" plans, a type of deferred compensation plan account for employees of state and local governments and non-profit organizations) are generally insured up to $100,000 per participant's "non-contingent" interest in the plan, if the FDIC disclosure rules are satisfied. **The short-hand expression is that the insurance "passes through" to each participant who has an interest in the plan deposits.**

In order for "pass-through" coverage to be provided, the insured institution must be able to accept "brokered deposits" under section 29 of the Federal Deposit Insurance Act. In order to accept brokered deposits, the institution must meet certain capital requirements at the time the employee benefit plan deposits are accepted. An institution may **only** accept brokered deposits if the institution is "well-capitalized" or if it is "adequately capitalized" and has obtained a waiver from the FDIC to accept brokered deposits.

There is one other way in which insurance can be provided in the amount of up to $100,000 per plan participant's interest, instead of $100,000 per plan. If an institution is adequately capitalized, but does not have a waiver to accept brokered deposits, and the depositor obtains a written notice from the institution **at the time that a deposit is made** into an employee benefit plan, then pass-through insurance coverage will be provided **for that deposit**. In that situation, an employee benefit plan deposit would be entitled to per-participant insurance coverage.

Assuming that an employee benefit plan account is entitled to "pass-through" coverage, any interests of the same participant in any other employee benefit plan established by the same employer or employee organization (e.g., a union) and deposited in the same institution is aggregated for insurance purposes.

Employees' interests that are not capable of determination will be insured up to a maximum of $100,000. This insurance coverage applies, for example, to funds deposited by many health and welfare plans.

Disclosure rules are as follows:

- The deposit account records of the depository institution must expressly disclose that the funds are those of an employee benefit plan.
- The account holder must maintain records that disclose the identities and interests of plan participants.

"Non-contingent interests"
The term "non-contingent interest" means an interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and the calculation methods published by the IRS.

For insurance purposes, it does not matter whether the funds are derived from employee contributions made on a before-tax or after-tax basis, employer contributions, or rollover contributions. In addition, the participants in a plan are considered to be fully vested when interests in a plan are being calculated.

Disclosure Rules for Employee Benefit Plan Accounts

Institutions must disclose certain capital information to existing and prospective employee benefit plan administrators/depositors. The disclosures do not alter the existing deposit insurance coverage. Rather, the disclosures are designed to reduce depositor uncertainty about whether a plan's deposits are eligible for pass-through coverage, and alert benefit plan depositors when pass-through coverage is no longer available. The disclosure rules became effective on July 1, 1995.

The depositor of an existing employee benefit plan account may request a written statement from an insured institution indicating: the institution's Prompt Corrective Action (PCA) category; various capital ratios; and a statement of whether, in the institution's judgment, the employee benefit plan account deposits qualify for pass-through insurance coverage.

Similarly, when an employee benefit plan account that might be eligible for pass-through insurance coverage is opened, the insured institution must provide written disclosure of the institution's PCA category; various capital ratios; and a statement of whether, in the institution's judgment, the employee benefit plan account deposits would qualify for pass-through insurance coverage.

Within ten business days of when new, renewed, or rolled-over employee benefit plan deposits are no longer eligible for pass-through insurance due to a change in the institution's PCA rating, the institution must send a written statement to all affected depositors indicating the new PCA rating, and including a notice that any new, renewed, or rolled-over employee benefit plan accounts will not qualify for pass-through insurance. Accounts that qualified for pass-through insurance when they were opened continue to be eligible until they mature. Insurance coverage on funds added to these accounts, however, will be based on the PCA rating of the institution on the date of the additional deposit. PCA ratings can only change once a quarter.

Aggregation of Certain Retirement Accounts

As of December 19, 1993, a depositor's interests in Individual Retirement Accounts (IRAs) and self-directed Keogh plans in the same insured institution are aggregated when determining deposit insurance coverage. In addition, the same depositor's interest in "457 plan" accounts and other self-directed defined contribution plan accounts are added to the depositor's aggregated IRA and Keogh funds held at the same institution. The total of all these retirement funds is insured to a maximum of $100,000.

Please note, however, that these aggregation rules apply only to funds deposited in such accounts after December 19, 1993. There is a "grandfather provision" for deposits made before the December 19, 1993, effective date.

Public Unit Funds

Public unit funds are those owned by cities, counties, states, or other government entities. Each official custodian of time, savings, and interest-bearing NOW accounts is insured up to $100,000 at each federally insured institution. In addition, demand deposits maintained in the same state as the public unit are separately insured to $100,000.

If a public unit has political subdivisions, the funds of each subdivision will be separately insured if each subdivision:

- was created under express authorization of state law,
- has some functions of government delegated to it by law, and
- is empowered to exercise exclusive control over funds for its exclusive use.

One person may serve as official custodian of the funds of many public units (e.g., contract tax collector). Also, a public unit may be served by two or more official custodians, all of whom qualify for separate insurance coverage of the funds in their custody.

The deposit insurance available to a public unit cannot be increased by fragmenting authority or control over that unit's funds among several official custodians or by merely designating portions of the public unit's funds for separate purposes.

Similarly, if the exercise of authority or control over the funds of a public unit requires action by or the consent of two or more "custodians," they will be treated as one official custodian for the purpose of calculating deposit insurance.

Conclusion

As you can see, it is very possible for a depositor to hold funds in a single institution that are insured for far more than $100,000, but very specific requirements must be met to qualify for separate insurance coverage based on the different ownership capacities of the funds.

Insurance coverage is not affected by the types of deposit instruments the funds are in – such as checking, passbook savings, money-market deposits, or CDs – **except in the case of public unit funds**. In all other ownership categories, using different types of account instruments will not qualify accounts owned in the same right and capacity for separate insurance.

Also, separate insurance coverage is not determined by social security or tax identification numbers. Instead, the key to determining insurance coverage is to decide the legal ownership category of the funds and then calculate the amount of coverage provided for that category by the deposit insurance regulations.

At this time it would be appropriate to give the students copies of the worksheets and quizzes to complete. These materials can be found at the end of this guide, and include an instructor's version that has correct answers.

Federal Deposit Insurance Corporation

- **“Rights and Capacities”= Actual Ownership**
- **Insurance Coverage Is Per Bank, NOT Per Branch**
- **$100,000 Limit = Principal and Interest**
- **Merging Institutions — 6–Month Rule and Time Deposit Exception**
- **“Deposit Account Records” = Bank Records and NOT Customer Records**
- **Fiduciary Accounts — Express Disclosure in Bank Deposit Account Records**

Insurance Coverage for Single Ownership Funds

Single ownership accounts:

- **Established by or for the same person**
- **Added together and insured to $100,000**

Single Ownership

An account owned by one person. This includes:

- **Individual Accounts**
- **Sole Proprietorship Accounts**
- **Community Property Funds (held in one name)**
- **Decedent and Decedent Estate Accounts**
- **Mortgage Servicing Tax and Insurance Premium Funds (T & I accounts)**
- **Agent, Nominee, Guardian, Custodian, or Conservator Accounts Held For Individuals**

Single Ownership Insurance Summary

Depositor	Type of Account	Amount
A	**Savings**	**$ 25,000**
A	**CD**	**$ 100,000**
A	**NOW**	**$ 25,000**
A, as Sole Proprietor	**Checking**	**$ 25,000**
Total on Deposit		$175,000

Maximum Insured	**$ 100,000**
Uninsured	**$ 75,000**

“Convenience Accounts"

- **Individual or Joint?**
- **Joint Unless:**

  Withdrawal by non-owner made pursuant to valid “Power of Attorney”

  or

  Deposit account records clearly indicate that funds are owned by one person and that the other signatory is acting only on behalf of owner

Insurance Coverage for Joint Ownership Funds

- The ownership interests of each co-owner in all joint accounts he or she owns in one insured depository institution are added together and insured up to 100,000.
- Changing SSNs and/or the order of names does not increase this limit.
- No individual can be insured for more than $100,000 in the joint ownership account category.

Joint Account Example

Four qualifying joint accounts are owned by A, B, C and D, as follows:

Account	Owners	Balance
Number 1	A and B	$100,000
Number 2	B and A	$ 25,000
Number 3	A, B and C	$ 75,000
Number 4	D and A	$ 80,000

Each owner's ownership interests in these four joint accounts follow:

A's Ownership Interest

1/2 of the balance in account Number 1	**$ 50,000**
1/2 of the balance in account Number 2	**$ 12,500**
1/3 of the balance in account Number 3	**$ 25,000**
1/2 of the balance in account Number 4	**$ 40,000**
Total of A's Ownership interest	$127,500

A's insurance coverage in the joint account category is limited to $100,000, so $27,500 is uninsured.

B's Ownership Interest

1/2 of the balance in account Number 1	**$ 50,000**
1/2 of the balance in account Number 2	**$ 12,500**
1/3 of the balance in account Number 3	**$ 25,000**
Total of B's Ownership interest	$ 87,500

B's ownership interest in the joint account category is $87,500. That amount is less than the $100,000 maximum, so it is fully insured.

Each owner's ownership interests in these four joint accounts follow: (continued)

C's Ownership Interest

1/3 of the balance in account Number 3	**$ 25,000**
Total of C's ownership interest	$ 25,000

C's ownership interest in the joint account category is $25,000. That amount is less than the $100,000 maximum, so it is fully insured.

D's Ownership Interest

1/2 of the balance in account Number 4	**$ 40,000**
Total of D's ownership interest	$ 40,000

D's ownership interest in the joint account category is $40,000. That amount is less than the $100,000 maximum, so it is fully insured.

Summary of Insurance Coverage

	Insured	Uninsured
A	$ 100,000	$ 27,500
B	$ 87,500	-0-
C	$ 25,000	-0-
D	$ 40,000	-0-
	$ 252,500	$ 27,500

Joint Account Rules

Separately insured if:

- **All co-owners are natural persons**
- **Each co-owner personally signs the signature card**

Exemptions: **Certificate of Deposit**
Negotiable Instruments
Funds maintained by an agent, nominee, guardian, custodian or conservator

- **All co-owners have equal rights of withdrawal**

Revocable Trust Account Insurance Coverage

- **$100,000 separate insurance**
- **per owner/settlor**
- **per qualifying beneficiary**

Rules for Testamentary Revocable Trust Account Coverage

- **Funds belong to beneficiaries on death of owner**
- **Testamentary intention must be stated in account TITLE:**

  In Trust For or "ITF"
  Payable on Death or "POD"
  As Trustee For or "ATF"
- **Beneficiaries must be specifically NAMED in deposit account records**
- **Relationship Requirement:**
  Parent, Sibling, Spouse, Child or Grandchild

('Child' includes a biological child, adopted child, and stepchild of the owner. 'Grandchild' includes a biological child, adopted child, and stepchild of any of the owner's children. 'Parent' includes a biological parent, adoptive parent, and stepparent of the owner. 'Brother' includes a full brother, half brother, brother through adoption, and stepbrother. 'Sister' includes a full sister, half sister, sister through adoption, and stepsister.)

Revocable Testamentary Trust Examples

Example 1
"Husband and Wife ITF Child 1, Child 2, & Child 3"*

Coverage	H	W
C1	$100,000	$100,000
C2	$100,000	$100,000
C3	$100,000	$100,000
Total	$300,000	$300,000

* Combined Maximum Coverage $600,000

Funds can be in one account or several accounts

Example 2
"H ITF W" and "W ITF H" (two separate accounts)

Each account can be insured as Revocable Trust funds to $100,000 for a total of $200,000 insurance coverage

Important:
"H&W ITF H & W" (one account)

- **Not POD Account**
- **Insured as a** Joint Account **(up to $200,000, depending on other joint accounts held at same institution)**

Living Trust Deposit Accounts

- **Governed by written trust document (unlike one-line POD accounts)**
- **For separate and maximum coverage, must meet:**

A. Recordkeeping requirements of account –

1. proper account title

2. beneficiaries listed by name in deposit account records

and

B. Substantive requirements of underlying trust –

1. upon death of last settlor, beneficiary must have "vested interest" (Guidelines, p. 5)

2. beneficiary must be "qualifying" (spouse, child, grandchild, parent or sibling of settlor — child or grandchild may be natural, adopted or step-)

Agency or Custodial Accounts

- **Owner of funds = insured party**
- **No separate insurance**
- **Funds are aggregated with funds in other ownership categories (e.g., individual or joint accounts)**
- **Recordkeeping of fiduciary is critical**

Example of Agency/Custodial Account Coverage

A = Agent for P1, P2, and P3

	Account	Amount
1.	A for P1, P2, and P3 (as individuals)	$300,000
2.	P1 (individual)	$100,000
3.	P2 (individual)	$100,000
4.	P3 (individual)	$100,000
5.	P1 and P2 (joint)	$100,000

Results:

	Insured	Uninsured
P1	$100,000	$100,000
P2	$100,000	$100,000
P3	$100,000	$100,000
P1 and P2	$100,000	—

Corporation, Partnership and Unincorporated Association Accounts

- **Insured to $100,000, separately from funds of owners/officers, members, if "independent activity" requirement is met**
- **Independent activity: entity has a purpose other than to increase deposit insurance**

Public Unit Account Coverage

A "political subdivision" of a public unit qualifies for separate deposit insurance if:

- **Expressly authorized by the law of the public unit**
- **Functions of government have been delegated by law**
- **Can exercise exclusive control over funds for its exclusive use**

If the institution is located in the same state as the public unit, each official custodian is separately insured to:

- **$100,000 for all time, savings and NOW deposits**
  and
- **$100,000 for all demand deposits**

If in a different state, each official custodian is separately insured to:

- **$100,000 for all funds, including time, savings, NOW, and demand deposits**

Each Official Custodian Must Have Plenary Authority, Including Control, Over Funds Owned by the Public Unit

Control includes possession and authority to:

1. **Establish accounts and**
2. **Make deposits, withdrawals and disbursements.**

New Pass-Through Disclosure Requirements for Employee Benefit Plan Deposits

I. Written disclosure of capital status required:

- **Within five days of depositor request**
- **Upon opening a new account**
- **Within 10 days of when pass-through coverage ceases**

II. Disclosure must include:

- **PCA capital category**
- **Whether pass-through would be available**
- **Capital ratios (requests only)**
- **Explanation of pass-through requirements (new accounts only)**

Retirement and Other Employee Benefit Plan Accounts

Pass–Through Insurance

- **Insurance "Passes Through" to Each Participant if at Time Deposit is Accepted:**
- **Institution is Well–Capitalized**

or

- **Institution Adequately-Capitalized With:**
- **Brokered Deposit Waiver**

or

- **Self-Certification Statement from the Institution that States:**

  1. The Institution is Adequately Capitalized, and

  2. Pass-Through Insurance is Provided

Retirement and Other Employee Benefit Plan Accounts

Insured Up to $100,000, per Institution for the following:

- **All of an Employee's Interests in same Employer's Plans**
- **Separately insured up to $100,000 per Institution for the following, combined:**
- **All of an Employee's Interests in:**
  - **A. IRAs**
  - **B. Self–Directed Keoghs**
  - **C. 457 Plans**
  - **D. Self-Directed Defined Contributions Plans**

Irrevocable Trust Deposit Insurance Coverage

- **Each Beneficiary's Interest or "Trust Interest" is Separately Insured**
- **All Non-Contingent Trust Interests for Each Beneficary are Insured to a Maximum of $100,000 Per Grantor**
- **All "Contingent" Interests are Aggregated and Insured to $100,000 Per Trust**

Irrevocable Trust Requirements

- **Disclosure of the Trust Relationship in the Account Title**
- **Valid Written Trust Document or Statute**
- **Identity of the Beneficiaries and their Interests**

Accounts Held by a Depository Institution as Trustee of an Irrevocable Trust

Funds Insured up to $100,000 for Each Owner or Beneficiary Represented if and Only if:

- **Bank is Trustee**
- **Trust is Irrevocable**
- **Pursuant to Written Trust Agreement or Statute**

Joint Account Worksheet Number 1

Each party in the following joint accounts has equal withdrawal rights and the accounts qualify as valid joint accounts for insurance purposes. Calculate the insurance coverage available assuming that these are the ONLY joint accounts these parties have at one institution.

	Account Title	Account Balance
1.	John and Beth Blevins	$ 60,000
2.	Elizabeth or J. L. Blevins	30,000
3.	Mr. and Mrs. John Blevins	25,000
4.	Beth Blevins or John Blevins	10,000
	Total	$ 125,000

Insurance Summary:

	Insured	Uninsured
John Blevins		
Beth Blevins		
Total		

Joint Account Worksheet Number 1
Answers

Each party in the following joint accounts has equal withdrawal rights and the accounts qualify as valid joint accounts for insurance purposes. Calculate the insurance coverage available assuming that these are the ONLY joint accounts these parties have at one institution.

	Account Title	Account Balance
1.	John and Beth Blevins	$ 60,000
2.	Elizabeth or J. L. Blevins	30,000
3.	Mr. and Mrs. John Blevins	25,000
4.	Beth Blevins or John Blevins	10,000
	Total	$ 125,000

Insurance Summary:

	Insured	Uninsured
John Blevins	$ 62,500	0
Beth Blevins	62,500	0
Total	$ 125,000	0

Joint Account Worksheet Number 2

Each party in the following joint accounts has equal withdrawal rights; the accounts are qualified joint accounts for insurance purposes. Calculate the insurance coverage assuming that these are the ONLY joint accounts these parties have at one institution.

	Account Title	Account Balance
1.	A and B	$ 150,000
2.	A or C	50,000
3.	A, B, and C	90,000
4.	C and A	70,000
5.	B or C	8,000
	Total	$ 368,000

Insurance Summary:

	Insured	Uninsured
A		
B		
C		
Sub total		
Total		

Joint Account Worksheet Number 2
A n s w e r s

Each party in the following joint accounts has equal withdrawal rights; the accounts are qualified joint accounts for insurance purposes. Calculate the insurance coverage assuming that these are the ONLY joint accounts these parties have at one institution.

	Account Title	Account Balance
1.	A and B	$ 150,000
2.	A or C	50,000
3.	A, B, and C	90,000
4.	C and A	70,000
5.	B or C	8,000
	Total	$ 368,000

Insurance Summary:

	Insured	Uninsured
A	$ 100,000	$ 65,000
B	100,000	9,000
C	94,000	0
Sub total	$ 294,000	74,000

Total of insured and uninsured $368,000

Worksheet Number 3

Assume that the titles listed below depict consistent ownership with computer titles, signature cards etc.; assume that the joint accounts are valid joint accounts for insurance purposes. Calculate the insurance coverage available assuming that these are the ONLY accounts these parties have at one institution.

	Account Title	Account Balance
1.	Barbie	$ 40,000
2.	Ken and Barbie	98,000
3.	Barbie	80,000
4.	Barbie and Skipper	10,000
5.	Barbie and Ken	30,000
	Total	$ 258,000

Analyze and Calculate total insurance coverage:

Total Insured: **Total Uninsured:**

Worksheet Number 3
A n s w e r s

Assume that the titles listed below depict consistent ownership with computer titles, signature cards etc.; assume that the joint accounts are valid joint accounts for insurance purposes. Calculate the insurance coverage available assuming that these are the ONLY accounts these parties have at one institution.

	Account Title	Account Balance
1.	Barbie	$ 40,000
2.	Ken and Barbie	98,000
3.	Barbie	80,000
4.	Barbie and Skipper	10,000
5.	Barbie and Ken	30,000
	Total	$ 258,000

Analyze and Calculate total insurance coverage:

Single Ownership (Accounts 1 and 3)

Barbie (Account 1)	$ 40,000
(Account 3)	$ 80,000
	$ 120,000
Barbie's single ownership uninsured = $20,000	

Joint Ownership (Accounts 2, 4, and 5)

Barbie's interest in all joint combinations:	$ 69,000
Ken's interest in all joint combinations:	$ 64,000
Skipper's interest in all joint combinations:	$ 5,000

Six

Chapter 6

Appendix

The documents in this Chapter are provided to assist you in obtaining more detailed information about the FDIC's deposit insurance program. These documents can be located in the following order:

Rules and Regulations
Federal Deposit Insurance Corporation
12 CFR Part 330

Thursday April 1, 1999

Section

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819(Tenth), 1820(f), 1821(a), 1822(c).

§330.1 Definitions

For the purposes of this part:

(a) Act means the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.).

(b) Corporation means the Federal Deposit Insurance Corporation.

(c) Default has the same meaning as provided under section 3(x) of the Act (12 U.S.C. 1813(x)).

(d) Deposit has the same meaning as provided under section 3(l) of the Act (12 U.S.C. 1813(l)).

(e) Deposit account records means account ledgers, signature cards, certificates of deposit, passbooks, corporate resolutions authorizing accounts in the possession of the insured depository institution and other books and records of the insured depository institution, including records maintained by computer, which relate to the insured depository institution’s deposit taking function, but does not mean account statements, deposit slips, items deposited or cancelled checks.

(f) FDIC means the Federal Deposit Insurance Corporation.

(g) Independent activity. A corporation, partnership or unincorporated association shall be deemed to be engaged in an "independent activity" if the entity is operated primarily for some purpose other than to increase deposit insurance.

(h) Insured branch means a branch of a foreign bank any deposits in which are insured in accordance with the provisions of the Act.

(i) Insured deposit has the same meaning as that provided under section 3(m)(1) of the Act (12 U.S.C. 1813(m)(1)).

(j) Insured depository institution is any depository institution whose deposits are insured pursuant to the Act, including a foreign bank having an insured branch.

(k) Natural person means a human being.

(l) Non-contingent trust interest means a trust interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in s 20.2031-7 of the Federal Estate Tax Regulations (26 CFR 20.2031-7) or any similar present worth or life expectancy tables which may be adopted by the Internal Revenue Service.

(m) Sole proprietorship means a form of business in which one person owns all the assets of the business, in contrast to a partnership or corporation.

(n) Trust estate means the determinable and beneficial interest of a beneficiary or principal in trust funds but does not include the beneficial interest of an heir or devisee in a decedent's estate.

(o) Trust funds means funds held by an insured depository institution as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement.

(p) Trust interest means the interest of a beneficiary in an irrevocable express trust (other than an employee benefit plan) created either by written trust instrument or by statute, but does not include any interest retained by the settlor.

§330.2 Purpose

The purpose of this part is to clarify the rules and define the terms necessary to afford deposit insurance coverage under the Act and provide rules for the recognition of deposit ownership in various circumstances.

§330.3 General principles

(a) Ownership rights and capacities. The insurance coverage provided by the Act and this part is based upon the ownership rights and capacities in which deposit accounts are maintained at insured depository institutions. All deposits in an insured depository institution which are maintained in the same right and capacity (by or for the benefit of a particular depositor or depositors) shall be added together and insured in accordance with this part. Deposits maintained in different rights and capacities, as recognized under this part, shall be insured separately from each other.

(Example: Single ownership accounts and joint ownership accounts are insured separately from each other.)

(b) Deposits maintained in separate insured depository institutions or in separate branches of the same insured depository institution. Any deposit accounts maintained by a depositor at one insured depository institution are insured separately from, and without regard to, any deposit accounts that the same depositor maintains at any other *25757 separately chartered and insured depository institution, even if two or more separately chartered and insured depository institutions are affiliated through common ownership. (Example: Deposits held by the same individual at two different banks owned by the same bank holding company would be insured separately, per bank.) The deposit accounts of a depositor maintained in the same right and capacity at different branches or offices of the same insured depository institution are not separately insured; rather they shall be added together and insured in accordance with this part.

(c) Deposits maintained by foreigners and deposits denominated in foreign currency. The availability of deposit insurance is not limited to citizens and residents of the United States. Any person or entity that maintains deposits in an insured depository institution is entitled to the deposit insurance provided by the Act and this part. In addition, deposits denominated in a foreign currency shall be insured in accordance with this part. Deposit insurance for such deposits shall be determined and paid in the amount of United States dollars that is equivalent in value to the amount of the deposit denominated in the foreign currency as of close of business on the date of default of the insured depository institution. The exchange rates to be used for such conversions are the 12 PM rates (the "noon buying rates for cable transfers") quoted for major currencies by the Federal Reserve Bank of New York on the date of default of the insured depository institution, unless the deposit agreement specifies that some other widely recognized exchange rates are to be used for all purposes under that agreement, in which case, the rates so specified shall be used for such conversions.

(d) Deposits in insured branches of foreign banks. Deposits in an insured branch of a foreign bank which are payable by contract in the United States shall be insured in accordance with this part, except that any deposits to the credit of the foreign bank, or any office, branch, agency or any wholly owned subsidiary of the foreign bank, shall not be insured. All deposits held by a depositor in the same right and capacity in more than one insured branch of the same foreign bank shall be added together for the purpose of determining the amount of deposit insurance.

(e) Deposits payable solely outside of the United States and certain other locations. Any obligation of an insured depository institution which is payable solely at an office of such institution located outside the States of the United States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, is not a deposit for the purposes of this part.

(f) International banking facility deposits. An "international banking facility time deposit," as defined by the Board of Governors of the Federal Reserve System in Regulation D (12 CFR 204.8(a)(2)), or in any successor regulation, is not a deposit for the purposes of this part.

(g) Bank investment contracts. As required by section 11(a)(8) of the Act (12 U.S.C. 1821(a)(8)), any liability arising under any investment contract between any insured depository institution and any employee benefit plan which expressly permits "benefit responsive withdrawals or transfers" (as defined in section 11(a)(8) of the Act) are not insured deposits for purposes of this part. The term "substantial penalty or adjustment" used in section 11(a)(8) of the Act means, in the case of a deposit having an original term which exceeds one year, all interest earned on the amount withdrawn from the date of deposit or for six months, whichever is less; or, in the case of a deposit having an original term of one year or less, all interest earned on the amount withdrawn from the date of deposit or three months, whichever is less.

(h) Application of state or local law to deposit insurance determinations. In general, deposit insurance is for the benefit of the owner or owners of funds on deposit. However, while ownership under state law of deposited funds is a necessary condition for deposit insurance, ownership under state law is not sufficient for, or decisive in, determining deposit insurance coverage. Deposit insurance coverage is also a function of the deposit account records of the insured depository institution and of the provisions of this part, which, in the interest of uniform national rules for deposit insurance coverage, are controlling for purposes of determining deposit insurance coverage.

(i) Determination of the amount of a deposit—

(1) General rule. The amount of a deposit is the balance of principal and interest unconditionally credited to the deposit account as of the date of default of the insured depository institution, plus the ascertainable amount of interest to that date, accrued at the contract rate (or the anticipated or announced interest or dividend rate), which the insured depository institution in default would have paid if the deposit had matured on that date and the insured depository institution had not failed. In the absence of any such announced or anticipated interest or dividend rate, the rate for this purpose shall be whatever rate was paid in the immediately preceding payment period.

(2) Discounted certificates of deposit. The amount of a certificate of deposit sold by an insured depository institution at a discount from its face value is its original purchase price plus the amount of accrued earnings calculated by compounding interest annually at the rate necessary to increase the original purchase price to the maturity value over the life of the certificate.

(3) Waiver of minimum requirements. In the case of a deposit with a fixed payment date, fixed or minimum term, or a qualifying or notice period that has not expired as of such date, interest thereon to the date of closing shall be computed according to the terms of the deposit contract as if interest had been credited and as if the deposit could have been withdrawn on such date without any penalty or reduction in the rate of earnings.

(j) Continuation of insurance coverage following the death of a deposit owner. The death of a deposit owner shall not affect the insurance coverage of the deposit for a period of six months following the owner's death unless the deposit account is restructured. The operation of this grace period, however, shall not result in a reduction of coverage. If an account is not restructured within six months after the owner's death, the insurance shall be provided on the basis of actual ownership in accordance with the provisions of § 330.5(a)(1).

§330.4 Continuation of separate deposit insurance after merger of insured depository institutions

Whenever the liabilities of one or more insured depository institutions for deposits are assumed by another insured depository institution, whether by merger, consolidation, other statutory assumption or contract:

(a) The insured status of the institutions whose liabilities have been assumed terminates on the date of receipt by the FDIC of satisfactory evidence of the assumption; and

(b) The separate insurance of deposits assumed continues for six months from the date the assumption takes effect or, in the case of a time deposit, the earliest maturity date after the six-month period. In the case of time deposits which mature within six months of the date the deposits are assumed and which are renewed at the same dollar amount (either with or without accrued interest having been added to the principal amount) and for the same term as the original deposit, the separate insurance applies to the renewed deposits until the first maturity date after the six-month period. Time deposits that mature within six months of the deposit assumption and that are renewed on any other basis, or that are not renewed and thereby become demand deposits, are separately insured only until the end of the six-month period.

§330.5 Recognition of deposit ownership and fiduciary relationships

(a) Recognition of deposit ownership—(1) Evidence of deposit ownership. Except as indicated in this paragraph (a)(1) or as provided in §330.3(j), in determining the amount of insurance available to each depositor, the FDIC shall presume that deposited funds are actually owned in the manner indicated on the deposit account records of the insured depository institution. If the FDIC, in its sole discretion, determines that the deposit account records of the insured depository institution are clear and unambiguous, those records shall be considered binding on the depositor, and the FDIC shall consider no other records on the manner in which the funds are owned. If the deposit account records are ambiguous or unclear on the manner in which the funds are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. Despite the general requirements of this paragraph (a)(1), if the FDIC has reason to believe that the insured depository institution's deposit account records misrepresent the actual ownership of deposited funds and such misrepresentation would increase deposit insurance coverage, the FDIC may consider all available evidence and pay claims for insured deposits on the basis of the actual rather than the misrepresented ownership.

(2) Recognition of deposit ownership in custodial accounts. In the case of custodial deposits, the interest of each beneficial owner may be determined on a fractional or percentage basis. This may be accomplished in any manner which indicates that where the funds of an owner are commingled with other funds held in a custodial capacity and a portion thereof is placed on deposit in one or more insured depository institutions without allocation, the owner's insured interest in the deposit in any one insured depository institution would represent, at any given time, the same fractional share as his or her share of the total commingled funds.

(b) Fiduciary relationships-(1)Recognition. The FDIC will recognize a claim for insurance coverage based on a fiduciary relationship only if the relationship is expressly disclosed, by way of specific references, in the "deposit account records" (as defined in §330.1(e)) of the insured depository institution. Such relationships include, but are not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian pursuant to which funds are deposited. The express indication that the account is held in a fiduciary capacity will not be necessary, however, in instances where the FDIC determines, in its sole discretion, that the titling of the deposit account and the underlying deposit account records sufficiently indicate the existence of a fiduciary relationship. This exception may apply, for example, where the deposit account title or records indicate that the account is held by an escrow agent, title company or a company whose business is to hold deposits and securities for others.

(2) Details of fiduciary relationships. If the deposit account records of an insured depository institution disclose the existence of a relationship which might provide a basis for additional insurance (including the exception provided for in paragraph (b)(1) of this section), the details of the relationship and the interests of other parties in the account must be ascertainable either from the deposit account records of the insured depository institution or from records maintained, in good faith and in the regular course of business, by the depositor or by some person or entity that has undertaken to maintain such records for the depositor.

(3) Multi-tiered fiduciary relationships. In deposit accounts where there are multiple levels of fiduciary relationships, there are two methods of satisfying paragraphs (b)(1) and (b)(2) of this section to obtain insurance coverage for the interests of the true beneficial owners of a deposit account.

(i) One method is to:

(A) Expressly indicate, on the deposit account records of the insured depository institution, the existence of each and every level of fiduciary relationships; and

(B) Disclose, at each level, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting.

(ii) An alternative method is to:

(A) Expressly indicate, on the deposit account records of the insured depository institution, that there are multiple levels of fiduciary relationships;

(B) Disclose the existence of additional levels of fiduciary relationships in records, maintained in good faith and in the regular course of business, by parties at subsequent levels; and

(C) Disclose, at each of the levels, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting. No person or entity in the chain of parties will be permitted to claim that they are acting in a fiduciary capacity for others unless the possible existence of such a relationship is revealed at some previous level in the chain.

(4) Exceptions—

(i) Deposits evidenced by negotiable instruments. If any deposit obligation of an insured depository institution is evidenced by a negotiable certificate of deposit, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, negotiable traveler's check, letter of credit or other negotiable instrument, the FDIC will recognize the owner of such deposit obligation for all purposes of claim for insured deposits to the same extent as if his or her name and interest were disclosed on the records of the insured depository institution; provided, that the instrument was in fact negotiated to such owner prior to the date of default of the insured depository institution. The owner must provide affirmative proof of such negotiation, in a form satisfactory to the FDIC, to substantiate his or her claim. Receipt of a negotiable instrument directly from the insured depository institution in default shall, in no event, be considered a negotiation of said instrument for purposes of this provision.

(ii) Deposit obligations for payment of items forwarded for collection by depository institution acting as agent. Where an insured depository institution in default has become obligated for the payment of items forwarded for collection by a depository institution acting solely as agent, the FDIC will recognize the holders of such items for all purposes of claim for insured deposits to the same extent as if their name(s) and interest(s) were disclosed as depositors on the deposit account records of the insured depository institution, when such claim for insured deposits, if otherwise payable, has been established by the execution and delivery of prescribed forms. The FDIC will recognize such depository institution forwarding such items for the holders thereof as agent for such holders for the purpose of making an assignment to the FDIC of their rights against the insured depository institution in default and for the purpose of receiving payment on their behalf.

§330.6 Single ownership accounts

(a) Individual accounts. Funds owned by a natural person and deposited in one or more deposit accounts in his or her own name shall be added together and insured up to $100,000 in the aggregate. Exception: Despite the general requirement in this paragraph (a), if more than one natural person has the right to withdraw funds from an individual account (excluding persons who have the right to withdraw by virtue of a Power of Attorney), the account shall be treated as a joint ownership account (although not necessarily a qualifying joint account) and shall be insured in accordance with the provisions of §330.9, unless the deposit account records clearly indicate, to the satisfaction of the FDIC, that the funds are owned by one individual and that other signatories on the account are merely authorized to withdraw funds on behalf of the owner.

(b) Sole proprietorship accounts. Funds owned by a business which is a "sole proprietorship" (as defined in s330.1(m)) and deposited in one or more deposit accounts in the name of the business shall be treated as the individual account(s) of the person who is the sole proprietor, added to any other individual accounts of that person, and insured up to $100,000 in the aggregate.

(c) Single-name accounts containing community property funds. Community property funds deposited into one or more deposit accounts in the name of one member of a husband-wife community shall be treated as the individual account(s) of the named member, added to any other individual accounts of that person, and insured up to $100,000 in the aggregate.

(d) Accounts of a decedent and accounts held by executors or administrators of a decedent's estate. Funds held in the name of a decedent or in the name of the executor, administrator, or other personal representative of his or her estate and deposited into one or more deposit accounts shall be added together and insured up to $100,000 in the aggregate; provided, however, that nothing in this paragraph (d) shall affect the operation of §330.3(j). The deposit insurance provided by this paragraph (d) shall be separate from any insurance coverage provided for the individual deposit accounts of the executor, administrator, other personal representative or the beneficiaries of the estate.

§330.7 Accounts held by an agent, nominee, guardian, custodian or conservator

(a) Agency or nominee accounts. Funds owned by a principal or principals and deposited into one or more deposit accounts in the name of an agent, custodian or nominee, shall be insured to the same extent as if deposited in the name of the principal(s). When such funds are deposited by an insured depository institution acting as a trustee of an irrevocable trust, the insurance coverage shall be governed by the provisions of §330.13.

(b) Guardian, custodian or conservator accounts. Funds held by a guardian, custodian, or conservator for the benefit of his or her ward, or for the benefit of a minor under the Uniform Gifts to Minors Act, and deposited into one or more accounts in the name of the guardian, custodian or conservator shall, for purposes of this part, be deemed to be agency or nominee accounts and shall be insured in accordance with paragraph (a) of this section.

(c) Accounts held by fiduciaries on behalf of two or more persons. Funds held by an agent, nominee, guardian, custodian, conservator or loan servicer, on behalf of two or more persons jointly, shall be treated as a joint ownership account and shall be insured in accordance with the provisions of §330.9.

(d) Mortgage servicing accounts. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal and interest, shall be insured in accordance with paragraph (a) of this section for the interest of each owner (mortgagee, investor or security holder) in such accounts. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a) of this section for the ownership interest of each mortgagor in such accounts.

(e) Custodian accounts for American Indians. Paragraph (a) of this section shall not apply to any interest an individual American Indian may have in funds deposited by the Bureau of Indian Affairs of the United States Department of the Interior (the "BIA") on behalf of that person pursuant to 25 U.S.C. 162(a), or by any other disbursing agent of the United States on behalf of that person pursuant to similar authority, in an insured depository institution. The interest of each American Indian in all such accounts maintained at the same insured depository institution shall be added together and insured, up to $100,000, separately from any other accounts maintained by that person in the same insured depository institution.

§330.8 Annuity contract accounts

(a) Funds held by an insurance company or other corporation in a deposit account for the sole purpose of funding life insurance or annuity contracts and any benefits incidental to such contracts, shall be insured separately in the amount of up to $100,000 per annuitant, provided that, pursuant to a state statute:

(1) The corporation establishes a separate account for such funds;

(2) The account cannot be charged with the liabilities arising out of any other business of the corporation; and

(3) The account cannot be invaded by other creditors of the corporation in the event that the corporation becomes insolvent and its assets are liquidated.

(b) Such insurance coverage shall be separate from the insurance provided for any other accounts maintained by the corporation or the annuitants at the same insured depository institution.

§330.9 Joint ownership accounts

(a) Separate insurance coverage. Qualifying joint accounts, whether owned as joint tenants with right of survivorship, as tenants in common or as tenants by the entirety, shall be insured separately from any individually owned (single ownership) deposit accounts maintained by the co-owners. (Example: If A has a single ownership account and also is a joint owner of a qualifying joint account, A's interest in the joint account would be insured separately from his or her interest in the individual account.) Qualifying joint accounts in the names of both husband and wife which are comprised of community property funds shall be added together and insured up to $100,000, separately from any funds deposited into accounts bearing their individual names.▲

(b) Determination of insurance coverage. The interests of each co-owner in all qualifying joint accounts shall be added together and the total shall be insured up to $100,000. (Example: "A&B" have a qualifying joint account with a balance of $60,000; "A&C" have a qualifying joint account with a balance of $80,000; and "A&B&C" have a qualifying joint account with a balance of $150,000. A's combined ownership interest in all qualifying joint accounts would be $120,000 ($30,000 plus $40,000 plus $50,000); therefore, A's interest would be insured in the amount of $100,000 and uninsured in the amount of $20,000. B's combined ownership interest in all qualifying joint accounts would be $80,000 ($30,000 plus $50,000); therefore, B's interest would be fully insured. C's combined ownership interest in all qualifying joint accounts would be $90,000 ($40,000 plus $50,000); therefore, C's interest would be fully insured.)

(c) Qualifying joint accounts. (1) A joint deposit account shall be deemed to be a qualifying joint account, for purposes of this section, only if:

(i) All co-owners of the funds in the account are "natural persons" (as defined in §330.1(k)); and

(ii) Each co-owner has personally signed a deposit account signature card; and

(iii) Each co-owner possesses withdrawal rights on the same basis.

▲ The reference to $100,000 is incorrect. Under the revised joint account rules, qualifying joint accounts held by spouses in a community property state would be insured up to $200,000, subject to the general rules applicable to the coverage of joint accounts. This mistake will be corrected through a technical amendment following the publication of this Guide.

(2) The signature-card requirement of paragraph (c)(1)(ii) of this section shall not apply to certificates of deposit, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained by an agent, nominee, guardian, custodian or conservator on behalf of two or more persons.

(3) All deposit accounts that satisfy the criteria in paragraph (c)(1) of this section, and those accounts that come within the exception provided for in paragraph (c)(2) of this section, shall be deemed to be jointly owned provided that, in accordance with the provisions of §330.5(a), the FDIC determines that the deposit account records of the insured depository institution are clear and unambiguous as to the ownership of the accounts. If the deposit account records are ambiguous or unclear as to the manner in which the deposit accounts are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. The signatures of two or more persons on the deposit account signature card or the names of two or more persons on a certificate of deposit or other deposit instrument shall be conclusive evidence that the account is a joint account (although not necessarily a qualifying joint account) unless the deposit records as a whole are ambiguous and some other evidence indicates, to the satisfaction of the FDIC, that there is a contrary ownership capacity.

(d) Nonqualifying joint accounts. A deposit account held in two or more names which is not a qualifying joint account, for purposes of this section, shall be treated as being owned by each named owner, as an individual, corporation, partnership, or unincorporated association, as the case may be, and the actual ownership interest of each individual or entity in such account shall be added to any other single ownership accounts of such individual or other accounts of such entity, and shall be insured in accordance with the provisions of this part governing the insurance of such accounts.

(e) Determination of interests. The interests of the co-owners of qualifying joint accounts, held as tenants in common, shall be deemed equal, unless otherwise stated in the depository institution's deposit account records. This section applies regardless of whether the conjunction "and" or "or" is used in the title of a joint deposit account, even when both terms are used, such as in the case of a joint deposit account with three or more co-owners.

§330.10 Revocable trust accounts

(a) General rule. Funds owned by an individual and deposited into an account with respect to which the owner evidences an intention that upon his or her death the funds shall belong to one or more qualifying beneficiaries shall be insured in the amount of up to $100,000 in the aggregate as to each such named qualifying beneficiary, separately from any other accounts of the owner or the beneficiaries. For purposes of this provision, the term "qualifying beneficiaries" means the owner's spouse, child/children, grandchild/grandchildren, parent/parents, brother/brothers or sister/sisters. (Example: If A establishes a qualifying account payable upon death to his spouse, sibling and two children, assuming compliance with the rules of this provision, the account would be insured up to $400,000 separately from any other different types of accounts either A or the beneficiaries may have with the same depository institution.) Accounts covered by this provision are commonly referred to as tentative or "Totten trust" accounts, "payable-on- death" accounts, or revocable trust accounts.

(b) Required intention. The required intention in paragraph (a) of this section that upon the owner's death the funds shall belong to one or more qualifying beneficiaries must be manifested in the title of the account using commonly accepted terms such as, but not limited to, "in trust for," "as trustee for," "payable-on-death to," or any acronym therefor. In addition, the beneficiaries must be specifically named in the deposit account records of the insured depository institution. The settlor of a revocable trust account shall be presumed to own the funds deposited into the account.

(c) Interests of nonqualifying beneficiaries. If a named beneficiary of an account covered by this section is not a qualifying beneficiary, the funds corresponding to that beneficiary shall be treated as individually owned (single ownership) accounts of such owner(s), aggregated with any other single ownership accounts of such owner(s), and insured up to $100,000 per owner. (Examples: If A establishes an account payable upon death to his or her nephew, the account would be insured as a single ownership account owned by A. Similarly, if B establishes an account payable upon death to her husband, son and nephew, two-thirds of the account balance would be eligible for POD coverage up to $200,000 corresponding to the two qualifying beneficiaries (i.e., the spouse and child). The amount corresponding to the non-qualifying beneficiary (i.e., the nephew) would be deemed to be owned by B in her single ownership capacity and insured accordingly.)

(d) Joint revocable trust accounts. Where an account described in paragraph (a) of this section is established by more than one owner and held for the benefit of others, some or all of whom are within the qualifying degree of kinship, the respective interests of each owner (which shall be deemed equal unless otherwise stated in the insured depository institution’s deposit account records) held for the benefit of each qualifying beneficiary shall be separately insured up to $100,000. However, where a husband and a wife establish a revocable trust account naming themselves as the sole beneficiaries, such account shall not be insured according to the provisions of this section but shall instead be insured in accordance with the joint account provisions of §330.9.

(e) Definition of “children”, “grandchildren”, “parents”, “brothers” and “sisters”. For the purpose of establishing the qualifying degree of kinship identified in paragraph (a) of this section, the term “children” includes biological, adopted and step-children of the owner. The term “grandchildren” includes biological, adopted and step-children of any of the owner’s children. The term “parents” includes biological, adoptive and step-parents of the owner. The term “brothers” includes full brothers, half brothers, brothers through adoption and step-brothers. The term “sisters” includes full sisters, half sisters, sisters through adoption and step-sisters.

(f) Living trusts. This section also applies to revocable trust accounts held in connection with a so-called “living trust,” a formal trust which an owner creates and retains control over during his or her lifetime. If a named beneficiary in a living trust is a qualifying beneficiary under this section, then the deposit account held in connection with the living trust may be eligible for deposit insurance under this section, assuming compliance with all the provisions of this part. If, however, for example, the living trust includes a “defeating contingency” relative to that beneficiary’s interest in the trust assets, then insurance coverage under this section would not be provided. For purposes of this section, a “defeating contingency” is defined as a condition which would prevent the beneficiary from acquiring a vested and non-contingent interest in the funds in the deposit account upon the owner’s death.

§330.11 Accounts of a corporation, partnership or unincorporated association

(a) Corporate accounts.

(1) The deposit accounts of a corporation engaged in any “independent activity” (as defined in §330.1(g)) shall be added together and insured up to $100,000 in the aggregate. If a corporation has divisions or units which are not separately incorporated, the deposit accounts of those divisions or units shall be added to any other deposit accounts of the corporation. If a corporation maintains deposit accounts in a representative or fiduciary capacity, such accounts shall not be treated as the deposit accounts of the corporation but shall be treated as fiduciary accounts and insured in accordance with the provisions of §330.7.

(2) Notwithstanding any other provision of this part, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to section 8 of the Investment Company Act of 1940 or that

would be required so to register but for the fact it is not created under the laws of the United States or a state or but for sections 2(b), 3(c)(1), or 6(a)(1) of that act shall be deemed to be a corporation for purposes of determining deposit insurance coverage.

(b) Partnership accounts. The deposit accounts of a partnership engaged in any "independent activity" (as defined in §330.1(g)) shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be separate from any insurance provided for individually owned (single ownership) accounts maintained by the individual partners. A partnership shall be deemed to exist, for purposes of this paragraph, any time there is an association of two or more persons or entities formed to carry on, as co-owners, an unincorporated business for profit.

(c) Unincorporated association accounts. The deposit accounts of an unincorporated association engaged in any independent activity shall be added together and insured up to $100,000 in the aggregate, separately from the accounts of the person(s) or entity(ies) comprising the unincorporated association. An unincorporated association shall be deemed to exist, for purposes of this paragraph, whenever there is an association of two or more persons formed for some religious, educational, charitable, social or other noncommercial purpose.

(d) Non-qualifying entities. The deposit accounts of an entity which is not engaged in an "independent activity" (as defined in §330.1(g)) shall be deemed to be owned by the person or persons owning the corporation or comprising the partnership or unincorporated association, and, for deposit insurance purposes, the interest of each person in such a deposit account shall be added to any other deposit accounts individually owned by that person and insured up to $100,000 in the aggregate.

§330.12 Accounts held by a depository institution as the trustee of an irrevocable trust

(a) Separate insurance coverage. "Trust funds" (as defined in §330.1(o)) held by an insured depository institution in its capacity as trustee of an irrevocable trust, whether held in its trust department, held or deposited in any other department of the fiduciary institution, or deposited by the fiduciary institution in another insured depository institution, shall be insured up to $100,000 for each owner or beneficiary represented. This insurance shall be separate from, and in addition to, the insurance provided for any other deposits of the owners or the beneficiaries.

(b) Determination of interests. The insurance for funds held by an insured depository institution in its capacity as trustee of an irrevocable trust shall be determined in accordance with the following provisions:

(1) Allocated funds of a trust estate. If trust funds of a particular "trust estate" (as defined in §330.1(n)) are allocated by the fiduciary and deposited, the insurance with respect to such trust estate shall be determined by ascertaining the amount of its funds allocated, deposited and remaining to the credit of the claimant as fiduciary at the insured depository institution in default.

(2) Interest of a trust estate in unallocated trust funds. If funds of a particular trust estate are commingled with funds of other trust estates and deposited by the fiduciary institution in one or more insured depository institutions to the credit of the depository institution as fiduciary, without allocation of specific amounts from a particular trust estate to an account in such institution(s), the percentage interest of that trust estate in the unallocated deposits in any institution in default is the same as that trust estate's percentage interest in the entire commingled investment pool.

(c) Limitation on applicability. This section shall not apply to deposits of trust funds belonging to a trust which is classified as a corporation under §330.11(a)(2).

§330.13 Irrevocable trust accounts

(a) General rule. Funds representing the "non-contingent trust interest(s)" (as defined in §330.1(l)) of a beneficiary deposited into one or more deposit accounts established pursuant to one or more irrevocable trust agreements created by the same settlor(s) (grantor(s)) shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be separate from the coverage provided for other accounts maintained by the settlor(s), trustee(s) or beneficiary(ies) of the irrevocable trust(s) at the same insured depository institution. Each "trust interest" (as defined in §330.1(p)) in any irrevocable trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his or her contribution to the trust.

(b) Treatment of contingent trust interests. In the case of any trust in which certain trust interests do not qualify as non-contingent trust interests, the funds representing those interests shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be in addition to the coverage provided for the funds *25762 representing non-contingent trust interests which are insured pursuant to paragraph (a) of this section.

(c) Commingled accounts of bankruptcy trustees. Whenever a bankruptcy trustee appointed under Title 11 of the United States Code commingles the funds of various bankruptcy estates in the same account at an insured depository institution, the funds of each Title 11 bankruptcy estate will be added together and insured up to $100,000, separately from the funds of any other such estate.

§330.14 Retirement and other employee benefit plan accounts

(a) "Pass-through" insurance. Except as provided in paragraph (b) of this section, any deposits of an employee benefit plan or of any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457) in an insured depository institution shall be insured on a "pass-through" basis, in the amount of up to $100,000 for the non-contingent interest of each plan participant, provided that the rules prescribed in §330.5 are satisfied. requirements, as prescribed in §330.5, are satisfied.

(b) Exception.
"Pass-through" insurance shall not be provided pursuant to paragraph (a) of this section with respect to any deposit accepted by an insured depository institution which, at the time the deposit is accepted, may not accept brokered deposits pursuant to section 29 of the Act (12 U.S.C. 1831f) unless, at the time the deposit is accepted:

(1) The institution meets each applicable capital standard; and

(2) The depositor receives a written statement from the institution indicating that such deposits are eligible for insurance coverage on a "pass-through" basis.

(c) Aggregation—
(1) Multiple plans. Funds representing the non- contingent interests of a beneficiary in an employee benefit plan, or eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457), which are deposited in one or more deposit accounts shall be aggregated with any other deposited funds representing such interests of the same beneficiary in other employee benefit plans, or eligible deferred compensation plans described in section 457 of the Internal Revenue Code of 1986, established by the same employer or employee organization.

(2) Certain retirement accounts.
(i) Deposits in an insured depository institution made in connection with the following types of retirement plans shall be aggregated and insured in the amount of up to $100,000 per participant:

(A) Any individual retirement account described in section 408(a) of the Internal Revenue Code of 1986 (26 U.S.C. 408(a));

(B) Any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457); and

(C) Any individual account plan defined in section 3(34) of the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1002) and any plan described in section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. 401(d)), to the extent that participants and beneficiaries under such plans have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plans.

(ii) The provisions of this paragraph (c) shall not apply with respect to the deposits of any employee benefit plan, or eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986, which is not entitled to “pass-through” insurance pursuant to paragraph (b) of this section. Such deposits shall be aggregated and insured in the amount of $100,000 per plan.

(d) Determination of interests—

(1) Defined contribution plans. The value of an employee’s non-contingent interest in a defined contribution plan shall be deemed to be the employee’s account balance as of the date of default of the insured depository institution, regardless of whether said amount was derived, in whole or in part, from contributions of the employee and/or the employer to the account.

(2) Defined benefit plans. The value of an employee’s non-contingent interest in a defined benefit plan shall be deemed to be the present value of the employee’s interest in the plan, evaluated in accordance with the method of calculation ordinarily used under such plan, as of the date of default of the insured depository institution.

(3) Amounts taken into account. For the purposes of applying the rule under paragraph (c)(2) of this section, only the present vested and ascertainable interests of each participant in an employee benefit plan or “457 Plan,” excluding any remainder interest created by, or as a result of, the plan, shall be taken into account in determining the amount of deposit insurance accorded to the deposits of the plan.

(e) Treatment of contingent interests. In the event that employees’ interests in an employee benefit plan are not capable of evaluation in accordance with the provisions of this section, or an account established for any such plan includes amounts for future participants in the plan, payment by the FDIC with respect to all such interests shall not exceed $100,000 in the aggregate.

(f) Overfunded pension plan deposits. Any portion of an employee benefit plan’s deposits which is not attributable to the interests of the beneficiaries under the plan shall be deemed attributable to the overfunded portion of the plan’s assets and shall be aggregated and insured up to $100,000, separately from any other deposits.

(g) Definitions of “depositor”, “employee benefit plan”, “employee organization” and “non-contingent interest”. Except as otherwise indicated in this section, for purposes of this section:

(1) The term depositor means the person(s) administering or managing an employee benefit plan.

(2) The term employee benefit plan has the same meaning given to such term in section 3(3) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1002) and includes any plan described in section 401(d) of the Internal Revenue Code of 1986.

(3) The term employee organization means any labor union, organization, employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees’

beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

(4) The term non-contingent interest means an interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in s 20.2031-7 of the Federal Estate Tax Regulations (26 CFR 20.2031-7) or any similar present worth or life expectancy tables as may be published by the Internal Revenue Service.

(h) Disclosure of capital status—

(1) Disclosure upon request. An insured depository institution shall, upon request, provide a clear and conspicuous written notice to any depositor of employee benefit plan funds of the institution's leverage ratio, Tier 1 risk-based capital ratio, total risk-based capital ratio and prompt corrective action (PCA) capital category, as defined in the regulations of the institution's primary federal regulator, and whether, in the depository institution's judgment, employee benefit plan deposits made with the institution, at the time the information is requested, would be eligible for "pass-through" insurance coverage under paragraphs (a) and (b) of this section. Such notice shall be provided within five business days after receipt of the request for disclosure.

(2) Disclosure upon opening of an account. An insured depository institution shall, upon the opening of any account comprised of employee benefit plan funds, provide a clear and conspicuous written notice to the depositor consisting of an accurate explanation of the requirements for "pass-through" deposit insurance coverage provided in paragraphs (a) and (b) of this section; the institution's PCA capital category; and a determination of whether or not, in the depository institution's judgment, the funds being deposited are eligible for "pass-through" insurance coverage.

(3) Disclosure when "pass-through" coverage is no longer available. Whenever new, rolled-over or renewed employee benefit plan deposits placed with an insured depository institution would no longer be eligible for "pass- through" insurance coverage, the institution shall provide a clear and conspicuous written notice to all existing depositors of employee benefit plan funds of its new PCA capital category, if applicable, and that new, rolled-over or renewed deposits of employee benefit plan funds made after the applicable date shall not be eligible for "pass-through" insurance coverage under paragraphs (a) and (b) of this section. Such written notice shall be provided within ten business days after the institution receives notice or is deemed to have notice that it is no longer permitted to accept brokered deposits under section 29 of the Act and the institution no longer meets the requirements in paragraph (b) of this section.

(4) Definition of "employee benefit plan". For purposes of this paragraph (h), the term "employee benefit plan" has the same meaning as provided under paragraph (g)(2) of this section but also includes any eligible deferred compensation plans described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457).

§330.15 Public unit accounts

(a) Extent of insurance coverage—

(1) Accounts of the United States. Each official custodian of funds of the United States lawfully depositing such funds in an insured depository institution shall be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all time and savings deposits; and

(ii) Up to $100,000 in the aggregate for all demand deposits.

(2) Accounts of a state, county, municipality or political subdivision.

(i) Each official custodian of funds of any state of the United States, or any county, municipality, or political subdivision thereof, lawfully depositing such funds in an insured depository institution in the state comprising the public unit or wherein the public unit is located (including any insured depository institution having a branch in said state) shall be separately insured in the amount of:

(A) Up to $100,000 in the aggregate for all time and savings deposits; and

(B) Up to $100,000 in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the state comprising the public unit or wherein the public unit is located, shall be insured in the amount of up to $100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(3) Accounts of the District of Columbia. (i) Each official custodian of funds of the District of Columbia lawfully depositing such funds in an insured depository institution in the District of Columbia (including an insured depository institution having a branch in the District of Columbia) shall be separately insured in the amount of:

(A) Up to $100,000 in the aggregate for all time and savings deposits; and

(B) Up to $100,000 in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the District of Columbia shall be insured in the amount of up to $100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(4) Accounts of the Commonwealth of Puerto Rico and other government possessions and territories. (i) Each official custodian of funds of the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or The Commonwealth of the Northern Mariana Islands, or of any county, municipality, or political subdivision thereof lawfully depositing such funds in an insured depository institution in Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or The Commonwealth of the Northern Mariana Islands, respectively, shall be separately insured in the amount of:

(A) Up to $100,000 in the aggregate for all time and savings deposits; and

(B) Up to $100,000 in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the commonwealth, possession or territory comprising the public unit or wherein the public unit is located, shall be insured in the amount of up to $100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(5) Accounts of an Indian tribe. Each official custodian of funds of an Indian tribe (as defined in 25 U.S.C. 1452(c)), including an agency thereof having official custody of tribal funds, lawfully depositing the same in an insured depository institution shall be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all time and savings deposits; and

(ii) Up to $100,000 in the aggregate for all demand deposits.

(b) Rules relating to the “official custodian”—

(1) Qualifications for an “official custodian”. In order to qualify as an “official custodian” for the purposes of paragraph (a) of this section, such custodian must have plenary authority, including control, over funds owned by the public unit which the custodian is appointed or elected to serve. Control of public funds includes possession, as well as the authority to

establish accounts for such funds in insured depository institutions and to make deposits, withdrawals, and disbursements of such funds.

(2) Official custodian of the funds of more than one public unit. For the purposes of paragraph (a) of this section, if the same person is an official custodian of the funds of more than one public unit, he or she shall be separately insured with respect to the funds held by him or her for each such public unit, but shall not be separately insured by virtue of holding different offices in such public unit or, except as provided in paragraph (c) of this section, holding such funds for different purposes.

(3) Split of authority or control over public unit funds. If the exercise of authority or control over the funds of a public unit requires action by, or the consent of, two or more officers, employees, or agents of such public unit, then they will be treated as one "official custodian" for the purposes of this section.

(c) Public bond issues. Where an officer, agent or employee of a public unit has custody of certain funds which by law or under a bond indenture are required to be set aside to discharge a debt owed to the holders of notes or bonds issued by the public unit, any deposit of such funds in an insured depository institution shall be deemed to be a deposit by a trustee of trust funds of which the noteholders or bondholders are pro rata beneficiaries, and the beneficial interest of each noteholder or bondholder in the deposit shall be separately insured up to $100,000.

(d) Definition of "political subdivision". The term "political subdivision" includes drainage, irrigation, navigation, improvement, levee, sanitary, school or power districts, and bridge or port authorities and other special districts created by state statute or compacts between the states. It also includes any subdivision of a public unit mentioned in paragraphs (a)(2), (a)(3) and (a)(4) of this section or any principal department of such public unit:

(1) The creation of which subdivision or department has been expressly authorized by the law of such public unit;

(2) To which some functions of government have been delegated by such law; and

(3) Which is empowered to exercise exclusive control over funds for its exclusive use.

§330.16 Effective dates

(a) Prior effective dates. Former §§330.1(j), 330.10(a), 330.12(c), 330.12(d)(3) and 330.13 (see 12 CFR part 330, as revised January 1, 1998) became effective on December 19, 1993.

(b) Time deposits. Except with respect to the provisions in former §330.12 (a) and (b) (see 12 CFR part 330, as revised January 1, l998) and current §330.14(a) and (b), any time deposits made before December 19, 1991 that do not mature until after December 19, 1993, shall be subject to the rules as they existed on the date the deposits were made. Any time deposits made after December 19, 1991 but before December 19, 1993, shall be subject to the rules as they existed on the date the deposits were made. Any rollover or renewal of such time deposits prior to December 19, 1993 shall subject those deposits to the rules in effect on the date of such rollover or renewal. With respect to time deposits which mature only after a prescribed notice period, the provisions of this part shall be effective on the earliest possible maturity date after June 24, 1993 assuming (solely for purposes of this section) that notice had been given on that date.

April 1, 1999

Re:Deposit Insurance Coverage of Revocable Trust Accounts

Dear Depositor:

The enclosed FDIC Guidelines explain the FDIC deposit insurance coverage for accounts containing the funds of revocable trusts. The FDIC's insurance rules for revocable trust accounts are the same, whether the trust funds are held in a bank or a savings and loan association.

When the FDIC uses the term "revocable trusts," it has three very different kinds of trusts in mind. First, "revocable trust" can mean a simple Totten trust or Payable-On-Death (POD) account, where there is no trust document at all but only an agreement between the depositor and his insured depository institution that, upon the depositor's death, his funds will be payable to some beneficiary (for example, an account entitled "Father POD to Daughter"). Another type of "revocable trust" is a trust created and ruled by a complex, often lengthy, written trust document. Between these two extremes is a kind of short-form trust, which usually appears on the trust account's signature card. The enclosed memorandum explains how all three kinds of trusts are insured.

The insurance of revocable trust funds is a highly complicated topic. Revocable trust documents can be many pages in length, and vary greatly in their terms, with a single term making a big difference in the amount of insurance coverage permitted. For this reason, it is difficult to make quick and easy statements about how these trust accounts are insured. It is possible, however, to say that, if a depositor holds only one trust account in a bank or savings and loan association, and no other kinds of accounts in that institution, the trust account will be insured for a maximum amount of at least $100,000. However, under certain circumstances, such a trust account might be insured for far more than $100,000. Further, if the depositor who set up the trust (who is known as the trust settlor or grantor) also holds individually-owned funds in the same bank or savings and loan association, under certain circumstances, the trust account might be insured separately from the individually-owned funds of the settlor and for far more than $100,000.

The separate insurance coverage of revocable trust accounts is dependent upon the settlor showing that at his or her death, the funds in the account will "belong to" the settlor's parent, brother, sister, spouse, child, or grandchild. ("Child" includes a biological child, adopted child, and stepchild of the owner. "Grandchild" includes a biological child, adopted child, and stepchild of any of the owner's children. "Parent" includes a biological parent, adoptive parents, and stepparents of the owner. "Brother" includes a full brother, half brother, brother through adoption, and stepbrother. "Sister" includes a full sister, half sister, sister through adoption, and stepsister.)

This requirement does not necessarily mean that the funds must be distributed outright to the beneficiary upon the settlor's death. However, it does mean that the beneficiary must have a very strong vested interest in his or her share of the trust fund upon the settlor's death (as defined by the Guidelines, page 4). Revocable trust documents, however, frequently contain one or more contingencies which make it impossible for the beneficiary to have a vested interest in the trust. These are referred to as defeating contingencies (see the Guidelines, page 6). When such a defeating contingency exists, the trust funds are insured as if they were the individually owned funds of the trust settlor or grantor. For example, Mr. Jones has $100,000 in an individually-owned bank account and $150,000 in the same bank in a trust account subject to a defeating contingency; the FDIC would treat the $150,000 as if it were the individually-owned funds of Mr. Jones. The $150,000 would be added to the $100,000 for a total of $250,000, and Mr. Jones would be insured for only $100,000.

The same treatment is given to a trust account when the beneficiary of the trust is someone other than the parent, sibling, spouse, child or grandchild of the settlor. (See page 7 of the Guidelines for an example of what happens when husband-and-wife settlors name one beneficiary who is a child and one beneficiary who is a nephew.) The same treatment will also occur when a trust account is not titled properly (see page 2 of the Guidelines), or when a depositor fails to list his beneficiaries by name in his depository institution's deposit account records (page 2 of the Guidelines).

Deposit insurance determinations for revocable trust accounts are quite difficult due to the complexity and individuality of the underlying trust documents. Moreover, many trusts are specifically created for estate planning, tax, and other considerations unrelated to deposit insurance. Therefore, the FDIC cannot provide deposit insurance analysis for individual trusts. Instead, the FDIC encourages depositors to consult with their attorney, tax advisor, estate planner, CPA, or other private professional advisor, as they deem appropriate, to determine the coverage of their trust accounts under the deposit insurance regulations.

Although the FDIC cannot provide deposit insurance analyses for individual trust accounts at open institutions, it may be compelled to do so in the event an institution fails. The FDIC's cumulative experience suggests that certain change events may affect a trust in ways that inadvertently and adversely affect deposit insurance coverage. These change events include, but are not limited to:

- Death
- Divorce
- Increased trust balance
- Change of trust titling
- Creation of new trust (s) at the same institution
- Creation of other new non-trust accounts at the same institution
- Conversion from revocable to irrevocable trust status
- Financial institution merger

In the event that any of these change events occur, the FDIC urges the depositor to once again consult with their private professional advisors to ensure that their accounts are, and remain, fully insured.

I hope that this information will prove useful to you.

Sincerely,

Hugh Eagleton
Senior Consumer Affairs Specialist

Enclosures

FDIC
Federal Deposit Insurance Corporation
550 17th Street, NW, Washington, DC 20429

Division of Compliance and Consumer Affairs

April 1, 1999

Insurance of Revocable Trust Accounts Including Living Trusts

This memorandum describes in general terms the extent of deposit insurance coverage available to accounts containing the funds of revocable trusts. A revocable trust account is an account owned by an individual — the trust settlor or grantor who establishes the trust — which shows an intention that the funds "shall belong" to a designated beneficiary upon the account owner's death. Throughout this memorandum, examples of the most common trust provisions are given to illustrate the operation of the various insurance rules.

Prior to the discussion of the insurance rules, however, two points should be mentioned. First, while the legal opinions provided here represent the current thinking of the FDIC Legal Division staff, they are not legally binding on the FDIC or its Board of Directors. Because the FDIC does not provide any kind of analysis for individual trusts, however, this memorandum is the only form of FDIC legal opinion that an individual depositor can receive.

Second, what may seem to be only a slight difference between a trust provision cited here and a trust provision appearing in a given depositor's trust document may lead to a vastly different result in the amount of insurance coverage permitted. For this reason, it would be best for depositors to use this memorandum as a guide only, and to consult an attorney specializing in trusts (perhaps the attorney who drafted the given trust) in order to determine the insurance coverage for that particular trust.

The FDIC's present regulation on the insurance of revocable trust accounts provides in part as follows:

(a) **General rule.** Funds owned by an individual and deposited into an account with respect to which the owner evidences an intention that upon his or her death the funds shall belong to one or more qualifying beneficiaries shall be insured in the amount of up to $100,000 in the aggregate as to each such named qualifying beneficiary, separately from any other accounts of the owner or the beneficiaries. For purposes of this provision, the term "qualifying beneficiaries" means the owner's spouse, child/children, grandchild/grandchildren, parent/parents, brother/brothers or sister/sisters. (Example: If A establishes a qualifying account payable upon death to his spouse, sibling and two children, assuming compliance with the rules of this provision, the account would be insured up to $400,000 separately from any other different types of accounts either A or the beneficiaries may have with the same depository institution.) Accounts covered by this provision are commonly referred to as tentative or "Totten trust" accounts, "payable-on-death" accounts, or revocable trust accounts.

12 C.F.R. § 330.10(a). This regulation applies to revocable trust accounts held by all insured depository institutions, both banks and savings and loan associations (hereafter "savings associations").

It is important to note that the special insurance coverage provided by the regulation quoted above depends, first of all, upon the proper titling of the trust accounts, and then, upon the listing of the trust's beneficiaries by name in the deposit account records of the insured depository institution.

As far as account titling is concerned, the terms which must be used are said to be "commonly accepted terms such as, but not limited to, 'in trust for,' 'as trustee for,' 'payable-on-death to,' or any acronym [abbreviation] therefor." 12 C.F.R. § 330.10(b) (emphasis added). Thus, if the title of a trust account suggests that a trust is involved, that title will usually be acceptable. For instance, a trust account entitled the "Jones Family Trust" or the "Jones Family Revocable Trust" would meet the proper titling requirement even though these titles are not precisely in the form of "in trust for," "as trustee for," or "payable-on-death to."

The next requirement is that the trust's beneficiaries be "specifically" listed in the insured depository institution's "deposit account records." The "specifically" means that the beneficiaries must be listed by name — for example, Ann Jones, Tommy Jones — not merely by the class to which they belong — that is, the requirement is not met by listing the beneficiaries merely as "my children." As for the "deposit account records," these are defined as "account ledgers, signature cards, certificates of deposit, passbooks ... and other books and records of the insured depository institution, including records maintained by computer, which relate to the insured depository institution's deposit taking function...." 12 C.F.R. § 330.1(e). For most purposes, perhaps the signature card and the certificate of deposit are the best places for listing one's beneficiaries.

Insurance Coverage of Simple Trusts (Trusts Established Without Written Trust Documents)

In order to understand how the above regulation works, one must first have some general knowledge about the FDIC's insurance rules. Under the FDIC's rules, deposits in a bank or savings association are insured according to the "right" or "capacity" in which they are held. The terms "right" and "capacity" refer to the manner in which the accounts are held, such as jointly-owned accounts, trust accounts or individually-owned accounts. All accounts (including savings or checking accounts and certificates of deposit) owned by a depositor in the same right and capacity within the same insured institution will be added together and insured for up to $100,000. (Of course, a depositor cannot be insured for more than he/she holds in all such accounts.) Deposits maintained in different rights and capacities are separately insured for up to $100,000. What the rule quoted above means is that, if a revocable trust beneficiary is the parent, sibling, spouse, child or grandchild of the trust owner, that may entitle the trust owner, or "settlor," to even more insurance coverage than he/she would otherwise receive — up to $100,000 times the number of settlors living when the depository institution goes into default times the number of qualifying beneficiaries (parent, sibling, spouse, child or grandchild of the settlor) then living who have a vested interest in the trust upon the death of the last settlor to die.

Of course, if the insured institution goes into default before the death of the last settlor to die, the only qualifying beneficiaries who might have a vested interest are those who are alive at the time of the institution's default. For instance, assume that, at the same insured depository institution, a husband and wife co-own a joint account and that each also owns a separate trust account with one beneficiary, their daughter (who will receive a trust's funds outright as soon as the settlor of that trust dies). In this case, the FDIC would say that the joint account is being held in a different right and capacity from either of the trust accounts, so the joint account would be separately insured from the trust accounts for up to a maximum of $200,000 (or $100,000 per owner in accordance with the FDIC's rules governing joint accounts). The FDIC would consider the mother's trust for the benefit of her daughter to be held in a different right and capacity from the father's trust for the same daughter, because the trust owners are different. Then, too, because the beneficiary is the child of each of her parents, and because it is each parent's intention that the trust funds “shall belong” to the daughter as soon as that parent dies, each of these trust accounts will be separately insured for up to $100,000. Thus, given the parents’ joint account and the two trust accounts, there will be a maximum of $400,000 of insurance coverage for these accounts. Note, however, that if the father owned two trust accounts at the same institution, with each account having the same beneficiary, his daughter, these two accounts would be viewed as being held in the same right and capacity, and so would be added together and insured for up to $100,000 only. (This might be so even if one account were a simple payable-on-death account — Father POD to Daughter — and the other trust account was governed by a lengthy revocable trust document, in which the father also named several other beneficiaries, including his daughter. In this case, the amount of the daughter’s vested interest in the revocable trust would be added to the payable-on-death account held for her benefit, and that amount insured for up to $100,000.)

The maximum insurance of $100,000 applies to each insured depositor holding funds in a given capacity in each insured depository institution, without regard to the deposits held by that depositor in any other separately chartered institution. For example, if Mother held $100,000 in a payable-on-death account for Son at Bank A, and Mother also held $100,000 in a second payable-on-death account for Son at Bank B, the FDIC would insure each account separately for $100,000; it would not add the two accounts together and insure the $200,000 total amount for only $100,000. However, if a bank (or savings association) has one or more branches, the main office and all branch offices are considered one bank (or savings association). Thus, all accounts owned by a depositor in the same right and capacity within the main office and branches of the same bank (or savings association) would be added together and insured for up to $100,000.

The Insurance Coverage of More Difficult Revocable Trust Accounts

In examining this subject, it is important to remember that a revocable trust account is an account owned by an individual — the trust owner or settlor or grantor who establishes the trust — which shows an intention that the funds will belong to a designated beneficiary upon the account owner’s death. A revocable trust — sometimes called a “living” or “inter vivos” trust — is a trust which comes into being while the settlor is living, as distinguished from a trust that is created after the settlor has died, by the terms of his/her will. A revocable trust can be revoked by the settlor, usually until his/her death.

In order to qualify for the special insurance coverage provided to revocable trust accounts by 12 C.F.R. § 330.10, the following two conditions must be met upon the death of the last settlor to die:

(1) there must be one or more qualifying beneficiaries to benefit from the trust (that is, one or more of the beneficiaries upon the death of the last settlor must be the spouse, child, grandchild, parent or sibling of a settlor); and

(2) a qualifying beneficiary, at the death of the last settlor, must have a vested or non-contingent interest in the trust (such that the funds might be said to “belong” to the beneficiary). This “vested or non-contingent interest” for revocable trusts is defined far differently from the “vested or non-contingent interest” for irrevocable trusts and should not be confused with the irrevocable trust’s definition.

The first condition — that, upon the death of the last settlor, there must be one or more qualifying beneficiaries of a settlor to benefit from the trust — is not very difficult to satisfy. The separate insurance coverage of revocable trust accounts is dependent upon a showing by the settlor that at his or her death, the funds in the account “shall belong” to the settlor’s spouse, child, grandchild, parent, brother or sister. (“Child” includes a biological child, adopted child, and stepchild of the owner. “Grandchild” includes a biological child, adopted child, and stepchild of any of the owner’s children. “Parent” includes a biological parent, adoptive parent, and stepparent of the owner. “Brother” includes a full brother, half brother, brother through adoption, and stepbrother of the owner. “Sister” includes a full sister, half sister, sister through adoption, and stepsister of the owner.)

The second condition, however — that a qualifying beneficiary must have a vested or non-contingent interest in the trust — is much more difficult to satisfy. The FDIC defines a “vested interest” in the context of a revocable trust as:

(1) an interest to which no defeating contingency is attached; AND

(2) an interest where the person holding it has already been born, and his/her identity ascertained upon the death of the last settlor to die (or upon the earlier default of the insured depository institution); AND

(3) an interest where, no later than upon the death of the last settlor to die, the trustee is instructed to set aside a share of the trust principal for this particular beneficiary (even if that share might later change in size, for example, when another grandchild of the settlor is born after the death of the last settlor, but before the funds are scheduled to be finally distributed; note, however, that this grandchild, because he/she was born after the death of the last settlor, would not be considered a qualifying beneficiary because of requirement (2)); AND

(4) an interest where the beneficiary either receives an outright distribution of his/her share of the trust principal upon the death of the last settlor OR can invade the principal of his/her share to an unlimited extent at his or her demand from that time on OR where the beneficiary will eventually take his/her share outright, provided that he/she survives for a given number of years or to a certain age, or, if he/she does not so survive, provided that his/her share in the trust will pass to his/her estate or his/her heirs at his/her death.

Assuming that a given trust fulfills all of the above requirements, the following example shows how an account holding the funds of that trust would be insured.

The Basic Operation of the Rule

Suppose that two settlors, a husband and wife, establish a revocable trust for the benefit of the survivor of either one of them and their four children. Upon the death of the first settlor, the trust is split into a marital trust for the surviving spouse and a family trust for the children. The trust defines how much is to go into each of these sub-trusts and provides that the surviving spouse will be able to invade the principal of his/her trust to an unlimited extent during his/her life, and, if he/she wishes, to dispose of the rest (if any) of the marital trust by will. The trust also provides that, upon the death of the last settlor, the trustee is to set aside a share of the family trust for each of the settlors’ children then living. Each child is to receive his/her share outright when he/she attains 21 years of age. If a child dies before reaching 21 years of age, his/her share of the trust will go to his/her estate or heirs.

What would be the insurance coverage of such a trust? It is important to remember that the amount of insurance coverage can change according to who is alive when the bank or savings association fails and according to whether the trust then in operation is a revocable or irrevocable trust.

While both the husband and wife are alive, the trust outlined above is revocable, so one would apply the insurance regulation at 12 C.F.R. ß 330.10. Looking to the number of qualifying beneficiaries (here, children) who will have a vested interest upon the death of the last settlor to die, one finds the four children. Thus, if the depository institution should fail while both spouses are alive, the trust would be insured for a maximum amount equal to —

> the number of settlors then living (2) <u>times</u> the number of qualifying beneficiaries then living (4) <u>times</u> $100,000 = $800,000.

Upon the death of the first spouse, the trust remains revocable (because the surviving spouse still has the power to revoke it), and the rules for revocable trusts continue to apply. Once again, the qualifying beneficiaries who will have a vested interest in the trust upon the death of the last settlor are the four children. Thus, if the depository institution should fail when the surviving spouse is alive, the trust would be insured for a maximum amount equal to the number of settlors then living (1) <u>times</u> the number of qualifying beneficiaries then living (4) <u>times</u> $100,000 = $400,000. Upon the death of the surviving spouse — that is, upon the death of the last settlor — the trust usually becomes irrevocable (because usually only the settlors have the power to revoke the trust and once they have died that power is gone). Because the trust is irrevocable, one must apply the regulation for irrevocable trusts. According to that regulation, in order for a beneficiary's interest to receive separate insurance coverage, the beneficiary need not be only the spouse, child, grandchild, parent or sibling of the settlor. Instead, the rule for irrevocable trusts adds together all of the "non-contingent trust interests" of the same beneficiary that are created by the same settlor (in one or more irrevocable trusts) and insures that beneficiary's total interest which is derived from that settlor for up to $100,000, with such coverage remaining separate from that provided for other accounts maintained by the settlors, trustees or beneficiaries of the irrevocable trust (or trusts) at the same insured depository institution. In addition, each trust interest in any irrevocable trust established by two or more settlors is deemed to be derived from each settlor pro rata to his or her actual contribution to the trust. Meanwhile, all interests of an irrevocable trust which are deemed to be contingent are added together and insured for up to $100,000, separately from the coverage for non-contingent interests. The FDIC defines a "non-contingent trust interest" as it applies to irrevocable trusts as a trust interest capable of determination without evaluation of contingencies except for those covered by the present worth or life expectancy tables of the Internal Revenue Code. See 12 C.F.R. § 330.13; 12 C.F.R. § 330.1(l).

In order for the special insurance coverage of the revocable trust regulation (12 C.F.R. § 330.10) to be triggered, the revocable trust agreement must provide that at least one qualifying beneficiary shall have a vested interest in the trust upon the death of the last settlor. One of the requirements of a vested interest is that there is no condition attached to it which would render it contingent. Because such conditions, or "defeating contingencies," have a drastic effect on the insurance coverage of a trust, it is important to examine them more closely.

The Effect of a Defeating Contingency

Suppose that a settlor establishes a revocable trust for his wife and three children. Upon his death, should his wife survive him, the trust is split into a marital trust for the wife and a family trust for the children. His trust defines how much is to go into the marital trust and states that, upon his death, the family trust is to be divided into equal shares for his children then living, and immediately distributed outright to those children. However, his trust also states that, if his probate estate should prove insufficient to pay for all of the legacies he makes in his will, his executor can make his trustee use <u>the funds in the family trust</u> to pay for those legacies. This clause in the trust has the effect of making the children's interests contingent and thus ineligible for the special insurance coverage provided by 12 C.F.R. § 330.10. As a result, those funds attributable to the children's interests would be insured like the settlor's individually-owned funds; that is, they would be aggregated with any individually-owned funds held by the settlor in the same institution, and the entire amount would be insured for up to $100,000. (If the settlor holds no individually-owned funds in that institution, those funds attributable to the children's interests would still be added together and insured for up to $100,000.)

Another "defeating contingency" occurs when the trust states that a beneficiary must survive the settlor for a given period of time before his trust share is established. (Please note that requiring a beneficiary to survive the settlor for a single moment before the beneficiary's trust share is established is not a defeating contingency.) Suppose that a husband sets up a very simple trust for his wife. Upon his death, he wants everything in the trust to be distributed to his wife outright <u>but only if his wife survives him for nine months</u>. This condition means that, upon the death of the settlor, the wife's interest in the trust is only contingent, since she will have a vested interest in the trust only if she survives her husband for nine months. Once an interest is vested, however, it is permissible to provide that a beneficiary will not receive an outright distribution of the funds until he/she reaches a given age or until he/she has survived for a given amount of time (for example, until a child has attained majority). Holding off the outright distribution of funds in this way does not prevent a qualifying beneficiary with a vested interest from receiving the special insurance coverage of 12 C.F.R. § 330.10, provided that, if such a beneficiary does not survive for the given amount of time or reach the given age, the trust provides that his/her share will go to his/her estate or heirs.

There is a defeating contingency where a beneficiary is to receive payments of income and/or principal only at the discretion of the trustee (where the beneficiary is not the trustee) — because a given beneficiary has no right to the funds, and may never receive anything. Likewise, where the beneficiary is to receive payments only once he or she has received a college degree, or married, or upon some other condition, each of these is a contingency that will defeat the special insurance coverage of the beneficiary's trust interest.

But there are some contingencies that do not defeat the separate insurability of a beneficiary's trust interest. For instance, a condition that the beneficiary must survive the settlor for only a moment in order to benefit from the trust; a condition that inheritance, estate and other death taxes, last illness and funeral expenses, the decedent's debts and administrative expenses relating to the settlor's estate must be paid from the trust; a condition that attorney's fees, accountant's fees and other expenses of operating the trust must be paid from the trust; and a condition that the marital trust (or family trust) will not be formed unless a spouse (or issue) survives the settlor for only a moment — all of these conditions are viewed as such expected parts of trusts that they can appear in a trust without being held to prevent the beneficiary from having a vested interest in the trust, provided the beneficiary does have a vested interest.

What Happens to the Interests of Nonqualifying Beneficiaries?

The above sections have dealt with how the interests of qualifying beneficiaries with vested interests are insured, where a beneficiary is said to be "qualifying" if he/she is the sibling, parent, spouse, child or grandchild of the trust settlor. Now this section will show what happens when a settlor names one beneficiary who is qualifying and one who is not.

Suppose that two trust owners or settlors — assume that they are husband and wife — establish a revocable trust of $400,000 for their son and <u>their nephew</u>. In this case, their son is a qualifying beneficiary but their nephew is not. Unless stated otherwise in the trust, it is presumed that the husband and wife have contributed equal sums to the trust and that the beneficiaries will share equally in it. This means that the husband is viewed as having contributed $100,000 for the benefit of his son and $100,000 for the benefit of his nephew, and that the wife is viewed as having contributed the same amounts for each beneficiary. Since the nephew is not a qualifying beneficiary, the $100,000 representing his beneficial interest derived from the husband will be combined with any individually-owned funds of the husband that are held in the same institution, and the total amount will be insured for up to $100,000 only. (If the husband holds no individually-owned funds in that institution, the nephew's beneficial interest derived from the husband will still be insured for up to $100,000.) In the same way, the $100,000 representing the nephew's beneficial interest derived from the wife will be combined with any individually-owned funds of the wife and insured in the aggregate to $100,000. As to the remaining amounts — the $100,000 held by the husband for the benefit of his son and the $100,000 held by the wife for the benefit of this same son — each amount will be separately insured for up to the maximum amount of $100,000, or a total of $200,000 in insurance coverage for their son's interest in the trust.

An Exception to the General Rules — Insurance Coverage When a Husband and Wife Together Establish a Trust with One or Both of Them as the Sole Beneficiary or Beneficiaries

A special situation is the revocable trust established by a husband and wife solely for their own benefit (or for the benefit of only one of them). In this case, where the husband and wife are co-settlors and co-beneficiaries, and where the survivor takes everything on the death of his/her spouse, the FDIC considers this trust the equivalent of a joint account with right of survivorship. Therefore, while both spouses are alive, the account will be insured in accordance with the FDIC's rules governing joint accounts up to a maximum of $200,000 (in aggregation with any other joint accounts owned by the husband and/or wife at the same depository institution). This rule applies to trusts in the form of (1) husband (H) and wife (W) in trust for H and W, (2) H and W in trust for H, and (3) H and W in trust for W.

However, a trust in the form of H in trust for W or W in trust for H is still eligible for the special insurance coverage provided by 12 C.F.R. § 330.10, provided that the other requirements of that section are met. Thus, a simple payable-on-death account in the form of H in trust for W would be separately insured for up to $100,000, and a similar payable-on-death account in the form of W in trust for H would also be separately insured for up to $100,000, for a total of $200,000 of insurance coverage.

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency
Office of Thrift Supervision

Interagency Statement on Retail Sales of Nondeposit Investment Products

February 15, 1994

Introduction

Recently many insured depository institutions have expanded their activities in recommending or selling to retail customers nondeposit investment products, such as mutual funds and annuities. Many depository institutions are providing these services at the retail level, directly or through various types of arrangements with third parties. Sales activities for nondeposit investment products should ensure that customers for these products are clearly and fully informed of the nature and risks associated with these products. In particular, where nondeposit investment products are recommended or sold to retail customers, depository institutions should ensure that customers are fully informed that the products:

- are not insured by the FDIC
- are not deposits or other obligations of the institution and are not guaranteed by the institution; and,
- are subject to investment risks, including possible loss of the principal invested. Moreover, sales activities involving these investment products should be designed to minimize the possibility of customer confusion and to safeguard the institution from liability under the applicable anti-fraud provisions of the federal securities laws, which, among other things, prohibit materially misleading or inaccurate representations in connection with the sale of securities.

The four federal banking agencies — the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision — are issuing this Statement to provide uniform guidance to depository institutions engaging in these activities. Interagency Statement Chapter Six on Nondeposit Investment Products Appendix Financial Institution Employee's Fall 1996

Scope

This Statement applies when retail recommendations or sales of nondeposit investment products are made by:

- employees of the depository institution;
- employees of a third party, which may or may not be affiliated with the institution,occurring on the premises of the institution (including telephone sales or recommendations by employees or from the institution's premises and sales or recommendations initiated by mail from its premises); and
- sales resulting from a referral of retail customers by the institution to a third party when the depository institution receives a benefit for the referral.

These guidelines generally do not apply to the sale of non-deposit investment products to non-retail customers, such as sales to fiduciary accounts administered by institution. However, as part of its fiduciary responsibility, an institution should take appropriate steps to avoid potential customer confusion when providing nondeposit investment products to the institution's fiduciary customers.

Adoption of Policies and Procedures

Program Management

A depository institution involved in the activities described above for the sale of nondeposit investment products to its retail customers should adopt a written statement that addresses the risks associated with the sales program and contains a summary of policies and procedures outlining the features of the institution's program and addressing, at a minimum, the concerns described in this Statement. The written statement should address the scope of activities of any third party involved, as well as the procedures for monitoring compliance by third parties in accordance with the guidelines below. The scope and level of detail of the statement should appropriately reflect the level of the institution's involvement in the sale or recommendation of nondeposit investment products. The institution's statement should be adopted and reviewed periodically by its board of directors. Depository institutions are encouraged to consult with legal counsel with regard to the implementation of a nondeposit investment product sales program.

The institution's policies and procedures should include the following:

- **Compliance procedures**. The procedures for ensuring compliance with applicable laws and regulations and consistency with the provisions of this Statement.
- **Supervision of personnel involved in sales.** A designation by senior managers of specific individuals to exercise supervisory responsibility for each activity outlined in the institution's policies and procedures.
- **Types of products sold.** The criteria governing the selection and review of each type of product sold or recommended.
- **Permissible use of customer information.** The procedures for the use of information regarding the institution's customers for any purpose in connection with the retail sale of nondeposit investment products.
- **Designation of employees to sell investment products.** A description of the responsibilities of those personnel authorized to sell nondeposit investment products and of other personnel who may have contact with retail customers concerning the sales program; and a description of any appropriate and inappropriate referral activities and the training requirements and compensation arrangements for each class of personnel.

Arrangements with Third Parties

If a depository institution directly or indirectly, including through a subsidiary or service corporation, engages in activities as described above under which a third party sells or recommends nondeposit investment products, the institution should, prior to entering into the arrangement, conduct an appropriate review of the third party. The institution should have a written agreement with the third party that is approved by the institution's board of directors. Compliance with the agreement should be periodically monitored by the institution's senior management. At a minimum, the written agreement should:

- describe the duties and responsibilities of each party, including a description of permissible activities by the third party on the institution's premises, terms as to the use of the institution's space, personnel, and equipment, and compensation arrangements for personnel of the institution and the third party.

- specify that the third party will comply with all applicable laws and regulations, and will act consistently with the provisions of this Statement and, in particular, with the provisions relating to customer disclosures.

- authorize the institution to monitor the third party and periodically review and verify that the third party and its sales representatives are complying with its agreement with the institution.

- authorize the institution and the appropriate banking agency to have access to such records of the third party as are necessary or appropriate to evaluate such compliance.

- require the third party to indemnify the institution for potential liability resulting from actions of the third party with regard to the investment product sales program.

- provide for written employment contracts, satisfactory to the institution, for personnel who are employees of both the institution and the third party.

General Guidelines

1. Disclosures and Advertising

The banking agencies believe that recommending or selling nondeposit investment products to retail customers should occur in a manner that assures that the products are clearly differentiated from insured deposits. Conspicuous and easy to comprehend disclosures concerning the nature of nondeposit investment products and the risk inherent in investing in these products are one of the most important ways of ensuring that the differences between nondeposit products and insured deposits are understood.

Content and Form of Disclosure. Disclosures with respect to the sale or recommendation of these products should, at a minimum, specify that the product is:

- not insured by the FDIC;

- not a deposit or other obligation of, or guaranteed by, the depository institution;

- subject to investment risks, including possible loss of the principal amount invested.

The written disclosures described above should be conspicuous and presented in a clear and concise manner. Depository institutions may provide any additional disclosures that further clarify the risks involved with particular nondeposit investment products.

Timing of Disclosure. The minimum disclosures should be provided to the customer:

- orally during any sales presentation;
- orally when investment advice concerning nondeposit investment products is provided;
- orally and in writing prior to or at the time an investment account is opened to purchase these products; and
- in advertisements and other promotional materials, as described below.

A statement, signed by the customer, should be obtained at the time such an account is opened, acknowledging that the customer has received and understands the disclosures. For investment accounts established prior to the issuance of these guidelines, the institution should consider obtaining such a signed statement at the time of the next transaction.

Confirmations and account statements for such products should contain at least the minimum disclosures if the confirmations or account statements contain the name or the logo of the depository institution or an affiliate. If a customer's periodic deposit account statement includes account information concerning the customer's nondeposit investment products, the information concerning these products should be clearly separate from the information concerning the deposit account, and should be introduced with the minimum disclosures and the identity of the entity conducting the nondeposit transaction.

Advertisements and Other Promotional Material. Advertisements and other promotional and sales material, written or otherwise, about nondeposit investment products sold to retail customers should conspicuously include at least the minimum disclosures discussed above and must not suggest or convey any inaccurate or misleading impression about the nature of the product or its lack of FDIC insurance. The minimum disclosures should also be emphasized in telemarketing contacts. Any third party advertising or promotional material should clearly identify the company selling the nondeposit investment product and should not suggest that the depository institution is the seller. If brochures, signs, or other written material contain information about both FDIC-insured deposits and nondeposit investment products, these materials should clearly segregate information about nondeposit investment products from the information about deposits.

Additional Disclosures. Where applicable, the depository institution should disclose the existence of an advisory or other material relationship between the institution or an affiliate of the institution and an investment company whose shares are sold by the institution and any material relationship between the institution and an affiliate involved in providing nondeposit investment products. In addition, where applicable, the existence of any fees, penalties, or surrender charges should be disclosed. These additional disclosures should be made prior to or at the time an investment account is opened to purchase these products.

If sales activities include any written or oral representations concerning insurance coverage provided by any entity other than the FDIC, e.g., the Securities Investor Protection Corporation (SIPC), a state insurance fund, or a private insurance company, then clear and accurate written or oral explanations of the coverage must also be provided to customers when the representations concerning insurance coverage are made, in order to minimize possible confusion with FDIC insurance. Such representations should not suggest or imply that any alternative insurance coverage is the same as or similar to FDIC insurance.

Because of the possibility of customer confusion, a nondeposit investment product must not have a name that is identical to the name of the depository institution. Recommending or selling a nondeposit investment product with a name similar to that of the depository institution should only occur pursuant to a sales program designed to minimize the risk of customer confusion. The institution should take appropriate steps to ensure that the issuer of the product has complied with any applicable requirements established by the Securities and Exchange Commission regarding the use of similar names.

2. Setting and Circumstances
Selling or recommending nondeposit investment products on the premises of a depository institution may give the impression that the products are FDIC-insured or are obligations of the depository institution. To minimize customer confusion with deposit products, sales or recommendations of nondeposit investment products on the premises of a depository institution should be conducted in a physical location distinct from the area where retail

deposits are taken. Signs or other means should be used to distinguish the investments sales area from the retail deposit-taking area of the institution. However, in the limited situation where physical considerations prevent sales of nondeposit products from being conducted in a distinct area, the institution has a heightened responsibility to ensure appropriate measures are in place to minimize customer confusion.

In no case, however, should tellers and other employees, while located in the routine deposit taking area, such as the teller window, make general or specific investment recommendations regarding nondeposit investment products, qualify a customer as eligible to purchase such products, or accept orders for such products, even if unsolicited. Tellers and other employees who are not authorized to sell nondeposit investment products may refer customers to individuals who are specifically designated and trained to assist customers interested on the purchase of such products.

3. Qualifications and Training
The depository institution should ensure that its personnel who are authorized to sell nondeposit investment products or to provide investment advice with respect to such products are adequately trained with regard to the specific products being sold or recommended. Training should not be limited to sales methods, but should impart a thorough knowledge of the products involved, of applicable legal restrictions, and of customer protection requirements. If depository institution personnel sell or recommend securities, the training should be the substantive equivalent of that required for personnel qualified to sell securities as registered representatives. Depository institution personnel with supervisory responsibilities should receive training appropriate to that position. Training should also be provided to employees of the depository institution who have direct contact with customers to ensure a basic understanding of the institution's sales activities and the policy of limiting the involvement of employees who are not authorized to sell investment products to customer referrals. Training should be updated periodically and should occur on an ongoing basis.

Depository institutions should investigate the backgrounds of employees hired for their nondeposit investment products sales programs, including checking for possible disciplinary actions by securities and other regulators if the employees have previous investment industry experience.

4. Suitability and Sales Practices
Depository institution personnel involved in selling nondeposit investment products must adhere to fair and

reasonable sales practices and be subject to effective management and compliance reviews with regard to such practices. In this regard, if depository institution personnel recommend nondeposit investment products to customers, they should have reasonable grounds for believing that the specific product recommended is suitable for the particular customer on the basis of information disclosed by the customer. Personnel should make reasonable efforts to obtain information directly from the customer regarding, at a minimum, the customer's financial and tax status, investment objectives, and other information that may be useful or reasonable in making investment recommendations to that customer. This information should be documented and updated periodically.

5. Compensation
Depository institution employees, including tellers, may receive a one-time nominal fee of a fixed dollar amount for each customer referral for nondeposit investment products. The payment of this referral fee should not depend on whether the referral results in a transaction.

Personnel who are authorized to sell nondeposit investment products may receive incentive compensation, such as commissions, for transactions entered into by customers. However, incentive compensation programs must not be structured in such a way as to result in unsuitable recommendations or sales being made to customers. Depository institution compliance and audit personnel should not receive incentive compensation directly related to results of the nondeposit investment sales program.

6. Compliance
Depository institutions should develop and implement policies and procedures to ensure that nondeposit investment product sales activities are conducted in compliance with applicable laws and regulations, the institution's internal policies and procedures, and in a manner consistent with this Statement. Compliance procedures should identify any potential conflicts of interest and how such conflicts should be addressed. The compliance procedures should also provide for a system to monitor customer complaints and their resolution. Where applicable, compliance procedures also should call for verification that third party sales are being conducted in a manner consistent with the governing agreement with the depository institution.

The compliance function should be conducted independently of nondeposit investment product sales and management activities. Compliance personnel should determine the scope and frequency of their own review, and findings of compliance reviews should be periodically reported directly to the institution's board of directors, or to a designated committee of the board. Appropriate procedures for the nondeposit investment product program should also be incorporated into the institution's audit program.

Supervision by Banking Agencies

The federal banking agencies will continue to review a depository institution's policies and procedures governing recommendations and sales of nondeposit investment products, as well as management's implementation and compliance with such policies and all other applicable requirements. The banking agencies will monitor compliance with the institution's policies and procedures by third parties that participate in the sale of these products. The failure of a depository institution to establish and observe appropriate policies and procedures consistent with this Statement in connection with sales activities involving nondeposit investment products will be subject to criticism and appropriate corrective action.

Questions on the Statement may be submitted to:

FRB
Division of Banking Supervision and Regulation
Securities Regulation Section
(202) 452-2781

Legal Division
(202) 452-2246

FDIC
Office of Policy, Division of Supervision
(202) 898-6759

Regulation and Legislation Section, Legal Division
(202) 898-3796

OCC
Office of the Chief National Bank Examiner
Capital Markets Group
(202) 874-5070

OTS
Office of Supervision Policy
(202) 906-5740

Corporate and Securities Division
(202) 906-7289

Richard Spillenkothen
Director, Division of Banking
Supervision & Regulation
Federal Reserve Board

Stanley J. Poling
Director, Division of Supervision
Federal Deposit Insurance Corporation

Susan F. Krause
Senior Deputy Comptroller
for Bank Supervision Policy
Office of the Comptroller of the Currency

John C. Price
Acting Assistant Director for Policy
Office of Thrift Supervision

Effective Date:
February 15, 1994

Non-Deposit Investment Products

Insurable:

- **Checking**
- **Savings**
- **CDs**
- **Money Market Deposit Accounts**
- **Principal and Interest (P&I) Payments into Accounts**
- **Retirement Accounts**
- **Retirement CDs**

Uninsured:

- **Safe Deposit Box Contents**
- **Securities**
- **Annuities**
- **Bonds**
- **Treasury Securities (T-bills, etc.)**
- **Money Market Mutual Funds**
- **Benefit Responsive BICs**

Anything that is not a deposit is not Insured

Nondeposit Investment Products Sold by or Through a Federally Insured Institution:

1. are not FDIC insured
2. are not deposits
3. are not guaranteed by the institution
4. are subject to investment risk, including loss of principal.

Guidelines on Sale of Nondeposit Products:

Policies and Procedures should address:

1. Written disclosure of risks
2. Compliance with relevant laws
3. Supervision of all personnel
4. Selection of appropriate products
5. Safeguarding of customer information
6. Authorization, compensation, and training of sales staff

Disclosures

I, Clear and Conspicuous Form

II. Minimum content

1. not FDIC insured

2. not a deposit of, or guaranteed by, the institution

3. subject to investment risk including possible loss of principal

III. Additional disclosures may explain:

1. The product itself

2. The institution's connection to the sale

3. All risks associated with the product

4. Fees, penalties, and surrender charges

5. Non-FDIC insurance (e.g. SIPC)

IV. When disclosures should be made:

1. Orally during sales presentation

2. Orally when giving investment advice

3. Orally and in writing at or prior to sale

4. In confirmations and account statements

5. In all advertisements and promotional material

V. Signed customer acknowledgement when account is opened

VI. Segregate information on insured and uninsured products

Advertising and Sales

Goal: Avoid customer confusion

1. **Physically separate the sales area from the retail deposit area**
2. **Use different employees**
3. **Avoid using names which are identical to the institution's name**

Qualifications and training

1. **Check employee background**
2. **Train employees in sales, products, and customers' needs**
3. **Securities training should be equivalent to that for registered representatives**

Product suitability and sales practices

1. **Use fair and reasonable sales practices**
2. **Understand customer's needs**
3. **Document and update customer investment objectives**

Compliance

1. **Laws, policies, and Interagency Statement**
2. **Avoid conflicts and potential conflicts of interest**

Compliance

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AMERICAN BANKER

Thursday, June 29, 1995

New Disclosure Rules for Employee Benefit Plans

By DANIEL M. GAUTSCH
and JOSEPH A. DiNUZZO

Starting this Saturday, all FDIC-insured banks and thrifts will have to comply with new disclosure requirements on employee benefit plan accounts. The requirements are intended to inform employee benefit depositors about the insurance available on their accounts.

Comment

The FDIC determined that the disclosure requirements were necessary because Congress pared back deposit insurance on employee benefit plan accounts in the FDIC Improvement Act of 1991.

The law made various changes to FDIC insurance rules. One of those revisions, which became effective on Dec. 19, 1992, affected the availability of so-called pass-through coverage for employee benefit plan deposits.

Pass-through coverage means that the insurance passes through the depositor of the funds (usually a plan administrator or trustee for an employee benefit plan) to each owner of the funds (the employee participants in the plan).

For example, if a plan administrator places a $1 million pension plan deposit with a bank and there are 10 employee participants of the plan, each of whom has a $100,000 interest in the deposit, the insurance of the account would be $100,000 per participant, or $1 million.

Employee benefit plan accounts that are not eligible for pass-through coverage are aggregated and insured to a limit of $100,000 per plan. This can be a significant limitation for plans with many employees.

In the FDIC Improvement Act, Congress limited the availability of pass-through coverage for employee benefit plan deposits to deposits made at banks and thrifts that meet certain capital requirements.

Pass-through insurance is available for employee benefit plan deposits only if such deposits are made at an insured

Daniel M. Gautsch

Joseph A. DiNuzzo

bank or thrift that is well capitalized at the time the deposit is made.

Pass-through coverage is also available if the institution is adequately capitalized and has either obtained a brokered-deposit waiver from the FDIC or provides a specific written statement to an employee benefit plan depositor that such deposits are eligible for pass-through insurance coverage.

Employee benefit plan deposits are not entitled to pass-through insurance coverage when

Capital tests determine whether such deposits get "pass-through" insurance of $100,000 per person.

placed with insured institutions that are adequately capitalized but have not obtained a waiver from the FDIC; have elected not to provide a written statement under the statutory exception; or are undercapitalized.

New Disclosure Rules

The disclosure rules that become effective Saturday apply only to employee benefit plan accounts. The most common of these are corporate pension and profit-sharing plans, 401(k) retirement accounts, Keogh plan accounts, deferred compensation plan accounts, and simplified employee pension (SEP) plan accounts.

The disclosure requirements trigger in three situations: when an employee benefit plan customer requests information on the account, when a new employee benefit plan account is opened, and when a bank's or thrift's capital status changes so that new employee benefit plan deposits would not be eligible for pass-through coverage.

The specific requirements are:

Upon request. Within five business days after an employee benefit plan depositor (the administrator or trustee) requests information on the insurance of the account, an institution must provide in writing: its three capital ratios; its prompt-corrective-action capital category; and whether, in the institution's judgment, employee benefit plan deposits would be eligible for pass-through insurance protection.

Upon opening an account. When a new employee benefit plan account is opened, the institution must provide in writing: an accurate description of the requirements for pass-through insurance coverage; the institution's capital category; and whether in the institution's judgment the employee benefit plan deposits are eligible at that time for pass-through insurance coverage.

When pass-through coverage is no longer available. Whenever new, rolled over, or renewed employee benefit plan deposits would not be eligible for pass-through insurance coverage, the institution has 10 business days to explain this in writing to all affected employee benefit plan depositors and disclose its new capital category to them.

The FDIC provided sample disclosures in the Feb. 13 *Federal Register* and in a Feb. 3 financial institution letter sent to all insured banks and thrifts.

Catch-Up Provision

The new disclosure requirements also include a so-called catch-up provision for employee benefit plan deposits accepted between the Dec. 19, 1992, effective date of the FDIC Improvement Act's limitations on pass-through coverage and the effective date of the disclosure requirements.

The rule is: If as of July 1, 1995, an insured bank or thrift has employee benefit plan deposits that are not eligible for pass-through deposit insurance coverage, the institution must notify those depositors by July 17 and provide the prescribed disclosure information.

This requirement applies only to funds not entitled to pass-through coverage when deposited and still not eligible for pass-through coverage on July 1.

Answers to Common Questions

The FDIC has received numerous questions on the coverage of employee benefit plan accounts and the new disclosure requirements. The answers to the most common ones are:

Rules for disclosing that deposits are ineligible for the coverage will take effect this weekend.

- The term "employee benefit plan depositor" means the person or people administrating or managing an employee benefit plan. The term does not mean each plan participant entitled to pass-through insurance coverage.
- Employee benefit plan deposits that qualify for pass-through coverage when they are made will continue to be eligible for such coverage unless or until they are renewed, rolled over, or redeposited when pass-through insurance coverage is not available.
- The reverse is also true. Employee benefit plan deposits that do not qualify for pass-through coverage when they are made will continue to be ineligible for such coverage unless or until they are renewed, rolled over, or redeposited when pass-through insurance coverage is available.
- The new disclosure rules apply only to employee benefit plan accounts. Other accounts to which the pass-through rules also apply, such as agency or allocated trust funds, are not affected.
- The upon-opening-an-account disclosures apply only to newly established accounts. Though existing, renewed, or rolled-over accounts are not subject to disclosure requirements, institutions have the discretion to make such disclosures.
- Institutions are not required to maintain a separate list of employee benefit plan accounts. However, if and when new, renewed, or rolled-over employee benefit plan deposits are no longer eligible for pass-through coverage, the institution may have to send the required disclosures to all of its depositors if a list of employee benefit plan accounts cannot be developed.

Nevertheless, in order to satisfy the record-keeping requirements for pass-through coverage, each employee benefit plan account must be properly labeled and identified as such.

- Banks that have trust departments acting as administrators or trustees of employee benefit plans must provide the required disclosure documents to the trust officers (who are acting as plan administrators or trustees) if and when those officers place employee benefit plan deposits with the bank. This includes the institution's own retirement plan.

Legislative Alternative

Perhaps Congress should simply prohibit institutions that do not meet applicable capital requirements from accepting employee benefit plan deposits, instead of limiting the availability of pass-through coverage to banks and thrifts at those capital levels.

The current law is the only insurance-related statute that ties deposit insurance to an institution's capital. The statutory and regulatory rules surrounding and implementing this tie-in are somewhat difficult to follow, and may confuse the banking industry and the public. □

Mr. Gautsch is an examination specialist with the FDIC's division of supervision. Mr. DiNuzzo is an acting senior counsel with the agency's legal division.

Test Your Deposit Insurance IQ

How well do you understand the FDIC's deposit insurance rules? Depositors should have at least a basic knowledge of the rules, in case their bank or savings institution were to fail. An awareness of the rules is especially important if you or your family have $100,000 or more on deposit at one insured institution. Take our 10-question quiz and find out how well informed you are about FDIC insurance.

1 By law, all commercial banks and savings associations in the United States are insured by the FDIC. True or false?

2 I have $100,000 in certificates of deposit (CDs) at the bank where I have $100,000 in Individual Retirement Accounts (IRAs). I'm fully insured because retirement accounts are insured up to $100,000 separately from my other money at the bank. True or false?

3 If I have accounts at two FDIC-insured institutions that merge, my deposits are combined immediately for insurance purposes. True or false?

4 I have $20,000 in a checking account in my name alone, and at the same bank I have a $100,000 trust account in my name but payable to my mother when I die. All of my money is protected because the payable-on-death (POD) account is insured to $100,000 separately from my checking account.True or false?

5 I have my checking account at the same bank where I keep the accounts of my sole proprietorship (a business owned by just one person, not by a corporation). Under the insurance rules, my sole proprietorship accounts are added together with my personal accounts at the bank and are insured to $100,000 in total. True or false?

6 My spouse and I have joint accounts totaling $200,000, but because both of our names are on the accounts, they're fully insured ($100,000 for each of us). True or false?

7 I have three accounts at the same bank— a $100,000 savings account for myself, a $50,000 checking account just for me, and a separate $50,000 checking account I own jointly with my mother. All three accounts are separately insured for $100,000 each. True or false?

8 I've invested in the stock and bond markets by buying shares in a mutual fund sold by my bank. Because the institution is FDIC-insured, that means my investment is also protected by the FDIC.True or false?

9 I have three different joint accounts at the same bank — one for $100,000 with my spouse, another for $100,000 with my sister, and a third for $100,000 with my brother. Because I own each account with a different person, each account qualifies for $100,000 of insurance. True or false?

10 I can get additional FDIC insurance by opening accounts at different branches of my institution. True or false?

Answers on next page.

1	☐ True	☐ False	**6**	☐ True	☐ False
2	☐ True	☐ False	**7**	☐ True	☐ False
3	☐ True	☐ False	**8**	☐ True	☐ False
4	☐ True	☐ False	**9**	☐ True	☐ False
5	☐ True	☐ False	**10**	☐ True	☐ False

Mark your choices in the boxes at left and then compare them to the answers on the next page. If a little extra homework is needed, to be sure your savings are entirely safe, read the FDIC booklet "Your Insured Deposit," which is being updated to include the latest rule changes. It will be available free of charge from the FDIC's Public Information Center (the toll-free phone is 800-276-6003, the address is 801 17th Street, NW, Room 100, Washington, DC 20434, and the e-mail address is publicinfo@fdic.gov), and soon from insured banks and savings associations. "Your Insured Deposit" and other insurance-related information (including the "Electronic Deposit Insurance Estimator" service that allows you to check whether your accounts are fully insured) also appear on our Internet site at www.fdic.gov.

You also can contact the FDIC's Division of Compliance and Consumer Affairs (call 800-934-3342, write to 550 17th Street, NW, Washington, DC 20429, or e-mail consumer@fdic.gov) to get answers to specific questions.

Answers to Quiz

1. False. The FDIC insures deposits in most but not all banks and savings associations. FDIC-insured institutions must display an official sign at each teller window or teller station. You also can verify whether an institution is FDIC-insured by contacting the FDIC's Division of Com-pliance and Consumer Affairs, as listed on the previous page, or doing a search of insured institutions at the FDIC's Internet site (www.fdic.gov).

2. True. Individual Retirement Accounts (both "traditional" and "Roth" IRAs) are insured to $100,000 separately from your non-retirement accounts at the same bank. (Note: The deposit insurance rules for retirement accounts and pension savings can be confusing. For example, the rules treat traditional and Roth IRAs differently than employer-sponsored 401(k) retirement plans that may be deposited in the same bank. If all your retirement-related money in the same bank is near or above $100,000, you may want to consult the Division of Com-pliance and Consumer Affairs.)

3. False. In the event of a bank merger, the FDIC's rules provide a "grace period" so that any change in insurance coverage is not immediate. Regular checking and savings accounts from each institution are separately insured, as if they were still at separate institutions, for six months after the merger. In general, CDs at the acquired institution remain separately insured until the earliest maturity date after the six-month grace period.

4. True. Your payable-on-death accounts (also called testamentary, Totten trust or "In Trust For" accounts) are insured separately from your individual or joint accounts at the same institution, but only if certain conditions are met. One of these conditions is that the beneficiaries of the account must be the owner's spouse, children, grandchildren, parents or siblings (called "qualifying beneficiaries"). Parents and siblings were added to this list on April 1, 1999. If this requirement and the other requirements are satisfied, the account will be insured up to $100,000 for each beneficiary. For example, a POD account with three qualifying beneficiaries could be insured up to $300,000 (combined with any other POD accounts held by the account owner for the same beneficiaries). The list of qualifying beneficiaries also includes adopted children, adoptive parents, brothers and sisters through adoption, stepchildren, stepparents, stepbrothers and stepsisters. The list does not include cousins, aunts, uncles, nieces, nephews, friends or in-laws. This means a $300,000 POD account for three non-qualifying beneficiaries would be added to any other individual accounts the owner held at the bank and would be insured to only $100,000 in total.

5. True. Under the insurance rules, sole proprietorship accounts (unlike corporate or partnership accounts) are added to any personal accounts the owner may have at the same institution. Similarly, if a sole proprietorship is owned jointly by a husband and wife (permissible in some states), the business account would be insured as a joint account (presuming it satisfies the FDIC's requirements for joint accounts).

6. True. Under the new insurance rules that went into effect April 1, 1999, each person's shares in all joint accounts at an institution are covered to $100,000 in total. This couple's joint accounts therefore would be insured up to $200,000 (assuming they have no other joint accounts at the same institution). This is simpler and more straightforward than the "old" rules, which many consumers misunderstood.

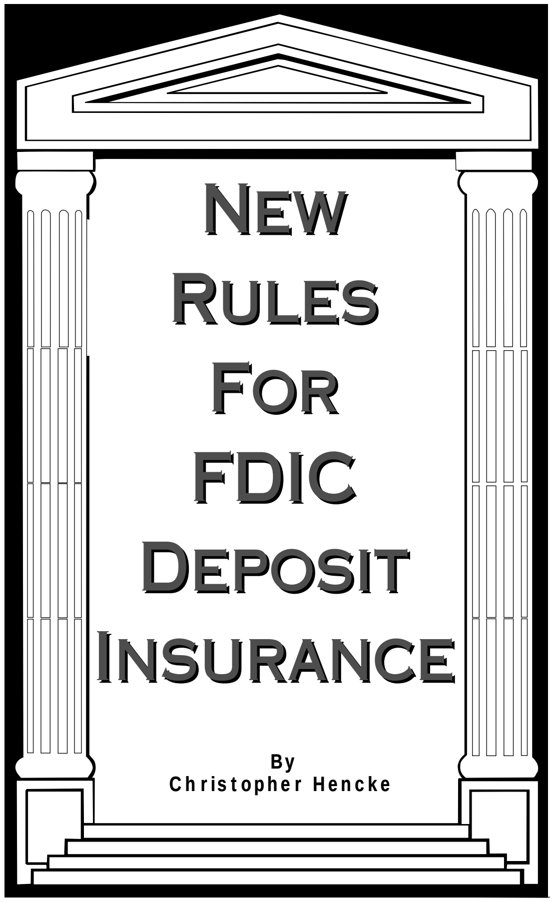
7. False. Insurance coverage generally is based on how accounts are owned. In this case, the two accounts you have in your name alone would be added together and insured to $100,000 in total, leaving $50,000 uninsured. Your share of any joint accounts at a bank is insured to $100,000 in total (and separately from your individual accounts). Here, the joint account you own with your mother would be insured for up to $200,000 ($100,000 for each person's share), so this account is fully protected.

8. False. FDIC insurance protects only deposits. Products such as mutual funds, annuities, stocks, bonds, life insurance policies and U.S. Treasury securities are not deposits and are not protected by the FDIC. Nondeposit investments are subject to investment risks, including the possible loss of principal, even if you bought them in your bank's lobby or otherwise through an FDIC-insured institution. Although Treasury securities are not insured by the FDIC, they are backed by the full faith and credit of the U.S. government.

9. False. For each $100,000 joint account, your interest would be $50,000. (The interests of the co-owners are presumed equal.) This means your interest in all three joint accounts would be $150,000. But under the FDIC's rules, no one person's insured interest in all joint accounts at the same institution can exceed $100,000. You'd be uninsured in the amount of $50,000.

10. False. An insured institution's main office and all branch offices are considered to be one institution.

FDIC ***Consumer News***



A husband and wife maintain a joint account at your bank with a balance of $200,000. They hold no other accounts. They ask you whether these funds are fully insured by the FDIC. Are they?

Another customer maintains an account in her name alone. She opens a second account "payable on death" to her mother. The balance of each account is $100,000. She, too, wishes to know whether her funds are fully insured. Are they?

On April 1, 1999, the answers to these questions changed. Before that date, the funds in both the first and second examples were uninsured in the amount of $100,000. Since that date, the funds have been fully insured.

What happened on April 1st?

On that date, the Federal Deposit Insurance Corporation (FDIC) published amendments to its deposit insurance regulations. The amendments became effective immediately. The amendments changed the insurance rules for two types of accounts: (1) joint accounts; and (2) revocable trust accounts, also known as "payable-on-death" or POD accounts. (Other names for revocable trust accounts include "in trust for" accounts, "tentative trust" accounts, and "Totten trust" accounts.)

For the average depositor, these amendments may be the most significant changes made by the FDIC to the deposit insurance regulations since 1967 (when the FDIC established the two-step process for insuring joint accounts and also created the concept of "qualifying beneficiaries" for POD accounts). The changes should be understood by all bankers. This article will explain the changes in detail.

WHY THESE CHANGES?

In recent years, a number of surveys have been conducted by news organizations and public interest research groups (PIRGs) concerning the industry's grasp of the FDIC's insurance rules. The results were not good. In general, they showed that a large percentage of bank and thrift employees misunderstood the coverage of joint accounts and POD accounts. ➤

INSIDE:

An explanation, with examples, of the changes effective April 1, 1999, to the deposit insurance rules governing joint accounts and payable-on-death accounts. Use this illustrative article as a ready-made training tool.

Author's Note: This article is not legally binding on the FDIC or its Board of Directors. Note that no person (by representations or interpretations) may affect the extent of insurance coverage provided by the Federal Deposit Insurance Act (12 U.S.C. § 1811 et seq.) and the FDIC's deposit insurance regulations (12 C.F.R. Part 330).

These survey results were consistent with the FDIC's experience in answering questions about deposit insurance through the FDIC's Consumer Affairs Call Center (1-800-934-3342). Unfortunately, these survey results also were consistent with the FDIC's experience in paying insurance. When depositors have lost money upon the failure of an insured depository institution, the loss often has occurred as a result of a misunderstanding of the insurance rules governing two categories of accounts: joint accounts and POD accounts.

The insurance rules apparently were too complicated. They were misunderstood by too many people. For this reason, the FDIC initiated a simplification effort. One of the results of that effort was the redrafting of the insurance regulations in simpler language (effective in July 1998). Another result was the adoption of the amendments dealing with joint accounts and POD accounts. Each of these amendments is explained in turn below.

Joint Accounts: FDIC Eliminated Step One of the Two-Step Process

A joint account is an account in the names of two or more persons. Such an account will be insured separately from any individual or single ownership accounts if three requirements are satisfied:

- Each of the co-owners must be a "natural person." This means simply that each of the co-owners must be a living human being.
- Each of the co-owners must sign a deposit account signature card. This requirement includes exceptions. Specifically, the execution of a signature card by all of the co-owners is unnecessary if the deposit account is a certificate of deposit, a deposit obligation evidenced by a negotiable instrument, or an account maintained by an agent or custodian on behalf of the co-owners.
- The co-owners must possess equal withdrawal rights.

These requirements have not changed. Assuming the satisfaction of these requirements, the FDIC's method for applying the $100,000 insurance limit has changed. Before April 1, 1999, the FDIC applied the $100,000 limit for joint account coverage in a two-step process:

Step one: All joint accounts owned by the same combination of individuals were added together with the balance being "insurable" up to $100,000.

Step two: Each person's "insurable" interests in all joint accounts — whether or not owned by the same combination of co-owners — were added together and insured up to $100,000.

An example will clarify the application of this two-step process. Suppose that the following joint accounts are held by John Smith, Jane Smith, and Bob Jones:

Account 1:	"John Smith and Jane Smith"	$70,000
Account 2:	"John Smith and Jane Smith"	$80,000
Account 3:	"John Smith, Jane Smith, and Bob Jones"	$90,000
Account 4:	"Jane Smith and Bob Jones"	$120,000
TOTAL		**$360,000**

Under step one, the FDIC would aggregate Accounts 1 and 2 because they are owned by the same combination of persons (John and Jane Smith). For each unique combination of owners, the amount in excess of $100,000 would be uninsured. Thus, step one would yield the following results:

	Balance	*Uninsured*	*"Insurable"*
John and Jane (Accounts 1, 2)	$150,000	$50,000	$100,000
John, Jane, Bob (Account 3)	$90,000	0	$90,000
Jane and Bob (Account 4)	$120,000	$20,000	$100,000
TOTALS	**$360,000**	**$70,000**	**$290,000**

The funds in the amount of $290,000 were called "insurable" because they had survived step one. Whether they were insured would depend upon the application of step two. Under that step, the FDIC would allocate these funds among the co-owners. For each account, the interests of the co-owners would be deemed equal (unless the account records specified otherwise). In other words, the "insurable" funds would be allocated under step two as follows:

About the Author

Christopher Hencke joined the Federal Deposit Insurance Corporation in 1989. He is a Counsel in the Regulation and Legislation Section of the FDIC's Legal Division in Washington, D.C. In this capacity, he participated in the drafting of the new insurance rules. He also has been responsible for applying the deposit insurance rules in connection with claims for insurance against the FDIC, the former Resolution Trust Corporation (RTC), and the former Federal Savings and Loan Insurance Corporation (FSLIC). Mr. Hencke received his law degree from the Catholic University of America. He is a member of the Maryland bar.

	John	Jane	Bob
Accounts 1, 2	$50,000	$50,000	0
Account 3	$30,000	$30,000	$30,000
Account 4	0	$50,000	$50,000
TOTALS	**$80,000**	**$130,000**	**$80,000**

For each person, under step two, the insurance limit was $100,000. Therefore, under this step, John's share of funds ($80,000) would be fully insured; Jane's share ($130,000) would be insured in the amount of $100,000 and uninsured in the amount of $30,000; and Bob's share ($80,000) would be fully insured.

As illustrated above, funds could be lost under either or both steps of the two-step process. In our example, the sum of $70,000 was uninsured under step one. Another $30,000 was uninsured under step two. Thus, in total, the aggregate balance of $360,000 was uninsured in the amount of $100,000 and insured in the amount of $260,000.

The two-step process was too complicated. For this reason, on April 1, 1999, the FDIC replaced the two-step process with a simple one-step process. This change was accomplished simply by eliminating step one. In other words, the new one-step process for insuring joint accounts consists of the step formerly known as step two. In the joint account category, the FDIC now will apply the $100,000 insurance limit as follows:

Only step: Each person's interests in all joint accounts at a single insured depository institution — whether or not owned by the same combination of co-owners — will be added together and insured up to $100,000.

Unless the account records specify otherwise, the interests or shares of the co-owners of a joint account are deemed equal.

The operation of this new method for insuring joint accounts can be clarified with an example. Let's use our previous set of accounts:

Account 1:	"John Smith and Jane Smith"	$70,000
Account 2:	"John Smith and Jane Smith"	$80,000
Account 3:	"John Smith, Jane Smith, and Bob Jones"	$90,000
Account 4:	"Jane Smith and Bob Jones"	$120,000
TOTAL		**$360,000**

Under the new method, the FDIC will disregard the amounts owned by unique combinations of co-owners (such as the $150,000 owned by the combination of John and Jane Smith or the $120,000 owned by the combination of Jane Smith and Bob Jones). Rather, the FDIC will focus exclusively on the interests or shares of each person. In our example, the funds in the four accounts would be allocated as follows:

	John	Jane	Bob
Account 1	$35,000	$35,000	0
Account 2	$40,000	$40,000	0
Account 3	$30,000	$30,000	$30,000
Account 4	0	$60,000	$60,000
TOTALS	**$105,000**	**$165,000**	**$90,000**

For each person, the insurance limit in the joint account category is $100,000. Therefore, John's share of funds ($105,000) would be insured in the amount of $100,000 and

Exhibit 1
Joint Accounts

The FDIC's insurance regulations appear in Title 12 of the Code of Federal Regulations (C.F.R.) Part 330. The section dealing with joint accounts is Section 330.9 (12 C.F.R. § 330.9). This section includes the new rule for determining the insurance coverage of joint accounts:

Determination of insurance coverage.

The interests of each co-owner in all qualifying joint accounts shall be added together and the total shall be insured up to $100,000. (Example: "A&B" have a qualifying joint account with a balance of $60,000; "A&C" have a qualifying joint account with a balance of $80,000; and "A&B&C" have a qualifying joint account with a balance of $150,000. A's combined ownership interest in all qualifying joint accounts would be $120,000 ($30,000 plus $40,000 plus $50,000); therefore, A's interest would be insured in the amount of $100,000 and uninsured in the amount of $20,000. B's combined ownership interest in all qualifying joint accounts would be $80,000 ($30,000 plus $50,000); therefore, B's interest would be fully insured. C's combined ownership interest in all qualifying joint accounts would be $90,000 ($40,000 plus $50,000); therefore, C's interest would be fully insured.)

12 C.F.R. § 330.9(b).

uninsured in the amount of $5,000; Jane's share ($165,000) would be insured in the amount of $100,000 and uninsured in the amount of $65,000; and Bob's share ($90,000) would be fully insured. In total, these four joint accounts (with an aggregate balance of $360,000) would be insured in the amount of $290,000 and uninsured in the amount of $70,000. The insurance coverage of $290,000 would be separate from, and in addition to, the coverage of any single ownership (individual) accounts maintained by John, Jane, or Bob at the same institution.

It's as simple as that.

Remember the husband and wife mentioned at the beginning of this article? They maintained a joint account at your bank with a balance of $200,000. Under the old two-step process, half of these funds would be uninsured through the application of step one. Under the new method, all of the funds would be insured (except for any accrued interest in excess of the $200,000 balance) because neither the interest of the husband nor the interest of the wife exceeds $100,000. If the husband or the wife held an interest in any other joint account at your bank, however, the joint account funds of that spouse would be uninsured in part because the funds would exceed $100,000.

Although the FDIC will aggregate each person's interests in all joint accounts, the FDIC will not aggregate those interests with any funds in other types of accounts owned by the same person (such as single ownership accounts or POD accounts). Assuming the satisfaction of all joint account requirements, joint accounts are insured separately from other types of accounts. In this regard, the insurance regulations have not changed.

POD Accounts: FDIC Added Parents and Siblings to List of "Qualifying Beneficiaries"

A revocable trust or POD account is an account that will pass automatically upon the death of the owner to one or more designated beneficiaries. Such an account will be insured separately from other types of accounts (such as single ownership accounts or joint accounts) if certain requirements are satisfied. Moreover, such accounts will not be insured up to $100,000 on a "per owner" basis. Rather, all such accounts owned by the same person at the same insured depository institution will be aggregated and insured up to $100,000 as to each beneficiary.

The requirements for this separate insurance coverage are three in number:

- The relationship between the owner and each beneficiary must be a "qualifying" relationship.
- The title of the deposit account must include a term such as "payable-on-death to", "in trust for", or "as trustee for" (or an acronym such as POD, ITF, or ATF).
- The beneficiaries must be identified by name in the deposit account records.

The FDIC has changed the first requirement (effective April 1, 1999). Under the FDIC's old rules, the list of "qualifying beneficiaries" consisted of the owner's spouse, children, and grandchildren. Under the new rules, the list of "qualifying beneficiaries" consists of the owner's spouse, children, grandchildren, parents, and siblings. Thus, the FDIC has not changed the coverage of POD accounts except by adding parents and siblings to the list of "qualifying beneficiaries."

An example may be helpful. Suppose that the following accounts are held by Jane Smith:

Account 1:	"Jane Smith POD John Smith"	$80,000
Account 2:	"Jane Smith POD John Smith, William Smith, and Bob Jones"	$90,000
Account 3:	"Jane Smith"	$95,000
TOTAL		**$265,000**

Under the old or new rules, the FDIC would allocate the funds in Accounts 1 and 2 (Jane's POD accounts) among the designated beneficiaries. For each POD account, the funds are allocated equally to the beneficiaries unless the account records specify otherwise. For example, in the case of Account 1, the funds would be allocated in full to John Smith. In the case of Account 2, one-third of the funds would be allocated to John Smith; one-third would be allocated to William Smith; and one-third would be allocated to Bob Jones. In summary, the funds in Accounts 1 and 2 would be allocated among the beneficiaries as follows (under the old and new rules):

	John	*William*	*Bob*
Account 1	$80,000	0	0
Account 2	$30,000	$30,000	$30,000
TOTALS	**$110,000**	**$30,000**	**$30,000**

The insurance coverage of these funds would depend upon the relationship between each of the beneficiaries and Jane (the owner). Let's say that John Smith is Jane's husband; William Smith is Jane's son; and Bob Jones is Jane's father. Under the old rules, only the husband and the son would be "qualifying beneficiaries." As a result, the funds allocated to the father (Bob Jones) would not be insured in the POD category. Rather, these funds (in the amount of

$30,000) would be classified as Jane's single ownership funds and aggregated with the funds in Account 3 (Jane's single ownership account in the amount of $95,000).

How much of Jane's funds would be insured? In the POD category, Jane would be insured up to $100,000 for the funds allocated to each qualifying beneficiary. Any excess funds would be uninsured. Therefore, in our example, the funds allocated to John ($110,000) would be insured in the amount of $100,000 and uninsured in the amount of $10,000. The funds allocated to William ($30,000) would be fully insured.

In the single ownership category (including the funds from Account 2 allocated to Bob Jones), Jane would be separately insured up to $100,000. Any excess funds would be uninsured. Therefore, in our example, Jane's single ownership funds ($125,000) would be insured in the amount of $100,000 and uninsured in the amount of $25,000.

In total, Accounts 1, 2, and 3 would be insured in the amount of $230,000 and uninsured in the amount of $35,000. These results are represented by the table below:

	Balance	*Insured*	*Uninsured*
Jane POD John	$110,000	$100,000	$10,000
Jane POD William	$30,000	$30,000	0
Jane	$125,000	$100,000	$25,000
TOTALS	**$265,000**	**$230,000**	**$35,000**

The insurance coverage of POD accounts is somewhat complicated. In the past, when depositors have lost money through a misunderstanding of the rules governing POD accounts (upon the failure of an insured depository institution), the loss generally has occurred because the depositor named a parent or sibling as a beneficiary. By adding parents and siblings to the list of "qualifying beneficiaries," the FDIC hopes to protect most confused depositors.

How would the new rules affect the coverage in our example? Under the new rules, Bob Jones (Jane's father) would be a "qualifying beneficiary." As a result, the funds allocated to Bob Jones ($30,000 from Account 2) would be insurable in the POD category. They would not be aggregated with Jane's single ownership funds ($95,000 from Account 3). The results are represented by the table below:

	Balance	*Insured*	*Uninsured*
Jane POD John	$110,000	$100,000	$10,000
Jane POD William	$30,000	$30,000	0
Jane POD Bob	$30,000	$30,000	0
Jane	$95,000	$95,000	0
TOTALS	**265,000**	**$255,000**	**$10,000**

Remember the customer mentioned at the beginning of this article? She maintained a single ownership account at your bank. She opened a second account "payable on death" to her mother. The balance of each account was $100,000. Under the FDIC's old rules, the two accounts would be aggregated because the mother would not be a "qualifying beneficiary." Half of the funds would be uninsured in the single ownership category. Under the new rules, however, the two accounts would not be aggregated. The first account would be insured up to $100,000 in the single ownership category; separately, the second account would be insured up to $100,000 in the POD category. No funds would be uninsured (except any accrued interest in excess of the $100,000 balance of each account).

Note that the FDIC has not changed the basic methodology for insuring two special types of POD accounts: (1) POD accounts owned by two or more persons; and (2) revocable "living trust" accounts. The coverage of these types of accounts can be confusing. For this reason, a brief explanation of the rules is presented next.

Joint POD Accounts

Joint POD accounts are simply POD accounts with more than one owner.

Suppose that John and Jane Smith have opened a joint POD account at your bank. Such accounts are not insured as joint accounts unless the owners have named themselves as the beneficiaries. For example, the following account would be classified as a joint account: "John Smith and Jane Smith POD John Smith and Jane Smith." The insurance coverage of the account would be determined by the joint account rules (previously discussed).

But let's say that John and Jane did not name themselves as the beneficiaries. Instead, their beneficiary is William Smith (their son). Note that William is a "qualifying beneficiary" for both of the owners. In this example, John's share of the funds in the account (50 percent unless the account records specify otherwise) would be insured in the POD category up to $100,000. In applying the $100,000 limit, the FDIC would aggregate this share with any other POD funds held by John for William at the same bank. Separately, Jane's share would be insured in the POD category up to $100,000. Again, in applying the $100,000 limit, the FDIC would aggregate this share with any other POD funds held by Jane for William at the same bank. In other words, this account ("John Smith and Jane Smith POD William Smith") could be insured up to $200,000.

Let's give John and Jane a second child. Her name is Wanda. At your bank, John and Jane have opened an account with the following title: "John Smith and Jane

Smith POD William Smith and Wanda Smith." The balance is $400,000. If neither John nor Jane held any other POD accounts at your bank for the benefit of William or Wanda, these funds would be allocated and insured as follows:

	Balance	*Insured*	*Uninsured*
John POD William	$100,000	$100,000	0
John POD Wanda	$100,000	$100,000	0
Jane POD William	$100,000	$100,000	0
Jane POD Wanda	$100,000	$100,000	0
TOTALS	**$400,000**	**$400,000**	**0**

The account would be fully insured (except for any accrued interest in excess of the $400,000 balance). The result would be the same if John and Jane had established four separate accounts as listed above ($100,000 held by each parent for each child).

"Living Trust" Accounts

A revocable "living trust" is a trust controlled by its creator during his or her lifetime but governed by a formal, written trust agreement following the owner's death. If a "living trust" account satisfies the FDIC's requirements for POD accounts (previously discussed), the account will be insured in the POD category. In other words, the account will be aggregated with any other POD accounts owned by the same person at the same insured depository institution and insured up to $100,000 as to each qualifying beneficiary.

The coverage described above is subject to a very important qualification. A "living trust" account will not be insured in the POD category unless the trust agreement provides that the funds, upon the death of the owner, shall belong to the designated beneficiaries without "defeating contingencies." The FDIC defines a "defeating contingency" as "a condition which would prevent the beneficiary from acquiring a vested and non-contingent interest in the funds in the deposit account upon the owner's death."

The problem with "living trust" accounts is that many, if not most, "living trust" agreements include "defeating contingencies." As a result, the account is not insurable in the POD category (with coverage up to $100,000 as to each qualifying beneficiary). Rather, it is insurable in the single ownership category (with coverage limited to $100,000 for all single ownership accounts owned by the same person at the same insured depository institution).

The coverage of "living trust" accounts is too complicated to discuss in depth in this article, but bankers should be aware that such an account might not qualify for the separate insurance coverage available to POD accounts.

What If Somebody Dies?

Deposit insurance will cover a significant sum of money if accounts are properly structured. Consider the following accounts:

Account 1:	"Husband"	$100,000
Account 2:	"Wife"	$100,000
Account 3:	"Husband and Wife"	$200,000
Account 4:	"Husband POD Wife"	$100,000
Account 5:	"Wife POD Husband"	$100,000
TOTAL		**$600,000**

Assuming the satisfaction of the FDIC's requirements for joint accounts and POD accounts (previously discussed), these five accounts would be fully insured (except for any accrued interest in excess of the $600,000 aggregate balance). The husband and wife could obtain additional insurance if they opened POD accounts for their children or other "qualifying beneficiaries." For some depositors, the potential insurance coverage at a single depository institution is significant.

But what if somebody dies?

Look at the accounts above. Let's say that the husband has died. As a result of this death, Account 1 ("Husband") would become an account in the name of a decedent. It would continue to receive insurance coverage up to $100,000 separate from the coverage of the wife's accounts. But Account 3 ("Husband and Wife") would become the wife's single ownership account through the wife's right of survivorship. And Account 4 ("Husband POD Wife") would become the wife's single ownership account through the "payable-on-death" provision. And Account 5 ("Wife POD Husband") would convert to a single ownership account owned by the wife because the deceased husband no longer would exist as a beneficiary.

In short, Accounts 3, 4, and 5 suddenly would become single ownership accounts subject to aggregation with Account 2 ("Wife"). The insurance coverage of these four accounts would shrink from $500,000 to $100,000. (Again, the coverage of Account 1 would remain separate at $100,000.)

As illustrated by this example, death could result in a significant reduction in insurance coverage. For this reason, depositors should be cautious about how they structure their accounts.

Last year, the FDIC addressed this problem by adopting a "grace period" following the death of a depositor. This "grace period" became effective in July 1998. Through the operation of this "grace period," the death of a depositor will not result in an immediate reduction in insurance coverage. Rather, the coverage of the depositor's accounts will remain in place until the accounts are restructured. This "grace period" will expire, however, if the accounts are not restructured within six months from the date of death.

In the example above, the "grace period" would prevent the immediate reclassification of Account 3 ("Husband and Wife") and Account 4 ("Husband POD Wife") as single ownership accounts owned by the wife. The "grace period" would not prevent the reclassification of Account 5 ("Wife POD Husband") because the "grace period" applies only to cases involving the death of a deposit account owner. It does not apply to cases involving the death of a non-owner such as the beneficiary of a POD account.

Exhibit 2
POD Accounts

In the FDIC's insurance regulations, the section dealing with revocable trust or "payable-on-death" (POD) accounts is Section 330.10 (12 C.F.R. § 330.10). This section defines "qualifying beneficiaries" as the depositor's spouse, children, grandchildren, parents, and siblings. Examples of "qualifying beneficiaries" and non-qualifying beneficiaries are set forth below:

Qualifying beneficiaries

Spouse
Biological children
Adopted children
Stepchildren
Grandchildren, including biological, adopted, and step-children of the depositor's children
Biological parents
Adoptive parents
Stepparents
Full brothers and sisters
Half brothers and sisters
Brothers and sisters through adoption
Stepbrothers and stepsisters

Non-qualifying beneficiaries

Ex-spouse
Former stepchildren
Former stepparent
Great grandchildren
Nieces and nephews
Aunts and uncles
Cousins
Friends
In-laws

SUMMARY

This article has explained the new rules for the insurance coverage of joint accounts and POD accounts. In the case of joint accounts, the FDIC has eliminated step one of the two-step process. In the case of POD accounts, the FDIC has expanded the list of "qualifying beneficiaries" by adding parents and siblings. Yes, these changes present opportunities for increased coverage. In advising their customers about these changes, however, bankers must exercise caution.

Remember that death could result in a reduction in insurance coverage. Also, remember that joint accounts and POD accounts will not be insured separately from single ownership accounts unless all of the FDIC's requirements are satisfied. For example, a joint account will not be insured as a joint account if the withdrawal rights of the co-owners are unequal. Similarly, a POD account will not be insured as a POD account if the title does not include a designation such as "POD" or "ATF." The FDIC's current requirements for joint accounts and POD accounts are stated elsewhere in this article. Keep in mind that regulatory requirements are subject to change and should be checked periodically.

GET READY …

John and Jane Smith have entered your bank. They have money and they want to make deposits. But first they want to talk to you about the insurance coverage of joint accounts and POD accounts.

Relax. You've read this article.

You're ready! ■

These survey results were consistent with the FDIC's experience in answering questions about deposit insurance through the FDIC's Consumer Affairs Call Center (1-800-934-3342). Unfortunately, these survey results also were consistent with the FDIC's experience in paying insurance. When depositors have lost money upon the failure of an insured depository institution, the loss often has occurred as a result of a misunderstanding of the insurance rules governing two categories of accounts: joint accounts and POD accounts.

The insurance rules apparently were too complicated. They were misunderstood by too many people. For this reason, the FDIC initiated a simplification effort. One of the results of that effort was the redrafting of the insurance regulations in simpler language (effective in July 1998). Another result was the adoption of the amendments dealing with joint accounts and POD accounts. Each of these amendments is explained in turn below.

Joint Accounts: FDIC Eliminated Step One of the Two-Step Process

A joint account is an account in the names of two or more persons. Such an account will be insured separately from any individual or single ownership accounts if three requirements are satisfied:

- Each of the co-owners must be a "natural person." This means simply that each of the co-owners must be a living human being.
- Each of the co-owners must sign a deposit account signature card. This requirement includes exceptions. Specifically, the execution of a signature card by all of the co-owners is unnecessary if the deposit account is a certificate of deposit, a deposit obligation evidenced by a negotiable instrument, or an account maintained by an agent or custodian on behalf of the co-owners.

About the Author

Christopher Hencke joined the Federal Deposit Insurance Corporation in 1989. He is a Counsel in the Regulation and Legislation Section of the FDIC's Legal Division in Washington, D.C. In this capacity, he participated in the drafting of the new insurance rules. He also has been responsible for applying the deposit insurance rules in connection with claims for insurance against the FDIC, the former Resolution Trust Corporation (RTC), and the former Federal Savings and Loan Insurance Corporation (FSLIC). Mr. Hencke received his law degree from the Catholic University of America. He is a member of the Maryland bar.

- The co-owners must possess equal withdrawal rights.

These requirements have not changed. Assuming the satisfaction of these requirements, the FDIC's method for applying the $100,000 insurance limit has changed. Before April 1, 1999, the FDIC applied the $100,000 limit for joint account coverage in a two-step process:

Step one: All joint accounts owned by the same combination of individuals were added together with the balance being "insurable" up to $100,000.

Step two: Each person's "insurable" interests in all joint accounts — whether or not owned by the same combination of co-owners — were added together and insured up to $100,000.

An example will clarify the application of this two-step process. Suppose that the following joint accounts are held by John Smith, Jane Smith, and Bob Jones:

Account 1:	"John Smith and Jane Smith"	$70,000
Account 2:	"John Smith and Jane Smith"	$80,000
Account 3:	"John Smith, Jane Smith, and Bob Jones"	$90,000
Account 4:	"Jane Smith and Bob Jones"	$120,000
TOTAL		**$360,000**

Under step one, the FDIC would aggregate Accounts 1 and 2 because they are owned by the same combination of persons (John and Jane Smith). For each unique combination of owners, the amount in excess of $100,000 would be uninsured. Thus, step one would yield the following results:

	Balance	*Uninsured*	*"Insurable"*
John and Jane (Accounts 1, 2)	$150,000	$50,000	$100,000
John, Jane, Bob (Account 3)	$90,000	0	$90,000
Jane and Bob (Account 4)	$120,000	$20,000	$100,000
TOTALS	**$360,000**	**$70,000**	**$290,000**

The funds in the amount of $290,000 were called "insurable" because they had survived step one. Whether they were insured would depend upon the application of step two. Under that step, the FDIC would allocate these funds among the co-owners. For each account, the interests of the co-owners would be deemed equal (unless the account records specified otherwise). In other words, the "insurable" funds would be allocated under step two as follows:

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1 800 934-3342
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The Financial Institution **Employee's Guide** to Deposit Insurance

Federal Deposit Insurance Corporation