FDIC Guide to Calculating Deposit Insurance Coverage for Revocable and Irrevocable Trusts

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Instructions for Using This Guide

The FDIC receives thousands of questions each year about FDIC insurance coverage of bank deposits held in revocable and irrevocable trusts. These questions are most commonly asked by bank personnel, trustees, depositors, attorneys and accountants. The *FDIC Guide to Calculating Deposit Insurance Coverage for Revocable and Irrevocable Trusts* (Guide) has been developed to assist in answering the most common question asked: *What is the maximum amount of deposit insurance coverage available at a single FDIC-insured institution, using a specific trust agreement?*

This Guide describes coverage for both informal and formal trusts, with special emphasis on the process for calculating deposit insurance coverage for formal revocable trusts. While the creation of irrevocable trusts is less common than formal revocable trusts, the process for calculating deposit insurance coverage for irrevocable trusts also is described.

The Guide is organized into chapters, as follows:

Chapter 1 – Introduction to FDIC Deposit Insurance Coverage: Describes the fundamental concepts of FDIC deposit insurance coverage, including how FDIC deposit insurance works and the different account ownership categories that qualify for separate insurance coverage under FDIC rules. The FDIC strongly recommends reviewing this chapter before proceeding to the subsequent chapters.

Chapter 2 – Overview of Revocable Trusts: Discusses the differences between informal and formal revocable trust accounts.

Chapter 3 – Informal Revocable Trusts: Describes the requirements for establishing a revocable trust deposit that is eligible for FDIC insurance coverage without a formal revocable trust document. Provides a definition of an informal revocable trust, a methodology for calculating the amount of deposit insurance coverage for informal revocable trusts, and specific examples applying this methodology.

Chapter 4 – Formal Revocable Trusts: Describes the requirements for FDIC deposit insurance coverage based upon a formal, written revocable trust document (usually created with the assistance of a legal professional). Describes a methodology for calculating coverage for bank deposits held by formal revocable trusts. While the requirements for FDIC coverage of informal and formal revocable trusts are similar, there are significant differences with respect to determining deposit insurance coverage.

Chapter 5 – Life Estate Beneficiaries: Describes the FDIC's rules for deposit insurance coverage of formal revocable trusts that provide life estate interests for one or more beneficiaries. Describes a methodology for determining deposit insurance coverage for formal revocable trusts with life estate beneficiaries.

Chapter 6 – Irrevocable Trusts: Describes the requirements for FDIC coverage of irrevocable trusts and explains how to calculate coverage for bank deposits held by irrevocable trusts.

Important Disclaimer

The information contained in this Guide is intended to assist users in determining FDIC insurance coverage for deposits held by revocable and irrevocable trusts. This guidance is based on the FDIC's deposit insurance rules and regulations, 12 C.F.R. Part § 330, and related advisory opinions in effect as of December 31, 2007.

The Guide is not intended to provide estate planning advice or guidance for the creation of trust agreements. For estate planning advice, the FDIC recommends that you consult with your financial advisor or a legal professional in your area.

The examples provided in this Guide are drawn from thousands of questions received by the FDIC. The examples are not intended to describe every situation that may arise in the determination of insurance coverage for deposits held by revocable or irrevocable trusts.

Use caution when applying the examples in this Guide to determine FDIC coverage of a specific trust agreement. Although two trusts may appear to be similar, there may be subtle differences in terms and conditions that could result in significantly different insurance calculations. In addition, the modification of a trust agreement at a future date may affect the calculation of the deposit insurance coverage made today. The death of an owner or beneficiary also may significantly affect FDIC deposit insurance coverage.

Also, note that certain examples or terminology used in this Guide may not be applicable to an individual's trust because of regulatory or statutory provisions in the state in which the depositor resides.

The Guide should be used in conjunction with the FDIC deposit insurance reference materials found at the FDIC web page www.fdic.gov/deposit/deposits. For help from an FDIC deposit insurance specialist, call the FDIC toll free at 1-877-ASK-FDIC (1-877-275-3342).

Chapter 1: Introduction to FDIC Deposit Insurance Coverage

Only Bank Deposits Are Covered by FDIC Insurance

The information contained in this Guide applies only to deposits held at FDIC-insured banks and savings associations. Examples of bank deposit products include certificates of deposit (CDs), checking, savings, money market deposits and NOW accounts. While the FDIC only insures bank deposits, the type of deposit product (for example, checking account, savings account, and certificate of deposit) is not relevant in calculating the amount of FDIC deposit insurance coverage.

Non-deposit investment products purchased through an FDIC-insured institution, such as mutual funds, stocks, bonds and annuities, are not insured by the FDIC.

Coverage is Based on Ownership Capacities

The single most important concept in understanding FDIC deposit insurance coverage is that funds held in the same right and capacity (which means legal ownership) are added together in calculating deposit insurance coverage. FDIC also refers to account ownership rights and capacities as "ownership categories." All deposits – whether in one account or multiple deposit accounts – held in an FDIC-insured institution in the same right and capacity (that is, same ownership category) are added together and insured up to the maximum FDIC insurance amount, including principal and any earned interest.

The only exception is the ownership category known as Certain Retirement Accounts (12 C.F.R. § 330.14(b)(2)). As of April 1, 2006, an individual's deposit accounts in the Certain Retirements Accounts category are insured up to $250,000, including principal and any earned interest. (See next page for listing of ownership categories recognized under the FDIC's deposit insurance regulations.)

All Deposits in the Same Ownership Category Are Combined

All deposits owned by the same depositor (or depositors) in the same ownership category are added together for the purpose of calculating FDIC deposit insurance coverage, irrespective of whether the deposits are opened under the same product type (for example, all certificates of deposit) or a combination of different product types (for example, a certificate of deposit and a checking account). In addition, the number of accounts a depositor establishes within an ownership category has no impact on the maximum amount of deposit insurance coverage provided. *It is the total dollar amount of all deposit accounts within a specific ownership category that is considered when determining insurance coverage.* A depositor cannot increase coverage by opening additional deposit accounts in the same ownership category.

Deposits Held at Different FDIC-Insured Institutions

FDIC deposit insurance coverage is calculated separately for deposits held at different FDIC-insured institutions (that is, separately for each depository institution with a unique charter). There is no aggregation of deposit insurance coverage when the same depositor has deposits at separately chartered FDIC-insured institutions. As an example, if it is determined that the maximum amount of deposit insurance coverage available under the terms and conditions of a specific trust agreement is $300,000, then this same amount of deposit insurance coverage is available at each and every separately chartered FDIC-insured institution for deposits made using the trust agreement.

Six-Month Grace Period When a Deposit Account Owner Dies

FDIC regulations found at 12 C.F.R. § 330.3(j) allow for a six-month grace period after an accountholder dies. The FDIC rule is intended to allow time for the owner's executor, representative or trustee to review the deceased owner's accounts and restructure the accounts if the death of the owner were to decrease FDIC coverage in effect before the owner died. The rule provides that the FDIC will insure a deceased owner's deposit accounts as if the owner were still living for six months after his or her death. 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 will not apply the grace period if the result will be a reduction in deposit insurance coverage.

The six-month grace period does not apply to the death of a beneficiary. Deposit insurance coverage is immediately reduced upon the death of a beneficiary.

Minimum Information Required to Calculate FDIC Coverage for Deposit Accounts

To determine the amount of insurance coverage available for bank deposits belonging to a person or entity, the following questions – at a minimum – must be asked:

- *Who owns the deposits?*
- *What FDIC ownership category is the depositor attempting to qualify under or use?*
- *Does the depositor meet all the requirements for coverage under that ownership category?*

Who owns the deposits? Determining whether the deposits are owned by an individual, business or government entity is an essential first step in analyzing the amount of deposit insurance coverage that may be available.

What FDIC ownership category is the depositor attempting to qualify under or use? Deposits made under any of the ownership categories listed below are insured separately from another ownership category so long as the depositor meets the specific requirements for each of the ownership categories the depositor is attempting to use. The most common FDIC deposit insurance ownership categories are:

- Single accounts
- Certain retirement accounts
- Joint ownership accounts
- Revocable trust accounts
- Irrevocable trust accounts
- Employee benefit plan accounts
- Business/organization accounts
- Government accounts (also known as public unit accounts)

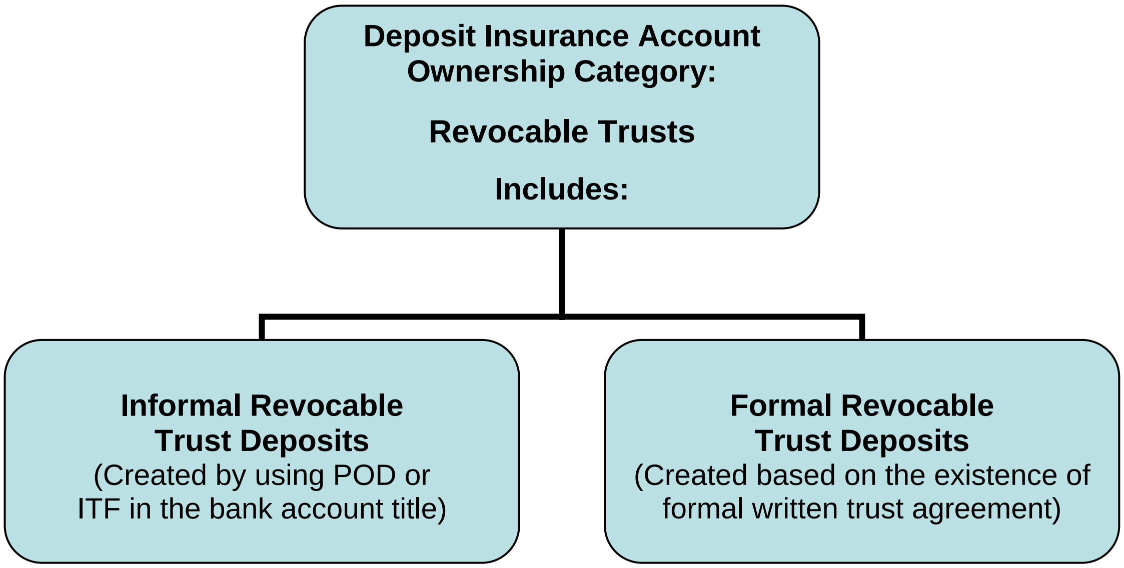
Does the depositor meet all the requirements for coverage under the applicable ownership category? It is possible under some ownership categories (for example, revocable trust) for a depositor to qualify for more than $100,000 in insurance coverage at an FDIC-insured financial institution so long as the depositor meets specific regulatory requirements for the ownership category.

The categories listed above cover ownership of deposits by different legal entities including individuals, business entities and government entities. In situations where a depositor would like to deposit more than $100,000 in a single FDIC-insured institution, it is imperative to understand and comply with the requirements for each of the ownership categories that the depositor intends to use. Some categories are exclusive to specific depositors based on the type of ownership (for example, individual, business or government entity) for deposit insurance eligibility. As an example, funds owned by a corporation can only qualify for deposit insurance coverage under the business/organization accounts category. In contrast, an individual's deposits may qualify for deposit insurance coverage under any of the above categories, except the business/organization and government categories.

Failure to comply with the requirements of an ownership category often will result in a default to another ownership category. For individual depositors, failure to meet the requirements of an ownership category generally will result in the deposits being insured under the single accounts category (which includes all deposits held in the depositor's name alone).

For more information about FDIC ownership categories other than revocable trusts or irrevocable trusts, please refer to the FDIC Web site www.fdic.gov/deposit/deposits.

Chapter 2: Overview of Revocable Trusts



The term revocable trust deposit refers to any deposit account that indicates an intention that the funds will pass to one or more named beneficiaries upon the death of the owner. A revocable trust account can be revoked or terminated at the discretion of the owner. The FDIC's insurance regulations distinguish between two types of revocable trusts – *informal trusts and formal trusts*.

Informal revocable trusts, sometimes referred to as "payable on death" (POD) accounts, "in trust for" (ITF) accounts, "as trustee for" (ATF) accounts, “transfer on death” (TOD) accounts, or Totten trust accounts, are created when the account owner signs an agreement (which is usually part of the bank's signature card or other documentation) stating that the funds are payable to one or more beneficiaries upon the owner's death.

Formal revocable trusts, also known as living or family trusts, are written trusts created for estate planning purposes. There is a wide range of descriptive names and terms that are sometimes applied in describing a formal revocable trust agreement. For example, trust agreements may be identified as living trusts, marital trusts, survivor’s trusts, bypass trusts, generation skipping trusts, AB trusts, special needs trusts and a long list of other names.

Regardless of the name or description that appears on the trust, a threshold issue for calculating FDIC deposit insurance coverage is whether the trust actually is revocable at the time of a bank failure. Since trust agreements can last decades, it is possible for the status of the trust to change over time. For example, a revocable trust can become irrevocable upon the death of an owner of the revocable trust. The importance of this issue in calculating FDIC deposit insurance coverage will be discussed throughout the following chapters of the Guide.

Typically, formal revocable trust agreements describe the owner using one of the following terms: *grantor, settlor, trustor, maker or donor.* For consistency, this Guide will use the term "owner" when describing the individuals who own either informal or formal revocable trust deposits.

The FDIC's regulations consider both informal revocable trust deposits (for example, payable on death accounts) and deposits in the name of formal revocable trusts (for example, living or family trusts) as revocable trusts accounts. The FDIC's rules for insurance coverage of informal and formal revocable trust deposits are essentially the same. There are significant differences, however, in the way the two types of revocable trusts are structured (for example, living trusts may provide beneficiaries with life estate interests) that can affect the calculation of deposit insurance coverage. These similarities and differences, and their impact on FDIC deposit insurance coverage, will be described in the following chapters of this Guide.

Regulatory Change Effective April 1, 2004

The FDIC amended its rules on deposit insurance coverage for revocable trust accounts (12 C.F.R. § 330.10) on April 1, 2004. Before the April 2004 rule change, the FDIC advised depositors to limit deposits based on a formal revocable trust agreement to no more than $100,000 at one FDIC-insured bank. The reason was the possible existence within the trust agreement of contingencies that affect beneficiaries' interests in the trust.

Before April 1, 2004, the FDIC's revocable trust regulations provided that if a formal trust agreement had contingent interests, then all contingent interests would be added together and insured up to a maximum of $100,000. Due to the uncertainty this rule created in calculating the actual amount of FDIC deposit insurance coverage for formal revocable trust agreements, the FDIC modified its rules to provide that the FDIC will calculate coverage for revocable trust accounts without regard to the existence of contingencies in a trust agreement. As a result, formal revocable trust agreements now are insured based on the terms and conditions of the trust without regard to the existence of contingencies affecting the beneficiaries' interests.

<u>Note</u>: Contingencies still are considered in calculating coverage for irrevocable trust agreements. (See Chapter 6.)

The April 2004 regulatory change also modified the FDIC's recordkeeping requirements for formal revocable trusts. FDIC-insured institutions no longer need to maintain a copy of the trust agreement or information about the beneficiaries listed in the trust agreement. For deposits opened based on a formal revocable trust agreement, FDIC insured institutions are only required to have the title of the account reflect that the funds in the account are held pursuant to a trust.

<u>Note</u>: The FDIC requirements for establishing an informal revocable trust (payable on death) accounts remain unchanged. The names of the beneficiaries must be identified specifically by name in the bank's account records.

Additional requirements for FDIC deposit insurance coverage for informal and formal trusts are described throughout this Guide.

Chapter 3: Informal Revocable Trusts

Informal revocable trusts are commonly known as “payable on death” (POD) accounts, “in trust for” (ITF) accounts, “as trustee for” (ATF), “transfer on death” (TOD) accounts or Totten trust accounts. These informal trusts are created when the account owner signs an agreement – usually part of the bank's signature card – stating that the funds are payable to one or more beneficiaries upon the owner's death. POD accounts are governed solely by the terms of the signature card or other deposit contract between the owner and the bank.

The establishment of a qualifying beneficiary trust relationship is necessary to be eligible for FDIC insurance coverage of a deposit under the revocable trust account category**.** A trust relationship qualifying for FDIC deposit insurance coverage is established when the account owner names a qualifying beneficiary who will receive the funds when the owner dies. The maximum amount of deposit insurance coverage is up to $100,000 based on this relationship.

Informal revocable trust deposits are insured up to $100,000 per owner for each qualifying beneficiary if all of the FDIC’s recordkeeping requirements for informal revocable trust accounts (see below) are met. FDIC rules place no limit on the number of qualifying beneficiaries that an account owner may designate for a revocable trust deposit.

Qualifying Beneficiary Requirement

The beneficiaries for informal revocable trusts must specifically meet the definition of a qualifying beneficiary under the FDIC regulations. A qualifying beneficiary is defined as the owner’s spouse, child, grandchild, parent or sibling. In determining whether a beneficiary is a qualifying beneficiary, the FDIC applies the following rules:

- Spouse only means a person of the opposite sex who is a husband or wife, under the federal Defense of Marriage Act (1 U.S.C. § 7)
- Child includes a biological child, adopted child and step-child
- Grandchild includes a biological grandchild, adopted grandchild and step-grandchild
- Parent includes a biological parent, adoptive parent and step-parent
- Sibling includes an adoptive sibling, step-sibling and half-sibling

Any beneficiary who does not meet the kinship requirement described above is a non-qualifying beneficiary for the purpose of FDIC deposit insurance coverage.

All of the following relationships are examples of non-qualifying beneficiaries for the purpose of FDIC deposit insurance coverage:

- In-laws (mother-in-law, father-in-law, brother-in-law, etc.)
- Aunts, uncles, nieces, nephews, cousins
- Former spouse
- Great-grandchild
- Grandparent
- Godchild
- Domestic partner
- Charitable organization (for example, universities, religious organizations)
- Business entities
- Pets
- Trusts

Sometimes the owner of an informal revocable trust account will identify an alternate beneficiary – that is, an individual who would receive a beneficiary's interest in the deposit account if the named beneficiary were to die before the account owner**. Alternate beneficiaries are not recognized by the FDIC for the purpose of insurance coverage of informal revocable trusts**. The designation of an alternate beneficiary does not affect FDIC deposit insurance coverage.

Note that the FDIC's deposit insurance rules in no way preclude a depositor from establishing a revocable trust for a non-qualifying beneficiary. The FDIC's rules only affect the insurance coverage that is available for such deposits. Even though a revocable trust account naming a non-qualifying beneficiary is insured by the FDIC as the accountholder's single funds (rather than as a revocable trust account), the account still would function as a testamentary account and the bank would ensure that the funds pass to the named beneficiaries if the accountholder were to die.

FDIC Recordkeeping Requirements

To qualify for FDIC deposit insurance coverage under the revocable trust category, an informal revocable trust deposit must meet *all* of the following requirements:

1. The account title must include commonly accepted terms such as "payable on death," "in trust for," "as trustee for" or similar language to indicate the testamentary nature of the account. These terms may be abbreviated as POD, ITF or ATF.

2. The beneficiaries must be identified by name in the deposit account records of the bank.

When FDIC Requirements Are Not Met

If any of the requirements described above for an informal revocable trust account are not met, the entire amount in the account, or any portion of the account that does not qualify for revocable trust coverage, would be insured as the owner's single account. If the owner has any other single accounts at the same bank, the total of all the owner's single accounts would be combined and insured up to $100,000.

When Non-qualifying Beneficiaries Are Named

One of the most important concepts in calculating deposit insurance coverage for revocable trusts is the effect that listing non-qualifying beneficiaries has on insurance coverage. Generally, a deposit is only eligible for FDIC deposit insurance coverage under one FDIC ownership category. For trust deposits, two deposit insurance categories will apply when both qualifying and non-qualifying beneficiaries are named. In this situation, the portion of the deposit attributable to the qualifying beneficiaries is covered under the revocable trust category and the portion attributable to the non-qualifying beneficiaries is covered under the single ownership category.

When a non-qualifying beneficiary is named under either an informal or formal revocable trust deposit, the portion of the deposit attributable to the non-qualifying beneficiary is insured under the single ownership category. The FDIC refers to this situation as a *reversion* of the non-qualifying deposit funds to another insurance category – in this case from the revocable trust category to the single ownership category. The reason for the reversion is the failure to meet the kinship requirements for coverage under the revocable trust category.

Make Sure Account Records Are Accurate

If an owner of deposit funds wishes to establish an account with the testamentary intent that the beneficiaries will be legally entitled to the deposit funds when the owner dies, the account will be insured as an informal revocable trust only if the FDIC regulatory requirements, described above, are met. It is therefore important in opening new accounts to avoid any ambiguity in the bank records about whether the account is intended to be a revocable trust account.

The FDIC sometimes sees situations where the bank's account records indicate that the deposit is both a single account and a POD/ITF account. Similarly, some account records identify a jointly owned informal revocable trust account as both a joint account and a POD/ITF account. This situation creates confusion about the actual ownership capacity of the funds that could result in the depositor having unintended uninsured funds if the bank were to fail.

Calculating Coverage for Informal Revocable Trust Deposits

To determine the amount of deposit insurance coverage available for informal revocable trust deposits, the following six questions must be answered:

1. *Who are the owners of the deposit?*
2. *How many beneficiaries are named?*
3. *Are the beneficiaries qualifying or non-qualifying beneficiaries?*
4. *Is everyone named on the informal trust deposit living – both owners and beneficiaries?*
5. *Do all named beneficiaries have an equal beneficiary interest?*
6. *Does the deposit account title include "POD" or similar term indicating testamentary intent, and do the account records accurately identify the owners and beneficiaries?*

Examples of revocable trusts with different owner/beneficiary scenarios are the best way to explain how these six questions are used to determine FDIC insurance coverage for informal revocable trust deposits. Examples 1 through 15, which follow in this chapter, illustrate the process for calculating coverage for informal revocable trusts using this six-step process.

Example 1 Informal Revocable Trust/POD Account One Owner and One Qualifying Beneficiary (Beneficiary Has 100% Interest)	
Account Title	**Balance**
John Smith POD to Jack Smith (son)	$100,000

<u>Facts</u>: John Smith wishes to establish a deposit account that names his son Jack Smith (living) as the sole beneficiary of the deposit upon his death. This is the only revocable trust account that John Smith has at the bank naming his son, Jack Smith, as beneficiary.

<u>Analysis</u>:

1. *Who are the owners of the deposit?* There is one owner: John Smith

2. *How many beneficiaries are named?* One beneficiary, Jack Smith, is named.

3. *Are the beneficiaries qualifying or non-qualifying beneficiaries?* The beneficiary is the owner's son and is therefore a qualifying beneficiary.

4. *Is everyone named on the informal trust deposit living – both owners and beneficiaries?* Yes.

5. *Do all named beneficiaries have an equal beneficiary interest?* There is only one beneficiary, so he has a 100% interest in the POD account.

6. *Does the deposit account title include "POD" or similar term indicating testamentary intent, and do the account records accurately identify the owners and beneficiaries?* John Smith can successfully meet this requirement by establishing an informal revocable trust deposit using testamentary language such as payable on death (or the abbreviation, POD) or similar testamentary language. An account titled "John Smith POD Jack Smith" would meet the requirement.

Coverage for Example 1 can be stated as:		
Owner to Beneficiary	**Ownership Share**	**Insured Amount**
John POD to Jack (son)	$100,000	$100,000
Total	**$100,000**	**$100,000**

This POD account is insured up to $100,000 in the revocable trust category since (1) there is one owner and one qualifying beneficiary who will receive the deposit when the owner dies and (2) John Smith does not have any other deposits at the same bank.

Example 2 **Informal Revocable Trust/POD Account** **One Owner and Two Equal Qualifying Beneficiaries** **(Each Beneficiary Has a 50% Interest)**	
Account Title	**Balance**
John Smith POD to Jack (son) and Kathy (daughter)	$200,000

<u>Facts</u>: John Smith wishes to establish a deposit account naming his son, Jack, and daughter, Kathy, as equal beneficiaries upon his death. He can successfully do this by establishing an informal revocable trust deposit using testamentary language such as payable on death (POD) or similar testamentary language. The owner and both beneficiaries are alive. This is the only revocable trust account that John Smith has at the bank naming his son, Jack Smith, and daughter, Kathy Smith, as beneficiaries.

<u>Analysis</u>:

1. *Who are the owners of the deposit?* There is one owner: John Smith.

2. *How many beneficiaries are named?* Two equal beneficiaries are named.

3. *Are the beneficiaries qualifying or non-qualifying beneficiaries?* The beneficiaries are the owner's son and daughter. Children are qualifying beneficiaries.

4. *Is everyone named on the informal trust deposit living – both owners and beneficiaries?* Yes.

5. *Do all named beneficiaries have an equal beneficiary interest?* The beneficiaries' interests are assumed equal unless there is a specific notation in the account records of the bank.

6. *Does the deposit account title include "POD" or similar term indicating testamentary intent, and do the account records accurately identify the owners and beneficiaries?* John Smith can successfully meet this requirement by establishing an informal revocable trust deposit using testamentary language such as payable on death (POD) or similar testamentary language. An account titled "John Smith POD to Jack and Kathy Smith" would meet the requirement.

Coverage for Example 2 can be stated as:		
Owner to Beneficiary	**Ownership Share**	**Insured Amount**
John POD to Jack (son)	$100,000	$100,000
John POD to Kathy (daughter)	$100,000	$100,000
Total	**$200,000**	**$200,000**

The POD account is insured up to $200,000 in the revocable trust category since (1) there is one owner and two qualifying beneficiaries who will receive the deposit when the owner dies and (2) John Smith does not have any other revocable trust accounts at the same bank naming his son and daughter as beneficiaries.

Example 3 Informal Revocable Trust/POD Account One Owner and Three Equal Qualifying Beneficiaries (Each Beneficiary Has a One-Third Interest)	
Account Title	**Balance**
John Smith POD to Jack Smith (son) and Kathy Smith (daughter) and Patricia Smith (grandchild)	$300,000

<u>Facts</u>: John Smith wishes to establish a deposit account that names his son, Jack, his daughter, Kathy, and his grandchild, Patricia, as equal co-beneficiaries of the deposit upon his death. The owner and all three beneficiaries are alive. This is the only revocable trust account that John Smith has at this bank naming his son, daughter and grandchild as beneficiaries.

<u>Analysis</u>:

1. *Who are the owners of the deposit?* There is one owner: John Smith.

2. *How many beneficiaries are named?* Three equal beneficiaries are named.

3. *Are the beneficiaries qualifying or non-qualifying beneficiaries?* The beneficiaries are the owner's son, daughter and grandchild. They are all qualifying beneficiaries.

4. *Is everyone named on the informal trust deposit living – both owners and beneficiaries?* Yes.

5. *Do all named beneficiaries have an equal beneficiary interest?* The beneficiaries' interests are assumed equal unless there is a specific notation in the account records of the bank.

6. *Does the deposit account title include "POD" or similar term indicating testamentary intent, and do the account records accurately identify the owners and beneficiaries*? An account titled "John Smith POD Jack Smith, Kathy Smith and Patricia Smith" would meet the FDIC requirement.

Coverage for Example 3 can be stated as:		
Owner to Beneficiary	**Ownership Share**	**Insured Amount**
John POD to Jack (son)	$100,000	$100,000
John POD to Kathy (daughter)	$100,000	$100,000
John POD to Patricia (grandchild)	$100,000	$100,000
Total	**$300,000**	**$300,000**

John Smith's POD account is insured up to $300,000 in the revocable trust category since (1) there is one owner and three qualifying beneficiaries who will receive the deposit when the owner dies and (2) John Smith does not have any other revocable trust accounts at the same bank naming his son, daughter and grandchild as beneficiaries.

Example 4 Husband and Wife Co-owners of an Informal Revocable Trust Account Two Qualifying Beneficiaries (Each Beneficiary Has a 50% Interest)	
Account Title	**Balance**
Mark and Paula Miller POD to George and Brian (the owners' sons)	$400,000

Facts: Mark and Paula Miller (husband and wife) are co-owners of a POD account for $400,000 that names their children, George and Brian, as equal co-beneficiaries of the deposit funds. Everyone named is alive. The couple has no other revocable trust deposits at the bank.

Analysis:

1. *Who are the owners of the deposit?* There are two co-owners: Mark and Paula Miller.

2. *How many beneficiaries are named?* There are two equal beneficiaries: George and Brian Miller.

3. *Are the beneficiaries qualifying or non-qualifying beneficiaries?* The couple's children are qualifying beneficiaries for both owners.

4. *Is everyone named on the informal trust deposit living – both owners and beneficiaries?* Yes.

5. *Do all named beneficiaries have an equal beneficiary interest?* The beneficiaries' interests are assumed equal unless there is a specific notation in the account records of the bank.

6. *Does the deposit account title include "POD" or similar term indicating testamentary intent, and do the account records accurately identify the owners and beneficiaries?* An account titled "Mark and Paula Miller POD George Miller and Brian Miller" would satisfy this requirement.

Coverage for Example 4 can be stated as: • **Mark's ownership share of the deposit = $200,000** • **Paula's ownership share of the deposit = $200,000**		
Owner to Beneficiary	**Ownership Share**	**Insured Amount**
Mark POD to George	$100,000	$100,000
Mark POD to Brian	100,000	100,000
Paula POD to George	100,000	100,000
Paula POD to Brian	100,000	100,000
Total	**$400,000**	**$400,000**

In this example, each beneficiary is to receive an equal share of the deposit upon the death of the owners. The maximum fully insured amount from a specific owner to a specific qualifying beneficiary of $100,000 is allowed for a total insured deposit of $400,000. As long as the beneficiaries are qualifying as to both owners, each additional qualifying beneficiary named would increase the amount of deposit insurance by $200,000.

Example 5 Husband and Wife Co-owners of an Informal Revocable Trust Account Three Qualifying Beneficiaries With Equal (One-Third) Interests	
Account Title	**Balance**
Mark and Paula Miller POD to George (son), Brian (son) and Sarah (daughter)	$600,000

<u>Facts</u>: Mark and Paula Miller (husband and wife) have a POD account for $600,000 that names their children (George, Brian and Sarah) as equal co-beneficiaries of the trust. Everyone named is alive. This is the only revocable trust deposits that the Miller's have at this bank.

<u>Analysis</u>:

1. *Who are the owners of the deposit?* There are two owners: Mark and Paula Miller.

2. *How many beneficiaries are named?* Three beneficiaries – George, Brian and Sarah – are named.

3. *Are the beneficiaries qualifying or non-qualifying beneficiaries?* The couple's children are qualifying beneficiaries for both owners.

4. *Is everyone named on the informal trust deposit living – both owners and beneficiaries?* Yes.

5. *Do all named beneficiaries have an equal beneficiary interest?* The beneficiaries' interests are assumed equal unless there is a specific notation in the account records of the bank.

6. *Does the deposit account title include "POD" or similar term indicating testamentary intent, and do the account records accurately identify the owners and beneficiaries:?* This requirement can be met by establishing an informal revocable trust deposit using testamentary language such as payable on death (POD) or similar testamentary language. An account titled "Mark and Paula Miller POD George Miller, Brian Miller and Sarah Miller" would be acceptable.

Coverage for Example 5 can be stated as: • Mark's ownership share of the deposit = $300,000 • Paula's ownership share of the deposit = $300,000		
Owner to Beneficiary	**Ownership Share**	**Insured Amount**
Mark POD to George	$100,000	$100,000
Mark POD to Brian	100,000	100,000
Mark POD to Sarah	100,000	100,000
Paula POD to George	100,000	100,000
Paula POD to Brian	100,000	100,000
Paula POD to Sarah	100,000	100,000
Total	**$600,000**	**$600,000**

In this example, each beneficiary is to receive an equal share of the deposit upon the death of the owners. The maximum fully insured amount from a specific owner to a specific qualifying beneficiary of $100,000 is allowed for a total insured deposit of $600,000. As long as the beneficiaries are qualifying as to both owners, each additional qualifying beneficiary named would increase the amount of deposit insurance by $200,000.

Example 6 One Owner with Two Accounts: One Single Account and One POD Account with Non-qualifying Beneficiary (Beneficiary Has 100% Interest in the POD Account)		
Account #	**Account Title**	**Balance**
Account 1	Elizabeth Brown POD Linda Jones (niece)	$100,000
Account 2	Elizabeth Brown (single ownership)	10,000

Facts: Elizabeth Brown has a POD account for $100,000 naming her niece, Linda Jones, as beneficiary. Elizabeth also has a demand deposit in her name alone with $10,000 at the same bank. Elizabeth Brown and her niece are both alive. These are the only deposit accounts that Elizabeth Brown has at the bank.

Analysis:

1. *Who are the owners of the deposits?* There is one owner of both accounts: Elizabeth Brown.

2. *How many beneficiaries are named?* One account – the POD account – names one beneficiary, who is the account owner's niece. The second account is a single ownership account and, thus, does not have any beneficiaries.

3. *Are the beneficiaries qualifying or non-qualifying beneficiaries?* The beneficiary of the POD account is the owner's niece. A niece is not a qualifying beneficiary.

4. *Is everyone named on the informal trust deposit living – both owners and beneficiaries?* Yes.

5. *Do all named beneficiaries have an equal beneficiary interest?* There is only one beneficiary, so it is assumed she has a 100% interest in the POD account.

6. *Does the deposit account title include "POD" or similar term indicating testamentary intent, and do the account records accurately identify the owners and beneficiaries?* An account titled "Elizabeth Brown POD Linda Jones" would meet the FDIC requirement.

Coverage for Example 6 can be stated as:					
Account #	**Account Title**	**Balances**	**Single Account**	**Insured Amount**	**Uninsured Amount**
Account 1	Elizabeth Brown POD Linda Jones (niece)	$100,000	$110,000	$100,000	$10,000
Account 2	Elizabeth Brown (single ownership)	10,000			

Since a niece is not a qualifying beneficiary, there is no deposit insurance coverage under the revocable trust category. When the depositor does not meet the requirements under the revocable trust category because a non-qualifying beneficiary (such as a niece) is named as beneficiary, the result is the funds attributable to the non-qualifying beneficiary ($100,000) will revert to the owner's (Elizabeth's) single ownership category for the purpose of calculating FDIC deposit insurance coverage.

The $100,000 that reverted to the single ownership category for Elizabeth will be added to her $10,000 demand deposit account for a total of $110,000 in the single ownership category. This means $100,000 is insured and $10,000 is uninsured in the single ownership category.

Example 7 One Owner with Two Accounts: One Single Account and One POD Account with Two Non-qualifying Beneficiaries (Each Beneficiary Has a 50% Interest)		
Account #	**Account Title**	**Balance**
Account 1	Carol Thompson POD Helen Campbell (niece) & George Thompson (nephew)	$200,000
Account 2	Carol Thompson (single ownership)	25,000

<u>Facts</u>: Carol Thompson has a POD account for $200,000 naming her niece, Helen Campbell, and her nephew, George Thompson, as equal beneficiaries. Carol also has a demand deposit in her name alone with $25,000 at the same bank. The owner and beneficiaries are living. These are the only deposits Carol Thompson has at the bank.

<u>Analysis</u>:

1. *Who are the owners of the deposit?* There is one owner: Carol Thompson.

2. *How many beneficiaries are named?* There are two beneficiaries named on the POD account. The other account is a single ownership account in Carol Thompson's name.

3. *Are the beneficiaries of the POD account qualifying or non-qualifying beneficiaries*? The beneficiaries are the owner's niece and nephew. A niece and nephew are not qualifying beneficiaries.

4. *Is everyone named on the informal trust deposit living – both owners and beneficiaries*? Yes.

5. *Do all named beneficiaries have an equal beneficiary interest?* The beneficiaries' interests are assumed equal unless there is a specific notation in the account records of the bank.

6. *Does the deposit account title include "POD" or similar term indicating testamentary intent, and do the account records accurately identify the owners and beneficiaries?* An account titled "Carol Thompson POD Helen Campbell and George Thompson" would satisfy the FDIC requirement.

Coverage for Example 7 can be stated as:					
Account #	**Account Title**	**Balances**	**Single Account**	**Insured Amount**	**Uninsured Amount**
Account 1	Carol Thompson POD Helen Campbell (niece) and George Thompson (nephew)	$200,000	$225,000	$100,000	$125,000
Account 2	Carol Thompson (single ownership)	25,000			

Since a niece and nephew are not qualifying beneficiaries, there is no FDIC coverage under the revocable trust category. When the depositor does not meet the requirements for revocable trust account coverage because non-qualifying beneficiaries are named, the deposits attributable to the non-qualifying beneficiaries ($200,000) revert to the owner's single ownership category for calculation of FDIC deposit insurance coverage. The $200,000 POD deposit is added to Carol's $25,000 demand deposit account for a total of $225,000 in the single ownership category. This means $100,000 is insured and $125,000 is uninsured in the single ownership category.

Example 8 Husband and Wife Co-Owners of an Informal Revocable Trust Account No Qualifying Beneficiaries	
Account Title	**Balance**
Jennifer and Robert Brown POD to Betty Harris (Jennifer's niece) and Billy Brown (Robert's nephew)	$400,000

Facts: Jennifer and Robert Brown (husband and wife) have a POD account for $400,000 that names Elizabeth's niece, Betty Harris, and Robert's nephew, Billy Brown, as equal beneficiaries of the trust. Jennifer and Robert are equal co-owners. Thus, for FDIC purposes, Jennifer and Robert each own one-half of the POD account. This is the only deposit that Jennifer and Robert Brown have at the bank.

Analysis:

1. *Who are the owners of the deposit?* There are two equal co-owners: Jennifer and Robert Brown.

2. *How many beneficiaries are named?* Two beneficiaries are named for each co-owner.

3. *Are the beneficiaries qualifying or non-qualifying beneficiaries?* A niece and nephew are not qualifying beneficiaries for either co-owner.

4. *Is everyone named on the informal trust deposit living – both owners and beneficiaries?* Yes.

5. *Do all named beneficiaries have an equal beneficiary interest?* The beneficiaries' interests are assumed equal unless there is a specific notation in the account records of the bank.

6. *Does the deposit account title include "POD" or similar term indicating testamentary intent, and do the account records accurately identify the owners and beneficiaries?* An account titled "Jennifer and Robert Brown POD Betty Harris and Billy Brown" would meet the FDIC requirement.

Coverage for Example 8 can be stated as:

- **Jennifer's ownership share of the deposit = $200,000**
- **Robert's ownership share of the deposit = $200,000**

Ownership to Beneficiary	Ownership Share	Revocable Trust Account	Single Account	Insured Amount	Uninsured Amount
Jennifer Brown POD Betty Harris and Billy Brown	$200,000	$0	$200,000	$100,000	$100,000
Robert Brown POD Betty Harris and Billy Brown	200,000	0	200,000	100,000	100,000
Total	**$400,000**	**$0**	**$400,000**	**$200,000**	**$200,000**

Neither beneficiary is a qualifying beneficiary, so the deposit is not insured under the revocable trust ownership category. The result is that $200,000 will revert to Robert's single account category and $200,000 will revert to Jennifer's single account category for FDIC insurance purposes. Since the couple has no other deposits at the bank, they each will be insured for $100,000 in the single accounts category, and $100,000 of each owner's funds will be uninsured. Note that the uninsured amount would be higher if either owner had other single accounts at the bank.

Example 9 Husband and Wife Co-Owners of an Informal Revocable Trust Account Qualifying and Non-Qualifying Beneficiaries (Each Beneficiary Has a 50% Interest)	
Account Title	**Balance**
Michelle and Jeff Evans POD to Kimberly and Jason Evans (Jeff's mother and father)	$400,000

Facts: Michelle and Jeff Evans (husband and wife) have a POD account for $400,000 that names Jeff's parents, Kimberly and Jason Evans, as equal co-beneficiaries of the trust. Everyone named is alive. This is the only deposit account that Michelle and Jeff Evans have at the bank.

Analysis:

1. *Who are the owners of the deposit*? There are two owners: Michelle and Jeff Evans.

2. *How many beneficiaries are named?* Two beneficiaries – Kimberly and Jason Evans – are named.

3. *Are the beneficiaries qualifying or non-qualifying beneficiaries?* Jeff's parents are both qualifying beneficiaries for Jeff but they are not qualifying beneficiaries for Michelle.

4. *Is everyone named on the informal trust deposit living – both owners and beneficiaries?* Yes.

5. *Do all named beneficiaries have an equal beneficiary interest?* The beneficiaries' interests are assumed equal unless there is a specific notation in the account records of the bank.

6. *Does the deposit account title include "POD" or similar term indicating testamentary intent, and do the account records accurately identify the owners and beneficiaries?* An account titled "Michelle and Jeff Evans POD Kimberly and Jason Evans" would be acceptable.

Coverage for Example 9 can be stated as:

- **Michelle's ownership share of the deposit = $200,000**
- **Jeff's ownership share of the deposit = $200,000**

Ownership to Beneficiary	Ownership Share	Revocable Trust Account	Single Account	Insured Amount	Uninsured Amount
Jeff POD to Jason(father)	$100,000	$100,000	$ 0	$100,000	$ 0
Jeff POD to Kimberly (mother)	100,000	100,000	0	100,000	0
Michelle POD to Jason (father-in-law)	100,000	0	100,000	100,000	100,000
Michelle POD to Kimberly (mother-in-law)	100,000	0	100,000		
Total	**$400,000**	**$200,000**	**$200,000**	**$300,000**	**$100,000**

If the beneficiaries are qualifying for one owner but not for the other owner, the interests of the qualifying beneficiaries would be insured under the revocable trust account category and the interests of the non-qualifying beneficiaries would be insured as the owner's single account.

Since Jeff's mother and father are qualifying beneficiaries for him, his half of the deposit – $200,000 – is fully insured under the revocable trust ownership category. Since in-laws are not qualifying beneficiaries, Michelle's half of the deposit – $200,000 – reverts to the single ownership category. Assuming Michelle has no other single ownership deposits at the bank, then $100,000 would be insured and $100,000 would be uninsured.

This example illustrates what can happen from an insurance standpoint when the beneficiaries listed on a revocable trust account are qualifying for one owner but not the co-owner. Kimberly and Jason are qualifying beneficiaries for Jeff, but they are Michelle's mother-in-law and father-in-law and, thus, are not qualifying beneficiaries for Michelle. Depositors should remember that when there are two owners of a revocable trust deposit, the beneficiaries must be qualifying for both owners or they run the risk of uninsured funds.

Example 10 Husband and Wife Co-Owners of an Informal Revocable Trust Account Qualifying and Non-Qualifying Beneficiaries (Each Beneficiary Has 50% Interest)	
Account Title	**Balance**
Michelle and Jeff Evans POD to Kimberly and Jason Evans (Jeff's mother and father)	$200,000

Facts: Assume the same set of facts as in Example 9, but the deposit balance is only $200,000. What is the maximum amount of deposits that Michelle and Jeff can have at one bank using this titling and still be fully covered by FDIC insurance?

Coverage for Example 10 can be stated as:

- **Michelle's ownership share of the deposit = $100,000**
- **Jeff's ownership share of the deposit = $100,000**

Ownership to Beneficiary	**Ownership Share**	**Revocable Trust Account**	**Single Account**	**Insured Amount**	**Uninsured Amount**
Jeff POD to Jason (father)	$ 50,000	$ 50,000	$ 0	$ 50,000	$0
Jeff POD to Kimberly (mother)	50,000	50,000	0	50,000	0
Michelle POD to Jason (father-in-law)	50,000	0	50,000	50,000	0
Michelle POD to Kimberly (mother-in-law)	50,000	0	50,000	50,000	0
Total	**$200,000**	**$100,000**	**$100,000**	**$200,000**	**$0**

If Jeff and Michelle want their deposits to have full FDIC insurance coverage, the maximum amount they can deposit at one bank, designating Jeff's parents as POD beneficiaries, is $200,000. One-half of the funds in the account would be attributed to Michelle. Michelle's share would be insured in the single ownership category because the beneficiaries are non-qualifying beneficiaries for Michelle. Therefore, if the couple wants the deposit account to be insured in full, Michelle's one-half share may not exceed $100,000. If one-half of the account is $100,000, then the entire account balance – $200,000 – is fully insured.

Example 11 Multiple Informal Revocable Trust Accounts With One Common Owner and One Common Beneficiary		
Account #	**Account Title**	**Balance**
Account 1	Paul & Lisa Wilson (parents) POD to John & Sharon (children)	$400,000
Account 2	Lisa Wilson POD to Sharon (child) and Bill (grandchild)	200,000

Facts: Paul and Lisa Wilson (husband and wife) have an informal revocable trust account that is payable on death to their two children, John and Sharon. The account balance is $400,000. Lisa recently opened a second deposit account for $200,000 that names Sharon and her grandson, Bill, as equal beneficiaries. Lisa believes that these two accounts are insured separately and are covered in full by FDIC insurance.

Analysis:

1. *Who are the owners of the deposit*? One account has two owners: Paul and Lisa Wilson. The second account has one owner: Lisa Wilson.

2. *How many beneficiaries are named?* The POD account co-owned by Paul and Lisa names John and Sharon, the couple's children, as beneficiaries. The POD account owned by Lisa names her daughter, Sharon, and her grandchild, Bill, as beneficiaries.

3. *Are the beneficiaries qualifying or non-qualifying beneficiaries?* The beneficiaries are the children and a grandchild of the account owners and, thus, are qualifying beneficiaries.

4. *Is everyone named on the informal trust deposit living – both owners and beneficiaries?* Yes.

5. *Do all named beneficiaries have an equal beneficiary interest?* The beneficiaries' interests are assumed equal unless there is a specific notation in the account records of the bank.

6. *Does the deposit account title include "POD" or similar term indicating testamentary intent, and do the account records accurately identify the owners and beneficiaries?* Accounts titled as "Paul & Lisa Wilson POD John and Sharon" and "Lisa Wilson POD Sharon and Bill" would meet the FDIC requirement.

Coverage for Example 11 can be stated as:					
Account #	**Owner to Beneficiary**	**Share of Account 1**	**Share of Account 2**	**Insured Amount**	**Uninsured Amount**
Account 1	Paul POD to John	$100,000	$ 0	$100,000	$ 0
Account 1	Paul POD to Sharon	100,000	0	100,000	0
Account 1	Lisa POD to John	100,000	0	100,000	0
Account 1 & 2	Lisa POD to Sharon	100,000	100,000	100,000	100,000
Account 2	Lisa POD to Bill	0	100,000	100,000	0
Total		**$400,000**	**$200,000**	**$500,000**	**$100,000**

All revocable trust accounts belonging to an owner at the same bank are added together for FDIC insurance purposes, and the combined total is insured up to $100,000 per owner per qualifying beneficiary. When an account owner names the same qualifying beneficiary on more than one informal revocable trust account at the same bank, all deposits designated for that beneficiary are added together and insured up to $100,000. Since Sharon was named as a beneficiary of Lisa Wilson on multiple accounts, the amounts attributable to Sharon for both accounts are added together and the total is insured up to $100,000, with $100,000 uninsured.

When opening multiple trust accounts at the same bank, depositors should remember that any allocation of revocable trust deposits from a specific owner to a specific beneficiary in excess of $100,000 will result in uninsured funds.

Example 12 One Owner with Multiple Informal Revocable Trust Accounts Naming the Same Two Qualifying Beneficiary (Each Beneficiary Has a 50% Interest in Account 1)				
Account #	**Account Title**	**Balance**	**Insured Amount**	**Uninsured Amount**
Account 1	Paul & Lisa Wilson (parents) POD to John & Sharon (children)	$400,000	$500,000	$0
Account 2	Lisa Wilson POD to Bill (grandchild)	100,000		

<u>Facts</u>: Assume the same set of facts as Example 11, except that Lisa – upon discovering that Account 2 exceeds the FDIC insurance limit – changed Account 2 to eliminate Sharon as a beneficiary, reduced the balance to $100,000, and moved the remaining $100,000 to another FDIC-insured institution. Lisa does not have any other deposits at the second bank where she deposited the excess $100,000 in a revocable trust account naming her grandchild, Bill, as beneficiary. Are her deposits now fully insured?

<u>Analysis</u>:

While there are a number of options available, the option Lisa chose – restructuring Account 2 to remove Sharon as a beneficiary, reducing the balance in Account 2, and placing the excess funds at another FDIC-insured institution – will accomplish her goal of ensuring that all of her deposits are insured by FDIC. This option would provide for full deposit insurance coverage for her deposits and it does alter the testamentary intent of naming her grandchild, Bill, as the beneficiary of these funds.

Example 13 POD Account with Multiple Owners and Beneficiaries After an Owner Dies (Each Beneficiary Has a One-Third Interest)	
Account Title	**Balance**
Donald and Linda Abbot (parents) POD to Kathy, Dennis and Joan (children)	$600,000

Facts: Donald and Linda Abbot have a POD account naming their three children, Kathy, Dennis and Joan, as equal beneficiaries. This is the only deposit account that the Abbots have at the bank. At the time the account is opened, all owners and beneficiaries are alive. After the account is opened, Linda dies. Donald needs to determine the impact of Linda's death on insurance coverage of his POD account.

Analysis:

1. *Who are the owners of the deposit*? There are two owners: Donald and Linda Abbot.

2. *How many beneficiaries are named?* Three beneficiaries – Kathy, Dennis and Joan – are named.

3. *Are the beneficiaries qualifying or non-qualifying beneficiaries?* The three beneficiaries are the Abbots' children; all three are qualifying for both co-owners.

4. *Is everyone named on the informal trust deposit living – both owners and beneficiaries?* Although everyone is alive when the account is opened, one of the account owners – Linda – dies afterwards. Linda's death will decrease coverage for this account as explained below.

5. *Do all named beneficiaries have an equal beneficiary interest?* The beneficiaries' interests are assumed equal unless there is a specific notation in the account records of the bank.

6. *Does the deposit account title include "POD" or similar term indicating testamentary intent, and do the account records accurately identify the owners and beneficiaries?* An account titled "Donald and Linda Abbot POD to Kathy, Dennis and Joan Abbot" would be acceptable.

While both account owners are alive, coverage for Example 13 can be stated as:			
Owner to Beneficiary	**Ownership Share**	**Insured Amount**	**Uninsured Amount**
Donald POD to Kathy	$100,000	$100,000	$0
Donald POD to Dennis	100,000	100,000	0
Donald POD to Joan	100,000	100,000	0
Linda POD to Kathy	100,000	100,000	0
Linda POD to Dennis	100,000	100,000	0
Linda POD to Joan	100,000	100,000	0
Total	**$600,000**	**$600,000**	**$0**

After the expiration of the six-month grace period following Linda's death, Donald becomes the sole owner of the POD account with a balance of $600,000 – or $200,000 for each of the named beneficiaries. Since Donald is only eligible for up to $100,000 in coverage for each qualifying beneficiary, FDIC insurance coverage for the POD account will be reduced to $300,000 after the six-month grace period.

After Linda dies (and after expiration of the six-month grace period), coverage for Example 13 can be stated as:			
Owner to Beneficiary	**Ownership Share**	**Insured Amount**	**Uninsured Amount**
Donald POD to Kathy	$200,000	$100,000	$100,000
Donald POD to Dennis	200,000	100,000	100,000
Donald POD to Joan	200,000	100,000	100,000
Total	**$600,000**	**$300,000**	**$300,000**

Donald will need to reduce this deposit by $300,000 and place these funds at another FDIC-insured depository institution to have the entire $600,000 fully covered by FDIC insurance.

Example 14 POD Account with Multiple Owners When One Owner Dies (Each Beneficiary Has 50% Interest in the POD Account)	
Account Title	**Balance**
Steve and Susan Miller (husband and wife) POD to Susan Miller's mother and father	$200,000
Steve Miller's single account	$100,000

Facts: Steve and Susan Miller, husband and wife, have a POD account naming Susan's parents as beneficiaries with a balance of $200,000. Steve Miller also has a single ownership account for $100,000 at the same financial institution. Steve dies and, a week later, the bank fails. What is the insurance coverage before and after Steve Miller's death?

Analysis:

1. *Who are the owners of the deposit*? The POD account has two owners: Steve and Susan Miller. Steve Miller is the sole owner of his single account.

2. *How many beneficiaries are named?* Two beneficiaries – Susan's mother and father – are named for the POD account. Single accounts do not have beneficiaries.

3. *Are the beneficiaries qualifying or non-qualifying beneficiaries?* Susan's parents are both qualifying beneficiaries for Susan but they are not qualifying beneficiaries for Steve.

4. *Is everyone named on the informal trust deposit living – both owners and beneficiaries?* Everyone is alive when the accounts are opened but Steve subsequently dies. Steve's death will affect coverage, as explained below.

5. *Do all named beneficiaries have an equal beneficiary interest?* The beneficiaries' interests are assumed equal unless there is a specific notation in the account records of the bank.

6. *Does the deposit account title include "POD" or similar term indicating testamentary intent, and do the account records accurately identify the owners and beneficiaries?* A POD account titled "Steve and Susan Miller POD to Susan's Mother and Father" would be acceptable.

<table>
<tr><th colspan="6">Before Steve Miller dies , coverage for Example 14 can be stated as:</th></tr>
<tr><th>Owner to Beneficiary</th><th>Ownership Share</th><th>Revocable Trust Account</th><th>Single Account</th><th>Insured Amount</th><th>Uninsured Amount</th></tr>
<tr><td>Susan POD to Mother</td><td>$ 50,000</td><td>$ 50,000</td><td></td><td>$ 50,000</td><td>$ 0</td></tr>
<tr><td>Susan POD to Father</td><td>50,000</td><td>50,000</td><td></td><td>50,000</td><td>0</td></tr>
<tr><td>Steve POD to Wife’s Mother</td><td>50,000</td><td></td><td>$ 50,000</td><td rowspan="3">100,000</td><td rowspan="3">100,000</td></tr>
<tr><td>Steve POD to Wife’s Father</td><td>50,000</td><td></td><td>50,000</td></tr>
<tr><td>Steve Miller (deceased)</td><td>100,000</td><td></td><td>100,000</td></tr>
<tr><td>Total</td><td>$300,000</td><td>$100,000</td><td>$200,000</td><td>$200,000</td><td>$100,000</td></tr>
</table>

After Steve Miller dies, coverage for Example 14 would change. All of the funds in the POD account become the funds of Susan Miller. Steve Miller’s single account is part of his estate.					
Owner to Beneficiary	**Ownership Share**	**Revocable Trust Account**	**Single Account**	**Insured Amount**	**Uninsured Amount**
Susan POD to Mother	$ 100,000	$100,000		$100,000	$0
Susan POD to Father	100,000	100,000		$100,000	0
Steve Miller (deceased)	100,000		$100,000	$100,000	0
Total	**$300,000**	**$200,000**	**$100,000**	**$300,000**	**$0**

This example illustrates several important aspects of revocable trust account coverage. First, it demonstrates the aggregation of revocable trust deposits naming non-qualifying beneficiaries with an account owner’s single deposit funds. It also demonstrates how coverage can change dramatically after the death of an account owner. This particular example shows a rare instance when insurance coverage increases after an owner dies. More commonly, coverage for revocable trust deposits decreases when an owner dies.

Example 15 POD Account with Multiple Beneficiaries When One Beneficiary Dies Each Beneficiary Has a 50% Interest	
Account Title	**Balance**
Jonathan Stuart POD to Paul and Amy Stuart (parents)	$200,000

Facts: Jonathan Stuart opens a deposit account for $200,000 that names his parents as co-beneficiaries of a payable on death informal revocable trust. His father Paul dies. Does the deposit remain insured for $200,000 for at least six months after Paul’s death?

<u>Analysis</u>:

1. *Who are the owners of the deposit*? The account has one owner: Jonathan Stuart.

2. *How many beneficiaries are named?* Two beneficiaries – Jonathan's mother and father – are named.

3. *Are the beneficiaries qualifying or non-qualifying beneficiaries?* Jonathan's parents are both qualifying beneficiaries for Jonathan.

4. *Is everyone named on the informal trust deposit living – both owners and beneficiaries?* Everyone is alive when the account is opened but one of the beneficiaries, Paul, subsequently dies. Paul's death will affect coverage, as explained below.

5. *Do all named beneficiaries have an equal beneficiary interest?* The beneficiaries' interests are assumed equal unless there is a specific notation in the account records of the bank.

6. *Does the deposit account title include "POD" or similar term indicating testamentary intent, and do the account records accurately identify the owners and beneficiaries?* A POD account titled "Jonathan Stuart POD to Paul and Amy Stuart" would be acceptable.

While both beneficiaries are alive, coverage for Example 15 can be stated as:			
Owner to Beneficiary	**Ownership Share**	**Insured Amount**	**Uninsured Amount**
Jonathan POD to Paul	$100,000	$100,000	$0
Jonathan POD to Amy	100,000	100,000	0
Total	**$200,000**	**$200,000**	**$0**

Immediately upon Paul's death, the insurance coverage of this account is reduced from $200,000 to $100,000. *Remember that the six-month grace period only applies to the owners of a trust, not to beneficiaries.* The reduced insurance coverage reflects the existence of one POD account owner with only one living qualifying beneficiary. Jonathan will need to reduce this deposit by $100,000 and place these funds at another FDIC-insured institution to obtain full FDIC insurance coverage.

Paul (beneficiary) dies. Immediately upon his death, coverage for Example 15 can be stated as:			
Owner to Beneficiary	**Ownership Share**	**Insured Amount**	**Uninsured Amount**
Jonathan POD to Amy	$200,000	$100,000	$100,000
Total	**$200,000**	**$100,000**	**$100,000**

Chapter 4: Formal Revocable Trusts

Formal revocable trusts – known as living or family trusts – are written trusts created for estate planning purposes. The owner (also known as a trustor, grantor or settlor) controls the funds in the trust during his or her lifetime and reserves the right to revoke the trust.

FDIC Requirements for Coverage

The FDIC's rules for insurance coverage of deposit accounts held in the name of formal revocable trusts are located at 12 C.F.R. § 330.10.

As with informal revocable trust accounts, the owner of a formal revocable trust is entitled to $100,000 of insurance coverage for each qualifying "owner to beneficiary pair" established in the trust. This coverage is based on the actual interest of each qualifying beneficiary as specified in the trust.

The interests of each qualifying beneficiary in all deposit accounts established by the same grantor and held at the same bank under a formal revocable trust are insured up to $100,000 so long as *all* of the following requirements are met:

- The account title at the bank must indicate that the account is held pursuant to a trust. This rule can be met by using the terms "trust," "living trust," "family trust," "revocable trust" or similar language in the account title. As an example, an account titled "The Charles King Revocable Trust" would meet the FDIC requirement.

- The beneficiaries must meet a specific kinship (qualifying beneficiary) requirement, which is the same for formal revocable trusts as it is for informal revocable trusts.

- The living trust agreement must provide that the deposits in the account will belong to the beneficiaries upon the last owner's death. When determining coverage, the FDIC will ignore any trust beneficiary who will have an interest in the trust assets only in the event that another beneficiary dies.

Unlike informal revocable trust accounts, the beneficiaries do not have to be identified by name in the deposit account records of the bank.

Unless the trust agreement states otherwise, the FDIC will assume that the beneficiaries have equal interests in the revocable trust account. Usually formal revocable trust agreements will describe the specific beneficial interest (dollar amount or percentage share) for each of the beneficiaries named in the trust.

Note About Trustees and Successor Trustees

A trustee or a successor trustee named in the trust agreement may have a dual status. In some cases, the trustee also is an owner (trustor, grantor, donor, maker or creator). A trustee also may be a beneficiary or a third party with no interest in the trust. While the administrative function performed by trustees or successor trustees is important, understand that ***the names and the number of trustees or successor trustees are irrelevant in calculating FDIC deposit insurance coverage***. It is the entitlement created between the owners and beneficiaries, not the trustees or successor trustees, that matters in calculating FDIC deposit insurance coverage.

When FDIC Requirements Are Not Met

If any of the FDIC's regulatory requirements for revocable trust coverage, described above, are not met, the entire amount in the deposit account, or any portion of the account that does not qualify, will be insured as the owner's single account. The combined total the account owner has in the single account category then will be insured to $100,000. If the formal revocable trust has multiple owners, the deposits will be insured as each owner's single ownership deposits.

Applying this rule, if a formal revocable trust provides a bequest to a non-qualifying beneficiary, the portion of the deposits allocated to the non-qualifying beneficiary will not be insured in the revocable trust ownership category. Instead, the deposit related to the non-qualifying beneficiary will be insured as the trust owner's single account funds and will be added to any other single account funds the owner may have at the same bank, and the total insured up to $100,000.

Important Considerations When Determining Coverage for Formal Revocable Trust Deposits

Unequal Beneficiary Interests

Caution is needed when a formal revocable trust provides a beneficiary an entitlement (either dollar amount or percentage interest) that is different from the entitlements granted the other beneficiaries under the trust. When unequal interests exist under a trust, the calculation of deposit insurance coverage may result in less than $100,000 deposit insurance coverage per beneficiary. As illustrated in examples provided later in this chapter, the owners of a trust that provides for unequal beneficiary interests cannot simply multiply the number of qualifying beneficiaries by $100,000 to calculate the amount of deposit insurance coverage.

Timing of Distributions to Beneficiaries

An additional consideration for coverage of formal revocable trusts is the timing when the beneficiaries will receive their trust interests after the owners' death. Deposit insurance coverage for a trust deposit may be significantly affected if the trust agreement provides that one or more beneficiaries must receive their funds before the distribution of the remaining funds to other beneficiaries.

Life Estate Beneficiaries

When an initial beneficiary has a life estate interest in the trust assets, special FDIC rules apply that will affect the determination of insurance coverage for the trust's deposits. A detailed discussion of life estate beneficiaries and the impact of life estate interests on coverage for revocable trusts is provided in Chapter 5 of this Guide. Careful review of Chapter 5 is essential before determining FDIC insurance coverage for any formal revocable trust that provides a life estate interest for a trust beneficiary.

Naming Formal Trusts as Beneficiaries of POD Accounts

The FDIC receives many inquiries about FDIC insurance coverage for informal revocable trust accounts titled as follows: "Name of trust owner POD the owner's formal trust." The establishment of an informal revocable trust account that is payable on death to a formal trust will result in the deposit account being insured as the owner's single account and insured with any other single accounts held by that owner at the same bank up to $100,000. An account titled in this manner does not qualify for per beneficiary coverage under the revocable trust ownership category, because a trust is not a qualifying beneficiary under the FDIC's regulations.

The following example illustrates the potential negative impact of naming a trust as the beneficiary of an informal revocable trust account: Assume that John Rogers is the sole owner of the John Rogers Living Trust and he opens an account titled "John Rogers POD to The John Rogers Living Trust." Since the John Rogers Living Trust is not a qualifying beneficiary under the FDIC's rules, all of the deposits in the POD account would be insured as John Rogers' single account funds. This deposit would be added to any other single account deposits that John Rogers has at the same bank and insured up to $100,000 including principal and interest. If John Rogers' actual intention was to establish a revocable trust deposit that qualifies for more than $100,000 in coverage based on naming multiple qualifying beneficiaries, then his intent was not met.

If there are two settlors named on an account that is payable on death to a trust (for example, "John and Mary Rogers POD to the Rogers Family Trust"), then the deposit is considered a single account deposit that is split evenly between the two settlors. Each owner's portion of the deposit is added to any other single account deposits the owner may have at the same bank and the total is insured up to $100,000.

When a Trust Owner or Beneficiary Dies

If one or more beneficiaries or owners of a trust are deceased on the date an FDIC-insured bank fails, then the amount of deposit insurance may be different than when the trust was established and everyone was living.

FDIC rules allow for a six-month grace period when the owner dies. 12 C.F.R. § 330.3(j). The rule provides for FDIC deposit insurance of the deceased owner's deposit accounts as if the owner were still living for six months after his or her death. 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 will not apply the grace period if the result will be a reduction in deposit insurance coverage.

As with informal revocable trusts, the six-month grace period does not apply to the death of a beneficiary. The deposit insurance coverage is immediately reduced upon the death of a beneficiary. Therefore, the owner or trustee of a revocable trust should consider the potential impact of the death of an owner or a beneficiary upon deposit insurance coverage of a deposit account.

In the event of the death of an owner, what was a revocable trust could become an irrevocable trust or the original revocable trust could split into an AB trust (two trusts): a revocable trust and an irrevocable trust.[1] The rules under 12 C.F.R. § 330.13 are used to calculate deposit insurance coverage for irrevocable trusts. (See Chapter 6.)

There can be a significant reduction in FDIC deposit insurance coverage when a revocable trust converts to an irrevocable trust. The primary reason is the treatment of contingent interests when calculating FDIC deposit insurance coverage. While the FDIC does not consider the impact of contingencies on a beneficiary's trust interest when calculating deposit insurance coverage for revocable trusts, such contingencies still are considered when computing deposit insurance coverage for irrevocable trusts. When a trust owner dies and a beneficiary's interest is contingent, the conversion of the revocable trust to an irrevocable trust can result in a reduction of coverage. For irrevocable trust agreements, all contingent interests are added together and insured up to $100,000.

Because of the possible reduction in deposit insurance coverage, the FDIC always recommends that the deposit insurance coverage be reviewed for a revocable trust whenever an owner or beneficiary dies. See Chapter 6 for a full discussion of the FDIC's rules and requirements for insurance coverage of irrevocable trust deposits.

[1] Married couples with a large dollar amount of assets sometimes make use of an AB trust arrangement. An AB trust currently is popular because of certain advantages under the tax laws. Upon the death of one spouse, the original revocable trust is split into an A trust (which is the deceased spouse's property and irrevocable) and a B trust (which is a revocable trust including the surviving spouse's share of the assets).

Calculating Coverage for Formal Revocable Trusts

In general, determining insurance coverage for living/family trust accounts is more complex than calculating coverage for informal revocable trust accounts. The most common reasons for complexity in calculating FDIC deposit insurance coverage for formal revocable trusts are:

- An owner or beneficiary named in the trust is now deceased
- The trust names both qualifying and non-qualifying beneficiaries
- The beneficiaries are to receive unequal amounts or percentages of the trust assets
- The trust contains ambiguous terms that make it unclear or impossible to determine the bequest

While FDIC regulations do not prescribe a specific methodology to use when calculating insurance coverage for deposits based on formal revocable trust agreements, the following six questions will assist the user in calculating FDIC deposit insurance coverage. All of these questions must be considered to calculate FDIC deposit insurance coverage accurately for a specific trust agreement.

The six questions that must be answered before a depositor can determine FDIC insurance coverage for a formal revocable trust account are:

1. *Who are the owners of the trust?*
2. *Who are the primary beneficiaries upon the death of the owners?*
3. *Are the primary beneficiaries qualifying or non-qualifying beneficiaries?*
4. *Are all the owners and primary beneficiaries named in the trust living?*
5. *What is the dollar amount or percentage interest each owner has allocated to each primary beneficiary? (This includes any specific lump sum amounts to be distributed to any beneficiary prior to the allocation by percentages.)*
6. *Is the trust properly identified in the bank's records?*

Calculating FDIC insurance coverage for most formal revocable trust deposits is a six-step process that involves obtaining answers to the six questions above and determining how these answers affect the trust's coverage.

When reviewing each of the steps discussed below, remember that you must complete all six steps to accurately determine FDIC insurance coverage for a formal revocable trust account.

<u>Step 1</u>: Identify the Owners of the Trust

The owners are commonly referenced in a revocable trust agreement using a variety of terms including settlors, trustors, grantors, donors, makers or creators.

Revocable trusts commonly have one or two owners. Revocable trusts listing three or more owners should be reviewed carefully to ensure that each named owner is in fact an actual owner of trust assets. There is a presumption when multiple owners are identified in a trust agreement that each is an equal owner of the trust assets unless otherwise specified in the trust agreement.

When two owners have unequal ownership interests in the trust assets, the calculation of the deposit insurance coverage can be complicated. The FDIC recommends that depositors contact the FDIC for assistance with questions regarding these types of trusts.

Remember that trustees and successor trustees do not affect FDIC deposit insurance coverage. It is the entitlement created between the owners and beneficiaries, not the trustees or successor trustees of the trust, that matters in calculating FDIC deposit insurance coverage.

Step 2: Identify the Primary Beneficiaries Upon the Death of the Owners

Under the FDIC's regulations, coverage up to $100,000 for the interest of each qualifying beneficiary is available only if, at the time an insured depository institution fails, (1) a qualifying beneficiary is entitled to his or her interest in the trust assets upon the grantor's death (or in the cases of a jointly owned trust, upon the death of the last owner) and (2) that ownership interest does not depend upon the death of another trust beneficiary.

As an example, assume a living trust agreement with one owner provides that all trust funds shall be distributed in equal shares to the owner's three sons following the owner's death. The trust agreement also provides that each son's one-third share of the trust funds, in the event a son dies before the distribution of the funds, shall be distributed to the deceased beneficiary's children (that is, the owner's grandchildren). If the owner and his three sons are all alive when the bank fails, the FDIC would treat the sons as the sole beneficiaries of the living trust account. The FDIC would not treat the grandchildren as beneficiaries for deposit insurance purposes since the grandchildren are not entitled to any trust assets unless their father has died.

The following are important points and guidelines that should be considered when identifying the beneficiaries of a formal revocable trust:

i. In trust agreements, the names of the beneficiaries generally are located in a section or paragraph that begins with the phrase, "upon the death of the owner…" If there are two owners, the trust agreement may include a section or paragraph that begins with the phrase "upon the death of the surviving (or last) owner…" For deposit insurance purposes, the beneficiaries are those persons or entities who shall become entitled to the trust funds upon the death of the last owner. In identifying the beneficiaries, look for those sections or paragraphs that provide instructions for the distribution of the trust funds following the death of the last owner.

ii. A formal revocable trust agreement generally provides that the trust funds, following the death of the owner, shall be entrusted to one or more trustees. For deposit insurance purposes, the trustees are not treated as beneficiaries. The possibility exists, however, that a particular person could be named in the trust agreement as both a trustee and a beneficiary. In other words, a particular person could be given the responsibility to make distributions of the trust funds and the same person might be designated to receive some of these funds. If so, the person would be treated as a beneficiary.

iii. If a named beneficiary is deceased at the time of the failure of an FDIC-insured bank, then the FDIC will not treat that person as a beneficiary. In identifying the beneficiaries of a living trust following the death of a named beneficiary, look for those sections or paragraphs of the trust agreement that provide instructions for the distribution of funds after the death of that beneficiary.

iv. A person is not a beneficiary for deposit insurance purposes if his/her interest in the trust assets depends upon the death of another beneficiary. An alternate or contingent beneficiary – that is, an individual who would receive the trust deposits if a named beneficiary were to die before the account owner – does not qualify as a beneficiary for FDIC insurance purposes. Consider the example of a trust agreement providing that the interest of the owner's son will be distributed to a charitable organization if the son were to die before the owner. If the son is living when the bank fails, the FDIC would not treat the charitable organization as a beneficiary because the organization's interest would depend upon the death of another beneficiary (that is, the owner's son). On the other hand, if the son is deceased when the bank fails, the FDIC would treat the charitable organization as a beneficiary.

v. Some formal revocable trusts give a beneficiary the right to receive income from the trust or to use trust assets during the beneficiary's lifetime (known as a life estate interest), and then other beneficiaries receive the remaining trust assets after the first beneficiary dies. In such a case, the FDIC will recognize the life estate beneficiary as well as the remainder beneficiaries in determining insurance coverage. Unless otherwise indicated in the trust, the FDIC will assume that a beneficiary with a life estate interest has an equal share of the trust with the other beneficiaries. (See Chapter 5 for a discussion of FDIC insurance coverage of deposits held by revocable trusts that provide for life estate beneficiary interests.)

vi. If a formal revocable trust with only one owner provides for payments to a surviving spouse, then the spouse is treated as a beneficiary. This is true under all of the following circumstances:

- Payments are periodic or monthly payments (e.g., payments of interest or income)
- Payments are lump-sum payments
- Payments are discretionary payments (such as payments for medical expenses)

vii. A formal revocable trust co-owned by two individuals (for example, a husband and wife) frequently provides for lifetime payments to the surviving owner following the death of the first owner. When a living trust agreement includes such provisions, the owner of a revocable living trust is not treated as a beneficiary. For deposit insurance purposes, the beneficiaries are those persons or entities who shall become entitled to the trust funds following the death of the last owner – not persons or entities who shall receive funds prior to the death of the last owner.

viii. A trust agreement might provide that the revocable trust, upon the death of the owner, shall cease to be a revocable trust and instead shall become an irrevocable trust. In other words, the trust agreement might provide that the trust funds shall become assets of an irrevocable trust. This does not mean that the future irrevocable trust is a beneficiary of the revocable trust. If a living trust agreement provides that the trust funds shall pass into an irrevocable trust upon the death of the owner, the irrevocable trust is not treated as a beneficiary of the revocable trust during the lifetime of the owner. Rather, the irrevocable trust is viewed simply as a mechanism through which the trust funds shall be distributed in the future to the beneficiaries. Thus, in identifying the beneficiaries of the revocable living trust during the lifetime of the owner, you must identify those persons and entities who shall receive the trust funds through the irrevocable trust following the death of the owner.

ix. Under the terms of some living trust agreements, the death of an owner results in the creation of two or more trusts. Common names for such trusts include the following: survivor's trust, marital trust, family trust, bypass trust, A trust and B trust. If a trust agreement provides that the trust funds shall pass into one or more new trusts upon the death of one or both owners, the future trusts are not treated as beneficiaries of the revocable trust before the death of any owner. Rather, the future trusts are viewed simply as mechanisms for distributing the trust funds. As explained above, in identifying the beneficiaries of the revocable living trust before the death of any owner, you must identify those persons (such as children) and entities (such as charitable organizations) who shall receive the trust funds through the future trusts.

x. A living trust agreement may provide for the payment of debts and funeral expenses following the owner's death. This does not mean that the funeral home is a beneficiary. For deposit insurance purposes, the owner's creditors and the funeral home are not treated as beneficiaries even though they may receive some of the trust funds under the terms of the trust agreement following the owner's death. In identifying the beneficiaries for deposit insurance purposes, you should look for those sections or paragraphs of the trust agreement that provide instructions for the distribution of the trust funds after the payment of debts and expenses.

xi. A living trust agreement may instruct the trustee to make payments of certain amounts (large or small) to designated persons or entities (such as friends or charities) before distributing the balance of the trust funds to other persons or entities (such as the owner's children). In such cases, the beneficiaries include those persons or entities who shall receive amounts "off the top" as well as those persons or entities who shall receive the balance of the trust assets. For deposit insurance purposes, the beneficiaries are those persons or entities who shall become entitled to the trust funds upon the death of the last owner. In identifying beneficiaries, the FDIC does not distinguish between beneficiaries who shall receive distributions "off the top" and beneficiaries who shall receive a percentage or portion of remaining funds. This is true even if the possibility exists that the payments "off the top" will exhaust the trust funds.

xii. Under a formal revocable trust agreement, payments might not be limited to qualifying beneficiaries as that term is defined in the FDIC's insurance coverage rules (the owner's spouse, children, grandchildren, parents or siblings). The agreement might instruct the trustee to make payments to non-qualifying beneficiaries (such as cousins or friends or charitable organizations). When identifying the beneficiaries of the trust, the non-qualifying beneficiaries may not be disregarded. When identifying the beneficiaries, you must include all persons or entities entitled to the trust funds upon the death of the last owner. The inclusion of non-qualifying beneficiaries in the trust agreement generally will affect the insurance coverage of the trust account.

xiii. A beneficiary's interest may be contingent, such as when a trust agreement provides that a particular person shall receive a portion of the trust funds only if certain conditions are met. For example, a trust may provide that a person will receive some trust assets only if he or she graduates from college. Alternatively, a trust agreement may provide that a particular person shall receive a portion of the trust funds only if the trust funds are not exhausted during the lifetime of the surviving spouse. Under the FDIC's regulations, coverage up to $100,000 for the interest of a qualifying beneficiary is available "irrespective of . . . conditions in the trust that might prevent a beneficiary from acquiring an interest in the deposit account upon the account owner's death." This means that a person or entity will be recognized as a beneficiary even if the interest of that person or entity in the trust funds is contingent.

Assume that a particular living trust agreement provides that the owner's only child shall receive all of the trust funds (after the death of the owner) when the child graduates from college. In addition, assume that the trust owner's bank fails when the owner is living and the child is 10 years old. Under these circumstances, the FDIC would treat the child as the sole beneficiary of the living trust account (that is, the FDIC would assume that the child would graduate from college someday).

Step 3: Determine Whether the Primary Beneficiaries Are Qualifying or Non-qualifying Beneficiaries

FDIC deposit insurance coverage for revocable trusts is up to $100,000 from each owner to each qualifying beneficiary. The kinship requirement for formal revocable trusts is the same as for informal revocable trusts. A beneficiary is a qualifying beneficiary under 12 C.F.R. § 330.10 (a) only if the beneficiary is the owner's spouse, child, grandchild, parent or sibling, as defined below:

- Spouse only means a person of the opposite sex who is a husband or wife, under the federal Defense of Marriage Act (1 U.S.C. § 7)
- Child includes a biological child, adopted child and step-child
- Grandchild includes a biological grandchild, adopted grandchild and step-grandchild
- Parent includes a biological parent, adoptive parent and step-parent
- Sibling includes an adoptive sibling, step-sibling and half-sibling

Any relationship between the owner and a beneficiary other than one described above will result in the beneficiary being considered a non-qualifying beneficiary for the purpose of FDIC insurance coverage.

All of the following relationships are examples of non-qualifying beneficiaries for the purpose of FDIC deposit insurance coverage:

- "In-laws" (mother-in-law, father-in-law, brother-in-law, etc.)
- Aunts, uncles, nieces, nephews, cousins
- Former spouse
- Great-grandchild
- Grandparent
- Godchild
- Domestic partner
- Charitable organization (for example, universities, religious organizations)
- Business entities
- Pets
- Trusts

If a revocable trust has co-owners, then it is possible for a beneficiary to be a qualifying beneficiary as to one owner but not the other. If a beneficiary does have this dual status under a specific revocable trust agreement (that is, a qualifying beneficiary as to one owner and a non-qualifying beneficiary as to the other owner), this status will affect the calculation of deposit insurance coverage. The amount or percentage of a revocable trust deposit attributable from an owner to a non-qualifying beneficiary is treated as the single ownership deposit of that owner and is added to any other single ownership deposits of the owner at the same FDIC-insured institution.

When a non-qualifying beneficiary is named under a formal revocable trust agreement, the portion of the trust's deposit payable to that beneficiary is insured under the single ownership category. The FDIC refers to this situation as a *reversion* of the non-qualifying deposit funds to another insurance category – in this case from the revocable trust category to the single ownership category. The reason for the reversion is that the requirements for coverage under the revocable trust category have not been met.

<u>Step 4</u>: Determine the Interests of the Primary Beneficiaries

To determine the interests of the beneficiaries, you will need the trust agreement and a list of the primary beneficiaries as determined under Step 2. In addition, to determine insurance coverage for an existing deposit account in the name of the trust, you will need the balance of the account (or the amount that the owner intends to deposit at the bank). Proceed with Step 4 in the order set forth below.

i. First, place the beneficiaries in the proper order**.** In many cases, formal revocable trust agreements do not provide for an immediate distribution of all trust funds to all beneficiaries upon the death of the last owner. Rather, the agreement provides for the distribution of the funds in a prescribed sequence.

Consider “The Robert Logan Revocable Trust,” which provides upon the death of the owner that:

- $250,000 shall be distributed to a charitable organization

- Then, from the remaining funds, $100,000 shall be distributed to the owner’s son and $50,000 to the owner’s daughter, and

- Then, from any remaining funds, equal shares shall be distributed to the owner’s four grandchildren when the youngest grandchild reaches the age of 21

Under the terms of this trust, the charitable organization could be termed an “initial beneficiary” because it will receive funds before the other beneficiaries. The son and daughter could be termed the “first group of remainder beneficiaries” because they will receive a portion of any remaining funds after the distribution to the initial beneficiary. Finally, the grandchildren could be termed the “second group of remainder beneficiaries” because they will receive any remaining funds after the distribution to the first group of remainder beneficiaries. Thus, the beneficiaries of The Robert Logan Revocable Trust deposit account would be ordered as follows:

- Initial beneficiary: charitable organization

- First group of remainder beneficiaries: son and daughter

- Second group of remainder beneficiaries: four grandchildren

ii. After placing the beneficiaries in the proper order, allocate funds to the initial beneficiaries. In determining the interests of the beneficiaries, the FDIC simply follows the terms of the trust agreement. In other words, the FDIC allocates funds to initial beneficiaries before allocating funds to any remainder beneficiaries.

For example, assume the balance of an account in the name of The Robert Logan Revocable Trust (as described above) is $180,000. Under the terms of the trust agreement, the initial beneficiary must receive $250,000 before any funds are distributed to the remaining beneficiaries. In accordance with this distribution scheme, the FDIC would allocate the entire balance of the deposit account ($180,000) to the initial beneficiary (that is, the charitable organization).

iii. After allocating funds to the initial beneficiaries, subtract this amount from the balance of the deposit account. Then, you must allocate the remaining funds (if any) to the first group of remainder beneficiaries. In the example above, the funds allocated to the charitable organization ($180,000) must be subtracted from the balance of the account ($180,000). The difference is zero. In the absence of any remaining funds, no funds would be allocated to the first group of remainder beneficiaries.

iv. After allocating funds to the first group of remainder beneficiaries, subtract this amount from the remaining balance (if any) of the deposit account. Then, you must allocate the remaining funds (if any) to the second group of remainder beneficiaries (and so on with any additional groups of remainder beneficiaries). In the example above, the funds allocated to the first group of remainder beneficiaries is zero because the balance of the account – after allocating funds to the initial beneficiaries – is zero. With a balance of zero, no funds would be allocated to the second group of remainder beneficiaries.

v. After allocating all funds in the deposit account, you must apply the insurance limit. In the example of The Robert Logan Revocable Trust described in the paragraphs above, the insurance limit would be applied in the following manner:

The Robert Logan Revocable Trust Deposit Account Balance: $180,000				
Owner to Beneficiary	**Ownership Share**	**Single Account**	**Insured Amount**	**Uninsured Amount**
Robert Logan to Charitable Organization	$180,000	$100,000	$100,000	$80,000
Son	0		0	0
Daughter	0		0	0
Grandchild 1	0		0	0
Grandchild 2	0		0	0
Grandchild 3	0		0	0
Grandchild 4	0		0	0
Total	**$180,000**	**$100,000**	**$100,000**	**$80,000**

Note that the charitable organization is not a qualifying beneficiary (that is, the owner's spouse, child, grandchild, parent or sibling). For this reason, the interest of the charitable organization ($180,000) must be added to any single ownership accounts maintained by the owner at the same bank. Thus, in this example, $100,000 is insured and $80,000 is uninsured (assuming Robert Logan has no other single accounts or trust deposits at the same bank).

Step 5: Determine Whether the Owner(s) and Primary Beneficiaries Are Living

Deposit insurance coverage provided for a formal revocable trust deposit usually will decrease significantly when a trust owner or beneficiary dies. For that reason, the FDIC strongly recommends that trust owners review their insurance coverage whenever one of the owners or beneficiaries dies.

FDIC rules state that when a deposit owner dies, the FDIC will insure the deposit as if the owner were still living for six months after the owner's death, unless application of the rule will result in a reduction in deposit insurance coverage. The six-month grace period does not apply to the death of a beneficiary. Consequently, deposit insurance coverage is reduced immediately upon the death of a beneficiary.

In the event of the death of an owner, a revocable trust could become an irrevocable trust or the original revocable trust could split into an AB trust (two trusts): a revocable trust and an irrevocable trust. In a situation where there is a revocable trust with a single owner who dies, the trust will become irrevocable because the owner can no longer revoke the trust or change any of the terms and conditions. After the six-month grace period has expired, the irrevocable trust must be calculated using the requirements provided in 12 C.F.R. § 330.13. See Chapter 6 for a discussion of FDIC insurance coverage for irrevocable trust deposits.

Step 6: Verify That the Trust Is Properly Identified in the Bank's Records

To obtain FDIC insurance coverage for a deposit under the revocable trust account category, FDIC regulations require that the account title at the bank must indicate that the deposit is held pursuant to a trust agreement. This rule can be met by using a term such as "living trust," "family trust," "revocable trust," or "trust" in the account title. As an example, an account titled "The George Green Revocable Trust" would meet the FDIC requirement.

It is not necessary that the owner's name be identified in the title. For example, the account could be titled "The Green Family Trust." Sometimes there may be supplemental language in the title including the names of trustees and descriptive language such as the date the trust was created. This additional language listing the trustees is acceptable but unnecessary for FDIC insurance purposes.

Though the names of the beneficiaries must be included in the bank's records for informal revocable trust deposits (POD accounts), the names of beneficiaries do not need to be in the bank records for formal trusts. However, the beneficiaries must be identified in the trust agreement. Although the actual beneficiary names are not required, the relationship of the beneficiaries to the owners must be identifiable in the trust document.

Calculating Coverage for Formal Revocable Trusts

Once you have reviewed and understand the six steps involved in calculating coverage for formal revocable trusts, you can determine the maximum amount of deposit insurance coverage available at a single FDIC-insured bank under any trust agreement.

Many formal revocable trust agreements follow a similar pattern of one or two owners (typically a husband and wife) designating children as beneficiaries to receive equal distributions of the trust assets upon the owners' deaths. The rest of this chapter presents examples that demonstrate how to apply the six-step process to different types of trust arrangements.

The examples contained in the remainder of Chapter 4 explain how to calculate deposit insurance coverage in the following situations:

- Revocable trusts with **qualifying beneficiaries** who have **equal interests**
- Revocable trusts with **qualifying beneficiaries** who have **unequal interests**
- Revocable trusts with **non-qualifying beneficiaries** who have **equal interests**
- Revocable trusts with **qualifying and non-qualifying beneficiaries** who have **unequal interests**
- Revocable trusts with beneficiaries who receive **lump sum cash distributions**
- **When a beneficiary or owner identified in the trust dies**

Some of the examples are very basic and the amount of FDIC deposit insurance coverage can be calculated easily. As mentioned previously, the calculation of the amount of deposit insurance coverage can be complicated by circumstances such as unequal allocations to beneficiaries, the existence of non-qualifying beneficiaries, or the death of an owner or beneficiary.

Important Note About Trusts With Life Estate Beneficiaries

The FDIC has special rules that apply to coverage for formal revocable trusts that provide life estate interests for beneficiaries. Chapter 5 discusses the special FDIC rules that apply to coverage of trusts with life estate interests and contains examples illustrating how these rules are applied to coverage of a trust's bank deposits. Review of Chapter 5 is critical before determining coverage for any revocable trust that provides a life estate interest for one or more beneficiaries.

Revocable Trusts With Qualifying Beneficiaries Who Have Equal Interests

Calculation of coverage for formal revocable trusts with qualifying beneficiaries who have equal interests is simple and straightforward. Calculation of coverage for these trusts is similar to the process used for informal revocable trusts described in the preceding chapter.

Example 16 Formal Revocable Trust One Owner and One Qualifying Beneficiary	
Account Title	**Balance**
John Parker Revocable Trust	$100,000

Facts: John Parker wishes to open a deposit account linked to his formal living trust titled "The John Parker Living Trust, dated January 1, 2000" and have all of the funds fully insured. The trust indicates that he is the sole grantor/owner of the trust and both he and his wife are trustees. The trust lists his son, David, as the sole beneficiary to receive 100% of all his assets when he dies. Everyone named in the trust is living. John Parker has no other deposits at the bank.

Analysis:

1. *Who are the owners of the trust?* John Parker is the sole owner named in the trust agreement. (Since John Parker's wife is a trustee and not an owner or beneficiary, her designation as trustee is irrelevant in calculating FDIC deposit insurance coverage for this deposit.)

2. *Who are the primary beneficiaries upon the death of the owner?* David Parker is the sole beneficiary.

3. *Are the primary beneficiaries qualifying or non-qualifying beneficiaries?* John Parker's son, David, is a qualifying beneficiary.

4. *Is everyone named in the trust living – both owners and beneficiaries?* Yes. Both the owner and the beneficiary are living.

5. *What is the dollar amount or percentage interest the each owner has allocated to each primary beneficiary?* The sole beneficiary is to receive 100% of the deposit upon the owner's death.

6. *Is the trust properly identified in the bank's records?* The deposit account title "The John Parker Living Trust" would meet the FDIC's regulatory requirement.

This trust account is insured up to $100,000 since there is one owner and one qualifying beneficiary who will receive the deposit when the owner dies.

Example 17 Formal Revocable Trust One Owner, Two Beneficiaries Who Have Equal Interests	
Account Title	**Balance**
The Michael Collins Living Trust	$200,000

Facts: Michael Collins wishes to open a deposit account linked to his formal living trust titled "The Michael Collins Living Trust, dated June 9, 2003" and have all of the funds fully insured. The trust indicates that he is the sole settlor of the trust and both he and his wife, Mary, are trustees. The trust identifies his son, Joe, and daughter, Margaret, as the co-beneficiaries. Each beneficiary will receive 50% of the trust assets when the owner dies. Everyone named in the trust is living. The trust also provides that his son must graduate from college to receive his bequest. Michael Collins has no other deposits at the bank.

Analysis:

1. *Who are the owners of the trust?* Michael Collins is the sole owner named in the trust agreement. (Since Mary Jones is a trustee and not an owner or beneficiary, her designation as trustee is irrelevant in calculating FDIC deposit insurance coverage for this deposit.)

2. *Who are the primary beneficiaries upon the death of the owner?* There are two beneficiaries named in the trust agreement, Margaret and Joe, the owner's children.

3. *Are the primary beneficiaries qualifying or non-qualifying beneficiaries?* A son (Joe) and daughter (Margaret) are both qualifying beneficiaries as to the owner.

4. *Is everyone named in the trust living – both owners and beneficiaries?* Yes. The owner and both beneficiaries are living.

5. *What is the dollar amount or percentage interest the owner has allocated to each primary beneficiary?* Each of the co-beneficiaries (son and daughter) is to each receive 50% of the deposit upon the owner's death. Since this is a revocable trust, the condition requiring the son to graduate from college to receive his beneficiary interest will not affect the insurance coverage.

6. *Is the trust properly identified in the bank's records?* The deposit account title "The Michael Collins Living Trust, dated June 9, 2003" would meet the FDIC's regulatory requirement.

Coverage for Example 17 can be stated as:		
Owner to Beneficiary	**Ownership Share**	**Insured Amount**
Michael to Joe (son)	$100,000	$100,000
Michael to Margaret (daughter)	100,000	100,000
Total	**$200,000**	**$200,000**

The maximum amount of deposit insurance coverage available at a single FDIC-insured institution using this trust agreement is up to $200,000 since there is one owner and two qualifying beneficiaries with equal interests.

Example 18 Formal Revocable Trust Two Co-owners, Three Qualifying Beneficiaries With Equal Interests	
Account Title	**Balance**
The Hall Family Trust	$600,000

Facts: Gary Hall and his wife, Jessica, together own The Hall Family Trust. The trust specifies that upon the death of one spouse, the deposits will pass to the surviving spouse and, upon the surviving owner's death, the deposits will pass in equal shares to their three children: Nancy, Betty and Carol.

Analysis:

1. *Who are the owners of the trust?* Gary Hall and his wife, Jessica, are the joint owners named in the trust agreement.

2. *Who are the primary beneficiaries upon the deaths of the owners?* There are three beneficiaries named in the trust agreement: Nancy, Betty and Carol.

3. *Are the primary beneficiaries qualifying or non-qualifying beneficiaries?* Nancy, Betty and Carol are the daughters of Gary and Jessica Hall and, therefore, are qualifying beneficiaries for both owners under this trust agreement.

4. *Is everyone named in the trust living – both owners and beneficiaries?* Yes. The owners and all beneficiaries are living.

5. *What is the dollar amount or percentage interest the owners have allocated to each primary beneficiary?* Each of the co-beneficiaries (three daughters) is to receive equal interest in the trust assets upon the death of the last owner.

6. *Is the trust properly identified in the bank's records?* The deposit account title "The Hall Family Trust" would meet the FDIC requirement.

Coverage for Example 18 can be stated as: • Gary's ownership share = $300,000 • Jessica's ownership share = $300,000		
Owner to Beneficiary	**Ownership Share**	**Insured Amount**
Gary to Nancy	$100,000	$100,000
Gary to Betty	100,000	100,000
Gary to Carol	100,000	100,000
Jessica to Nancy	100,000	100,000
Jessica to Betty	100,000	100,000
Jessica to Carol	100,000	100,000
Total	**$600,000**	**$600,000**

The Hall Family Trust is insured up to a maximum of $600,000. Each owner has a qualifying trust relationship to each of the three beneficiaries, resulting in insurance coverage up to $300,000 per owner, for a total of $600,000.

Revocable Trusts With Qualifying Beneficiaries Who Have Unequal Interests

FDIC insurance coverage for revocable trust accounts is based on the interests of each qualifying beneficiary named in the trust. Unless the trust agreement states otherwise, the FDIC will assume that the beneficiaries have equal interests in the revocable trust account. Usually formal revocable trust agreements will describe the specific beneficial interest (dollar amount or percentage share) for each of the beneficiaries named in the trust. Sometimes, generic language such as "equal shares" will be used to indicate that each beneficiary is to receive an equal percentage of the trust.

If a revocable trust specifies that one or more beneficiaries has a different entitlement (either dollar amount or percentage interest) from the other beneficiaries under the trust, then you need to be careful in calculating the amount of deposit insurance to avoid uninsured funds. When unequal interests exist under the trust, the calculation of the deposit insurance coverage may result in less than $100,000 deposit insurance coverage per beneficiary. Therefore, the owners of a trust with unequal interests cannot simply multiply the number of qualifying beneficiaries by $100,000 to calculate the amount of deposit insurance coverage.

When a trust provides that the beneficiaries are to receive different dollar amounts or percentage distributions, the best way to determine the maximum amount the trust can deposit at one bank – and have all its deposits fully insured – is to use the method shown in the example below.

Example 19
Formal Revocable Trust
One Owner, Two Qualifying Beneficiaries, Unequal Distributions

<u>Facts</u>: Mary Jones is the sole owner of the Mary Jones Living Trust. Her trust provides that upon her death, her daughter Sally is to receive 60% of the trust assets and her son Mike is to receive 40% of the trust assets. Mary wants to know the maximum amount that would be fully insured in a deposit account in the name of her trust at one bank.

<u>Analysis</u>:

1. *Who are the owners of the trust?* Mary Jones is the sole owner of the trust.

2. *Who are the primary beneficiaries upon the death of the owner?* There are two beneficiaries named in the trust agreement: Sally and Mike.

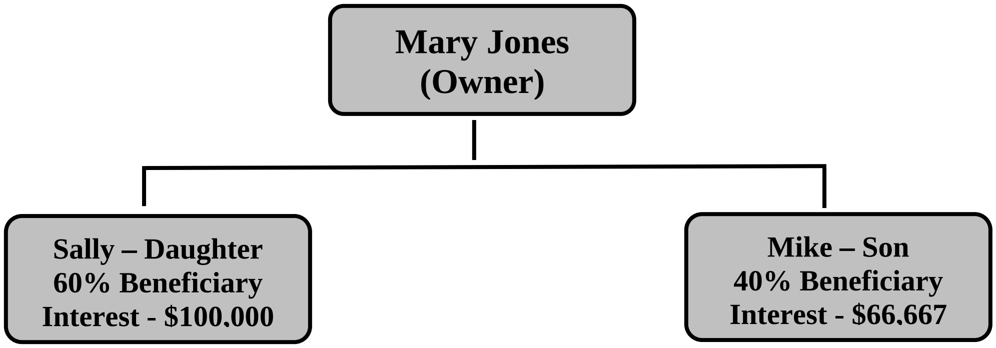
3. *Are the primary beneficiaries qualifying or non-qualifying beneficiaries?* Both beneficiaries are the owner's children and, thus, are qualifying beneficiaries.

4. *Is everyone named in the trust living – both owners and beneficiaries?* Yes. The owners and all beneficiaries are living.

5. *What is the dollar amount or percentage interest the owner has allocated to each primary beneficiary?* The beneficiaries do not share equally in the trust assets. Sally has a 60% interest in the trust assets while Mike has a 40% interest in the trust assets.

6. *Is the trust properly identified in the bank's records?* The deposit account title "The Mary Jones Living Trust" would meet the FDIC's regulatory requirement.

To calculate the maximum deposit balance that can be fully insured for this trust at one FDIC-insured bank, divide $100,000 (the maximum insured amount per beneficiary) by the largest percentage interest allotted to a beneficiary. In this example, $100,000 is divided by 60%, which is the largest percentage allocated to a beneficiary (Sally). Thus, the maximum account that this trust can deposit at one bank and have all the funds fully insured is $166,667.



Maximum Fully Insured Amount =
$100,000 / 60% = $166,667

Coverage for Example 19 can be stated as: **Mary Jones Living Trust – Maximum Fully Insured Amount = $166,667**				
Owner to Beneficiary	**Beneficiary % Interest**	**Ownership Share**	**Insured Amount**	**Uninsured Amount**
Mary to Sally	60%	$100,000	$100,000	$0
Mary to Mike	40%	66,667	66,667	0
Total	**100%**	**$166,667**	**$166,667**	**$0**

If the trust account has a deposit of $166,667 at one bank, then Mary to Sally's interest of the deposit is $100,000 (60% of $166,667) and Mary to Mike's interest of the deposit is $66,667 (40% of $166,667). Any deposit in excess of $166,667 will result in uninsured deposits.

Revocable Trusts With Non-qualifying Beneficiaries Who Have Equal Interests

If a formal revocable trust provides a bequest to a non-qualifying beneficiary, the portion of the deposits allocated to the non-qualifying beneficiary will not be insured in the revocable trust ownership category. Instead, the deposit related to the non-qualifying beneficiary will be insured as the trust owner's single account funds and will be added to any other single account funds the owner may have at the same bank, and the total insured up to $100,000.

Example 20 Formal Revocable Trust One Owner, Qualifying and Non-qualifying Beneficiaries Who Have Equal Interests	
Account Title	**Balance**
The Beatrice Singer Living Trust	$200,000
Beatrice Singer	20,000

Facts: Beatrice Singer's living trust states that, upon her death, all of the trust assets will belong equally to her husband and her nephew. Beatrice also has an account for $20,000 in her name alone (single ownership account) at the same bank. Beatrice has no other deposits at the bank.

Analysis:

1. *Who are the owners of the trust?* Beatrice Singer is the sole owner of the trust. She is also the owner of the single account.

2. *Who are the primary beneficiaries upon the death of the owner?* There are two beneficiaries named in the trust agreement: Beatrice's husband and Beatrice's nephew.

3. *Are the primary beneficiaries qualifying or non-qualifying beneficiaries?* The husband is a qualifying beneficiary; the nephew is a non-qualifying beneficiary.

4. *Is everyone named in the trust living – both owners and beneficiaries?* Yes. The owner and both beneficiaries are living.

5. *What is the dollar amount or percentage interest the owner has allocated to each primary beneficiary?* Each of the beneficiaries shares equally in the trust assets.

6. *Is the trust properly identified in the bank's records?* The account title "The Beatrice Singer Living Trust" would meet the FDIC's regulatory requirement.

Coverage for Example 20 can be stated as:					
Owner to Beneficiary	**Ownership Share**	**Revocable Trust Account**	**Single Account**	**Insured Amount**	**Uninsured Amount**
Beatrice to Husband	$ 100,000	$100,000		$100,000	$0
Beatrice to Nephew	100,000		$100,000	100,000	20,000
Beatrice Singer	20,000		20,000		
Total	**$220,000**	**$100,000**	**$120,000**	**$200,000**	**$20,000**

If the trust account has a balance of $200,000, the husband's share – $100,000 – would be insured under the revocable trust ownership category and the nephew's share – $100,000 – would be insured as Beatrice Singer's single account funds. If Beatrice already had a single account for $20,000, the nephew's interest ($100,000) would be added to her other single account funds and the total would be insured for $100,000, leaving $20,000 uninsured.

Revocable Trusts With Qualifying and Non-Qualifying Beneficiaries Who Have Unequal Interests

The examples in this section show the effect on insurance coverage when a trust has non-qualifying beneficiaries and the interests of the beneficiaries are unequal. As shown in the previous sections:

- When a formal revocable trust provides a bequest to a non-qualifying beneficiary, the portion of the deposits allocated to the non-qualifying beneficiary will be insured as the trust owner's single account funds and will be added to any other single account funds the owner may have at the same bank, and the total insured up to $100,000.

- When a trust provides that the beneficiaries are to receive different dollar amounts or percentage distributions, the best way to determine the maximum amount the trust can deposit at one bank – and have all its deposits fully insured – is to divide $100,000 by the interest of the beneficiary who will receive the largest portion of the trust's deposit.

Example 21 Formal Revocable Trust – One Owner Qualifying and Non-qualifying Beneficiaries With Unequal Interests	
Account Title	**Balance**
The Frank Kelly Revocable Trust	$300,000

Facts: Frank Kelly has a formal revocable trust that provides for the following distributions upon the death of the owner: 40% shall be distributed to his girlfriend (Michelle Carson); 35% shall be distributed to the owner's son; and 25% shall be distributed to the owner's daughter. Frank Kelly would like to deposit $300,000 at one bank but he wants to be sure that all of his deposits would be covered by FDIC insurance. Can a $300,000 deposit belonging to the Frank Kelly Revocable Trust be fully insured at one FDIC-insured bank?

Analysis:

1. *Who are the owners of the trust?* Frank Kelly is the sole owner named in the trust agreement.

2. *Who are the primary beneficiaries upon the death of the owner?* There are three beneficiaries identified in the trust agreement: the owner's girlfriend, son and daughter.

3. *Are the primary beneficiaries qualifying or non-qualifying beneficiaries?* Two of the three beneficiaries are qualifying. The son and daughter are qualifying but the girlfriend is not qualifying.

4. *Is everyone named in the trust living – both owners and beneficiaries?* Yes. The owner and all of the beneficiaries are living.

5. *What is the dollar amount or percentage interest the owner has allocated to each primary beneficiary?* The girlfriend is entitled to receive 40% of the trust assets, the son is entitled to receive 35%, and the daughter is entitled to 25% of the trust assets.

6. *Is the trust properly identified in the bank's records?* The account title "The Frank Kelly Revocable Trust" would meet the FDIC requirement.

Coverage for Example 21 can be stated as: **The Frank Kelly Revocable Trust** **Deposit Account Balance: $300,000**				
Owner to Beneficiary	**Beneficiary Percentage**	**Ownership Share**	**Insured Amount**	**Uninsured Amount**
Frank to Michelle Carson (girlfriend)	40%	$120,000	$100,000	$20,000
Frank to Son	35%	105,000	100,000	5,000
Frank to Daughter	25%	75,000	75,000	0
Total	**100%**	**$300,000**	**$275,000**	**$25,000**

Because the owner's girlfriend is a non-qualifying beneficiary, her interest in the trust deposit – $120,000 (40% of $300,000) – would be added to the owner's single ownership accounts (if any) at the bank and the total insured up to $100,000. In this example, $20,000 of the girlfriend's interest would be uninsured.

The other two beneficiaries meet the FDIC's kinship requirements (that is, they are qualifying beneficiaries). For this reason, the interest of each of the other beneficiaries would be insured separately up to $100,000 as revocable trust deposits. Because the son's share ($105,000, or 35% of $300,000) of the deposit exceeds $100,000, his share is insured for $100,000 and uninsured for $5,000. The daughter's share is less than $100,000 so her share is fully insured.

In summary, with a balance of $300,000, an account in the name of the Frank Kelly Revocable Trust would be insured in the amount of $275,000 and uninsured for $25,000.

It is important to note that if the Frank Kelly Revocable Trust had a deposit account at a bank with a balance of $275,000, that amount would not be fully insured; this figure is merely the insured amount when the trust's total deposit balance at one bank is $300,000.

To calculate the maximum deposit balance that can be fully insured for this trust at one FDIC-insured bank, divide $100,000 (the maximum insured amount per beneficiary) by the largest percentage interest allotted to a beneficiary. In this example, $100,000 is divided by 40%, which is the largest percentage allocated to a beneficiary (Michelle). Thus, the maximum account that this trust can deposit at one bank and have all the funds fully insured is $250,000.

Coverage for Example 21 can be stated as: **The Frank Kelly Revocable Trust – Maximum Fully Insured Amount = $250,000**				
Owner to Beneficiary	**Beneficiary Percentage**	**Ownership Share**	**Insured Amount**	**Uninsured Amount**
Frank to Michelle Carson (girlfriend)	40%	$100,000	$100,000	$0
Frank to Son	35%	87,500	87,500	0
Frank to Daughter	25%	62,500	62,500	0
Total	**100%**	**$250,000**	**$250,000**	**$0**

If the trust deposit totals $250,000 at one bank, then Frank to Michelle's interest of the deposit is $100,000 (40% of $250,000), Frank to his son's interest of the deposit is $87,500 (35% of $250,000) and Frank to his daughter's interest of the deposit is $62,500. Any deposit in excess of $250,000 will result in uninsured deposits.

Revocable Trusts with Beneficiaries Who Receive Lump Sum Cash Distributions

An additional consideration for coverage of formal revocable trusts is the timing of the beneficiary's receipt of the trust assets. If one or more beneficiaries are entitled to receive their funds before the distribution of trust assets to other beneficiaries, then this right could have a significant impact on the calculation of the amount of deposit insurance coverage.

Example 22
Formal Revocable Trust – One Owner
Lump Sum Distribution to Qualifying Beneficiary Less Than $100,000
Two Remainder Qualifying Beneficiaries With Equal Interests

Facts: Harry Lewis is the sole owner of a formal revocable trust titled "The Harry Lewis Living Trust." He wants to deposit the maximum amount of funds at one bank that can be fully covered by FDIC insurance. Harry is the sole owner of the trust, and he and his wife are co-trustees. Harry's attorney, Chris Thompson, is the successor trustee. The trust provides that Harry's wife, Suzy, is to receive $80,000 if Harry predeceases her; then, their two children, Betty and Jane, would receive equal shares of the remaining trust assets. Everyone named in the trust is living.

Analysis:

1. *Who are the owners of the trust?* Harry Lewis is the sole owner named in the trust agreement. (Since Suzy is a trustee and not an owner, her designation as trustee is irrelevant in calculating FDIC deposit insurance coverage for this deposit. The designation of Chris Thompson as successor trustee is also irrelevant in calculating FDIC deposit insurance coverage for this deposit.)

2. *Who are the primary beneficiaries upon the death of the owner?* There are three beneficiaries named in the trust agreement – Suzy, Betty and Jane.

3. *Are the primary beneficiaries qualifying or non-qualifying beneficiaries?* The spouse and children are all qualifying beneficiaries.

4. *Is everyone named in the trust living – both owners and beneficiaries?* Yes. The owner and the beneficiaries are living.

5. *What is the dollar amount or percentage interest the owner has allocated to each primary beneficiary?* The trust agreement provides that Harry's wife, Suzy, is to receive $80,000 before any other distributions. Assuming the trust assets exceed $80,000, then the two daughters will share equally in the remaining assets.

6. *Is the trust properly identified in the bank's records?* The account title "The Harry Lewis Living Trust" would meet the FDIC requirement.

Coverage for Example 22 can be stated as:

Owner to Beneficiary	Beneficiary % Interest	Ownership Share	Insured Amount	Uninsured Amount
Harry to Suzy	$80,000	$80,000	$80,000	$0
Harry to Betty	50% of remainder	100,000	100,000	0
Harry to Jane	50% of remainder	100,000	100,000	0
Total		**$280,000**	**$280,000**	**$0**

Suzy's lump sum distribution of $80,000 is insured in full since a qualifying beneficiary is insured up to $100,000. When lump sums of $100,000 or less are provided under a trust agreement, then the FDIC provides deposit insurance for the exact amount of the distribution. In addition, the distributions to the two daughters are equal and the FDIC provides insurance up to $100,000 for the interests of each child. Therefore, as shown above, the maximum amount that Harry Lewis can deposit in his trust at one bank and have all of the funds fully insured is $280,000.

Example 23
Formal Revocable Trust – One Owner
Lump Sum Distribution to Qualifying Beneficiary Greater Than $100,000
Two Remainder Equal Qualifying Beneficiaries

Facts: Jackie Lee wishes to open a deposit account linked to her living trust titled "The Jackie Lee Living Trust, dated January 5, 2007." She wants to deposit only the amount that can be fully insured at one bank without having any portion of the deposit uninsured. The trust indicates that she is the sole owner of the trust and the trustee. The trust provides that her husband, Robert, will receive $125,000 if she predeceases him and, then, their two sons, Joe and Sam, are to receive equal shares of the remaining trust assets. Everyone named in the trust is living.

Analysis:

1. *Who are the owners of the trust?* Jackie Lee is the sole owner named in the trust agreement.

2. *Who are the primary beneficiaries upon the death of the owner*? There are three beneficiaries named in the trust agreement – Robert, Joe and Sam.

3. *Are the primary beneficiaries qualifying or non-qualifying beneficiaries?* Jackie's husband (Robert) and two sons (Joe and Sam) are all qualifying beneficiaries.

4. *Is everyone named in the trust living – both owners and beneficiaries?* Yes. The owner and beneficiaries are living.

5. *What is the dollar amount or percentage interest the owner has allocated to each primary beneficiary?* The trust agreement provides that Jackie's husband, Robert, is to receive $125,000 before any other distributions. Only after this lump sum distribution is satisfied will the remaining assets be distributed equally to the two sons, Joe and Sam.

6. *Is the trust properly identified in the bank's records?* The account title "The Jackie Lee Living Trust" would meet the FDIC requirement.

The maximum amount that Jackie Lee can deposit at one FDIC-insured bank and have all of her funds fully insured is $100,000. Since the most that can be insured from an owner naming a specific qualifying beneficiary is $100,000, the bequest from Jackie to Robert will limit the maximum fully insured amount at one bank to $100,000. Any deposit over $100,000 will be allocated to Robert (up to $125,000) with the result that the amounts over $100,000 attributable to Robert would be uninsured.

When a Beneficiary or Owner Identified in the Formal Revocable Trust Dies

Coverage for revocable trust deposits is based on the bequest of an owner to each qualifying beneficiary. Stated another way, the FDIC insures the interest of each qualifying beneficiary provided by each trust owner in the bank deposit, up to $100,000 for the interests of each qualifying beneficiary per owner. The number of owners and qualifying beneficiaries is crucial in determining the amount of available FDIC insurance coverage. Therefore, when an owner or beneficiary of a trust dies, the amount of deposit insurance usually is significantly different than when everyone was living.

As previously discussed, FDIC rules allow for a six-month grace period when the owner dies. The rule provides for FDIC deposit insurance of the deceased owner's deposit accounts as if the owner were still living for six months after his or her death. The six-month grace period does not apply to the death of a beneficiary. The deposit insurance coverage is immediately reduced upon the death of a beneficiary.

Another way the death of an owner can affect FDIC coverage is when a revocable trust becomes an irrevocable trust or the original revocable trust splits into an AB trust (two trusts): a revocable trust and an irrevocable trust. There can be a significant reduction in FDIC deposit insurance coverage when a revocable trust converts to an irrevocable trust. The primary reason is the treatment of contingent interests when calculating FDIC deposit insurance coverage. While the FDIC does not consider the impact of contingencies on a beneficiary's trust interest when calculating deposit insurance coverage for revocable trusts, such contingencies are a factor when computing deposit insurance coverage for irrevocable trusts. See Chapter 6 for a full discussion of the FDIC's rules and requirements for insurance coverage of irrevocable trust deposits.

Example 24 Formal Revocable Trust – Two Owners Coverage After an Owner Dies	
Account Title	**Balance**
Abbot Family Trust	$600,000

<u>Facts</u>: Donald and Linda Abbot are the co-owners of a formal revocable trust that names the couple's three children – Kathy, Dennis and Joan – as equal beneficiaries to receive the trust assets after the last owner dies. The trust agreement provides that, following the death of the first owner, the trust shall be a revocable trust owned by the surviving spouse. The Abbots establish a $600,000 deposit at a bank where they have no other bank deposits. After the account is established, Donald dies. How does Donald's death affect FDIC insurance coverage for the Abbot Family Trust's bank deposit?

<u>Analysis</u>:

1. *Who are the owners of the trust?* Donald and Linda Abbot are equal co-owners of the trust.

2. *Who are the primary beneficiaries upon the death of the owner*? There are three beneficiaries named in the trust agreement – Kathy, Dennis and Joan.

3. *Are the primary beneficiaries qualifying or non-qualifying beneficiaries?* The couple's three children are all qualifying beneficiaries for both co-owners.

4. *Is everyone named in the trust living – both owners and beneficiaries?* Donald, a co-owner of the trust, died more than six months ago. Linda Abbot and the three children (beneficiaries) are living.

5. *What is the dollar amount or percentage interest the owner has allocated to each primary beneficiary?* The trust agreement provides that the trust assets shall be distributed equally to the three children upon Linda Abbot's death.

6. *Is the trust properly identified in the bank's records?* An account titled "The Abbot Family Trust" would meet the FDIC requirement.

***Coverage for Example 24* while both co-owners are alive can be stated as:**			
Owner to Beneficiary	**Ownership Share**	**Insured Amount**	**Uninsured Amount**
Donald to Kathy	$100,000	$100,000	$0
Donald to Dennis	100,000	100,000	0
Donald to Joan	100,000	100,000	0
Linda to Kathy	100,000	100,000	0
Linda to Dennis	100,000	100,000	0
Linda to Joan	100,000	100,000	0
Total	**$600,000**	**$600,000**	**$0**

After the expiration of the six-month grace period following Donald's death, total deposit insurance coverage for this account is reduced from $600,000 to $300,000.

Coverage for Example 24 after Donald dies (after expiration of six-month grace period) can be stated as:			
Owner to Beneficiary	**Ownership Share**	**Insured Amount**	**Uninsured Amount**
Linda to Kathy	$200,000	$100,000	$100,000
Linda to Dennis	200,000	100,000	100,000
Linda to Joan	200,000	100,000	100,000
Total	**$600,000**	**$300,000**	**$300,000**

The FDIC's deposit insurance regulations provide that the owner of a revocable trust account must be alive in order to qualify for coverage in the revocable trust account category. If Linda wishes to have her deposits fully insured, she can open a deposit account in the name of her trust at another FDIC-insured institution and obtain deposit insurance up to $100,000 for the interests of each qualifying beneficiary.

Example 25 Formal Revocable Trust – One Owner, Two Beneficiaries With Equal Interests Coverage After One Beneficiary Dies	
Account Title	**Balance**
Jonathan Stuart Living Trust	$200,000

<u>Facts</u>: Jonathan Stuart is the owner of a formal revocable trust that names his two parents as equal beneficiaries to share equally in the trust assets when he dies. Jonathan establishes a $200,000 deposit at a bank where he has no other bank deposits. After the account is established, Jonathan's father, Paul, dies. How does Paul's death affect FDIC insurance coverage for the Jonathan Stuart Living Trust's bank deposit?

<u>Analysis</u>:

1. *Who are the owners of the trust?* Jonathan Stuart is the sole owners of the trust.

2. *Who are the primary beneficiaries upon the death of the owner*? There are two beneficiaries named in the trust agreement – Jonathan's mother and father.

3. *Are the primary beneficiaries qualifying or non-qualifying beneficiaries?* Jonathan's parents are qualifying beneficiaries.

4. *Is everyone named in the trust living – both owners and beneficiaries?* One of the beneficiaries, Paul, died recently.

5. *What is the dollar amount or percentage interest the owner has allocated to each primary beneficiary?* The trust agreement provides that trust assets shall be distributed equally to Jonathan's mother and father. However, since his father has died, all of the trust deposits would go to Jonathan's mother when Jonathan dies.

6. *Is the trust properly identified in the bank's records?* An account titled "The Jonathan Stuart Living Trust" would meet the FDIC requirement.

*Coverage for Example 25, w*hile both beneficiaries are alive, can be stated as:			
Owner to Beneficiary	**Ownership Share**	**Insured Amount**	**Uninsured Amount**
Jonathan to Paul (father)	$100,000	$100,000	$0
Jonathan to Amy (mother)	100,000	100,000	0
Total	**$200,000**	**$200,000**	**$0**

*Coverage for Example 25, w*hen Paul dies, can be stated as:			
Owner to Beneficiary	**Ownership Share**	**Insured Amount**	**Uninsured Amount**
Jonathan to Amy	$200,000	$100,000	$100,000
Total	**$200,000**	**$100,000**	**$100,000**

Immediately upon Paul's death, the insurance coverage of this account is reduced from $200,000 to $100,000. The reduced insurance coverage reflects the existence of one revocable trust account owner with one qualifying beneficiary.

Example 26 Formal Revocable Trust – One Owner, Multiple Beneficiaries With Contingent Interests Converts to Irrevocable Trust When Owner Dies	
Account Title	**Balance**
The Kathleen Wilson Family Trust	$500,000

Facts: Kathleen Wilson names her five children as equal co-beneficiaries of her formal revocable trust, which converts to an irrevocable trust when Kathleen Wilson dies. The trust provides that the assets may be distributed equally to Kathleen's five children but contains conditions that affect the beneficiaries' ability to receive their trust shares after the owner dies. After establishing a fully insured $500,000 deposit at an FDIC-insured bank, Kathleen Wilson dies. What impact does her death have on FDIC coverage of the trust's deposits (after the expiration of the six-month grace period)?

Analysis:

1. *Who are the owners of the trust?* Kathleen Wilson (deceased) is the sole owner named in the trust agreement. The trust became an irrevocable trust when Kathleen died.

2. *Who are the primary beneficiaries upon the death of the owner*? There are five beneficiaries named in the trust agreement.

3. *Are the primary beneficiaries qualifying or non-qualifying beneficiaries?* The beneficiaries are all Kathleen's children, so they are all qualifying beneficiaries. It is important to note, however, that since the Kathleen Wilson Family Trust is now an irrevocable trust, the requirement that the beneficiaries meet the FDIC's kinship requirement is no longer relevant.

4. *Is everyone named in the trust living – both owners and beneficiaries?* No. The trust owner has died and the FDIC's six-month grace period has expired. All of the beneficiaries are living.

5. *What is the dollar amount or percentage interest the owner has allocated to each primary beneficiary?* The trust agreement provides that Kathleen's five children are to receive the trust assets equally upon her death. However, the trust agreement contains contingencies that affect whether the beneficiaries are entitled to receive the funds. These contingencies were not a factor in determining FDIC insurance coverage when the trust was revocable, but they are a critical factor now that the trust has become irrevocable.

6. *Is the trust properly identified in the bank's records?* An account titled "The Kathleen Wilson Family Trust" would meet the FDIC requirement.

Coverage for Example 26 while the owner and all beneficiaries are living **can be stated as:**			
Owner to Beneficiary	**Ownership Share**	**Insured Amount**	**Uninsured Amount**
Kathleen to Child-1	$100,000	$100,000	$0
Kathleen to Child-2	100,000	100,000	0
Kathleen to Child-3	100,000	100,000	0
Kathleen to Child-4	100,000	100,000	0
Kathleen to Child-5	100,000	100,000	0
Total	**$500,000**	**$500,000**	**$0**

While living, Kathleen established a deposit account for $500,000 that was fully insured under the FDIC's rules for insurance coverage of revocable trust deposits. Upon her death, however, the trust became irrevocable. The trust contains certain conditions on the receipt of trust funds by the beneficiaries. Because of these conditions, the beneficiaries' interests do not meet the "non-contingent trust interests" requirement in the FDIC's insurance regulations. (See Chapter 6.) Since the irrevocable trust rules apply following the expiration of the six-month grace period, all the children's interests are contingent trust interests and are added together and insured up to $100,000 as the owner's single account funds.

When Kathleen dies, coverage for Example 26 is reduced as follows:

Owner to Beneficiary	Ownership Share	Insured Amount	Uninsured Amount
Kathleen to Children (All children's interests are contingent)	$500,000	$100,000	$400,000
Total	**$500,000**	**$100,000**	**$400,000**

In this example, the death of the revocable trust owner has resulted in a decrease of FDIC deposit insurance coverage for the owner's trust from $500,000 to $100,000. The reduction in coverage results from the conversion of the trust from a revocable trust to an irrevocable trust, and the consequence of all beneficiaries having contingent interests.

Chapter 5: Life Estate Beneficiaries

A life estate interest is the right on the part of a beneficiary to receive income from a trust during the beneficiary's lifetime. In some cases, this life estate interest consists solely of the right to receive payments of interest or income. In other cases, the life estate interest includes the right to receive some or all of the trust assets (perhaps at the discretion of the trustee). For deposit insurance purposes, the FDIC does not distinguish between these cases.

While a life estate beneficiary is a beneficiary under the trust agreement, the entitlement is different from a typical beneficiary who is receiving either a specific percentage or dollar distribution. The FDIC considers a life estate beneficiary to be a primary beneficiary for calculation of deposit insurance coverage, except when the life estate beneficiary is also an owner of the trust. Under the FDIC's rules, the owner of a revocable trust will not be treated as a beneficiary of his or her own trust for deposit insurance purposes. (See discussion below.)

When a revocable trust creates a life estate interest for a life estate beneficiary, the trust also will create remainder interests for remainder beneficiaries. Following the death of the life estate beneficiary, any remaining trust funds will be payable to the remainder beneficiaries. A remainder beneficiary is therefore defined as one or more beneficiaries who are entitled to residual assets upon the death of the life estate beneficiaries. The FDIC considers a remainder beneficiary to be a primary beneficiary (along with the life estate beneficiary) for calculation of deposit insurance coverage.

Residual assets are defined for the purpose of deposit insurance coverage as the percentage or dollar amount that remains after specifically calculating the life estate beneficiary's interest in the trust assets.

FDIC Rule on Calculation of Life Estate Interests

The FDIC cannot predict the amount of funds that will be distributed in the future to a life estate beneficiary and remainder beneficiaries. In many cases, these amounts will depend upon discretion by a trustee. Because these amounts cannot be predicted, the FDIC has adopted the following special rule:

> *For living trusts accounts that provide for a life estate interest for designated beneficiaries and a remainder interest for other beneficiaries, unless otherwise indicated in the trust, each life estate holder and each remainder-man will be deemed to have equal interests in the trust assets for deposit insurance purposes*. 12 C.F.R. § 330(f)(3).

The FDIC has interpreted this rule to mean that a life estate interest shall be equal to the *average* interest of the trust beneficiaries (including the life estate beneficiary). The total amount of remainder interests shall be equal to the account balance less the life estate interest. Even though a life estate beneficiary may have the right under the trust agreement to use 100% of the assets and leave nothing for a remainder beneficiary, the FDIC's rule provides for equal recognition of the interests of the life estate beneficiary and the potential interests of the remainder beneficiaries.

Under the FDIC's regulations, a life estate beneficiary's interest is calculated by adding the total number of life estate beneficiaries and the total number of remainder beneficiaries named in the trust, then dividing this combined total into 100. This provides the percentage interest of the life estate beneficiary. Subtracting this percentage from 100% will provide the percentage of residual assets to be divided among the remainder beneficiaries.

Note About Other FDIC Requirements for Revocable Trusts

All of the FDIC's regulatory requirements for coverage of revocable trust deposits, discussed in Chapter 4, apply to the discussion of coverage for life estate and remainder beneficiaries of formal revocable trusts. The examples and analyses in this chapter assume that the trust deposits meet the FDIC's requirements for coverage of trust deposits under the revocable trust ownership category. These requirements are:

- The account title at the bank must indicate that the account is held pursuant to a trust by including terms such as "trust," "living trust," "family trust," "revocable trust" or similar language in the account title.

- The beneficiaries must be qualifying, meaning that the beneficiaries must be the owner's spouse, children, grandchildren, parents or siblings.

- The trust agreement must provide that the trust assets will belong to the beneficiaries upon the last owner's death. When determining coverage, FDIC will ignore any trust beneficiary who will have a trust interest only if another beneficiary dies.

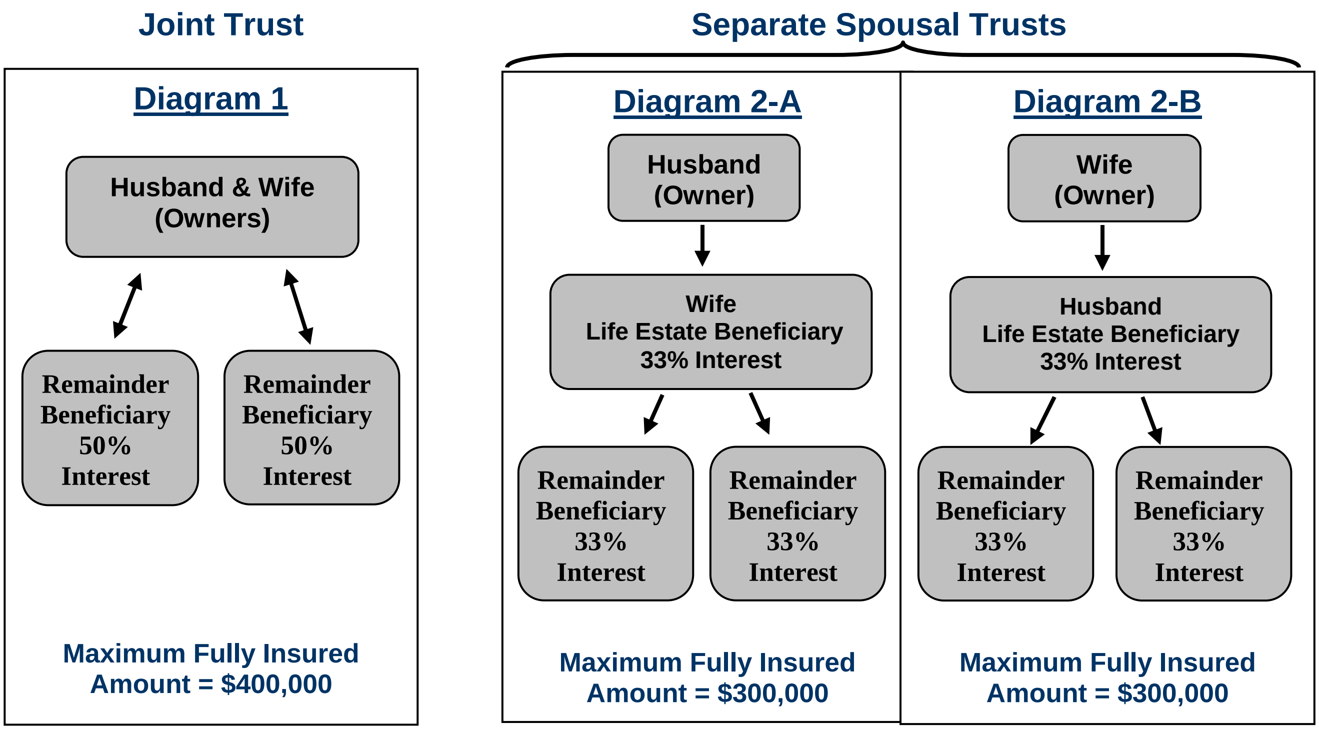
Common Family Trusts Involving Life Estate Interests

The following are the two most common scenarios of formal revocable trusts involving married couples that provide a life estate interest for a surviving spouse:

1. <u>Joint Trust for Husband and Wife</u>: A husband and wife are co-owners under a single trust agreement. Under the trust, when one of the two spouses dies, the surviving spouse will possess the right to receive interest and possibly the principal. In this scenario, while both owners are living, neither owner is treated as a life estate beneficiary for FDIC purposes. After both spouses have died, the funds pass to one or more beneficiaries.

2. <u>Separate Trust for Each Spouse</u>: Each spouse is the owner of his/her own trust. That is, the husband is the sole owner of a revocable trust; his wife is the sole owner of a separate revocable trust. Under the terms of both trust agreements, following the death of the owner, the surviving spouse will possess the right to receive interest and possibly principal from the other spouse's trust. In this scenario, while an owner is living, each trust owner's spouse is recognized as a life estate beneficiary for FDIC purposes. After both spouses have died, the funds pass to one or more beneficiaries.

The following diagrams illustrate how these two different types of formal revocable trusts are structured and the treatment of life estate beneficiaries under these different trust structures:



In Diagram 1, the husband and wife are co-owners of the trust assets. When one spouse dies, the trust funds first go to the surviving spouse as a life estate beneficiary. Upon the death of the second spouse, any residual assets will then be distributed to the remainder beneficiaries.

Under the FDIC's rules for insurance coverage of revocable trust deposits, the owner of a trust will not be treated as a beneficiary of his or her own trust. Therefore, in the case of a revocable trust that is jointly owned by a husband and wife (Diagram 1), neither owner is treated as a beneficiary for FDIC deposit insurance purposes while both owners are living. In such cases, insurance coverage is based on the interests of the remainder beneficiaries who will receive the remaining trust assets after both owners die.

In contrast, in the case where a husband and wife each establish a separate trust, then the owner's spouse is considered a life estate beneficiary for deposit insurance purposes. Under Diagrams 2-A and 2-B, each spouse has established a separate formal revocable trust. Under Diagram 2-A, if the husband predeceases his wife, then the husband's trust provides that the trust funds first go to his wife as a life estate beneficiary, then any remaining funds go to the remainder beneficiaries. Under Diagram 2-B, if the wife predeceases her husband, then the wife's trust provides that the trust funds first go to her husband as a life estate beneficiary, and then any remaining funds go to the remainder beneficiaries.

While Diagrams 2-A and 2-B are similar to Diagram 1 in terms of the beneficial interests provided the surviving spouse and remainder beneficiaries, the deposit insurance coverage provided for these two revocable trust structures is very different.

If all of the remainder beneficiaries are qualifying beneficiaries, then:

- The maximum insurance coverage available for the trust shown in Diagram 1 is $400,000, which is derived as follow: $100,000 X 2 Owners X 2 Beneficiaries. No insurance coverage is provided for the life estate interests since owners may not be beneficiaries of their own trust for deposit insurance purposes.

- In the case of Diagram 2-A and 2-B, the couple's maximum insurance coverage for deposits at one bank is $600,000, provided the funds are split evenly in the names of the husband's trust and the wife's trust as follows:

  - $300,000 maximum insurance coverage for the husband's trust deposits ($100,000 per beneficiary including the wife as a life estate beneficiary)

  - $300,000 maximum insurance coverage for the wife's trust deposits ($100,000 per beneficiary including the husband as a life estate beneficiary)

Determining Beneficiaries' Interests When Remainder Beneficiaries Have Equal Interests

If all remainder beneficiaries named in the formal revocable trust agreement receive equal percentages under the trust agreement (and all beneficiaries meet the FDIC kinship requirement), then the maximum fully insured amount is easy to calculate. Simply multiply the number of beneficiaries (life estate beneficiary and remainder beneficiaries) by $100,000 (assuming one owner).

For example, when a revocable trust provides for one life estate beneficiary and one remainder beneficiary, the maximum fully insured amount is $200,000 in total deposit insurance coverage (assuming one owner). If a trust agreement provides that there is one life estate beneficiary and two remainder beneficiaries with equal shares of the residual amount, then the maximum fully insured amount is $300,000 (assuming all of the beneficiaries are qualifying beneficiaries). Under this scenario, each qualifying remainder beneficiary increases the amount of insurance coverage by $100,000.

The following example illustrates how the FDIC's rule on life estate interests is applied to a specific trust:

Example 27
Formal Revocable Trust – One Owner
One Life Estate Beneficiary and One Remainder Beneficiary

Account Title	Balance
Sam Shaw Living Trust	$200,000

Facts: Sam Shaw has a living trust that gives his wife, Kate, a life estate interest. Upon Kate's death, the sole remainder beneficiary is Sam's son, Henry.

Analysis:

1. *Who are the owners of the trust?* Sam Shaw is the sole owner of the trust.

2. *Who are the primary beneficiaries upon the death of the owner?* Sam's wife, Kate, and his son, Henry, are the beneficiaries named in the trust agreement.

3. *Are the primary beneficiaries qualifying or non-qualifying beneficiaries?* Both the wife and son are qualifying beneficiaries.

4. *Is everyone named in the trust living – both owners and beneficiaries?* Yes. Everyone is living.

5. *What is the dollar amount or percentage interest each owner has allocated to each primary beneficiary?* The wife has a life estate interest. The son has a remainder interest in the trust and will

receive all the funds left in the trust after the wife dies. Under the FDIC's special rule for life estate interests, the wife and the son are treated as equal beneficiaries of the trust for deposit insurance purposes. Therefore, to calculate FDIC insurance coverage, assume that the two beneficiaries each have a 50% beneficiary interest in the trust.

6. *Is the trust properly identified in the bank's records?* The account title "The Sam Shaw Living Trust" would meet the FDIC's regulatory requirement.

Coverage for Example 27 can be stated as:		
Owner to Beneficiary	**Balance**	**Insured Amount**
Sam to Kate (wife) – 50% interest in the deposit	$100,000	$100,000
Sam to Henry (son) – 50% interest in the deposit	100,000	100,000
Total	**$200,000**	**$200,000**

Since there are two beneficiaries named and the life estate interest by definition is an equal interest, then the wife and the son are considered to each have a 50% interest for calculation of deposit insurance coverage. Therefore, the maximum amount of deposit insurance coverage available for deposits held by the Sam Shaw Living Trust at one bank is $200,000.

Determining Trust Interests: One Life Estate Beneficiary and Multiple Remainder Beneficiaries With Equal Interests

The following chart shows the calculation of beneficiary interests for formal revocable trusts with one life estate beneficiary and up to nine remainder beneficiaries who each have an equal beneficiary interest.

Determining Beneficiary Interests for Formal Revocable Trusts With One Life Estate Beneficiary and Remainder Beneficiaries				
Number of Life Estate Beneficiaries	**Number of Remainder Beneficiaries**	**Total Number of Primary Beneficiaries**	**% Interest of Life Estate Beneficiary in Trust Assets**	**% Interest of Residual Beneficiaries in Trust Assets**
1	1	2	100%/2 = **50.0%**	**50.0%**
1	2	3	100%/3 = **33.3%**	**66.7%**
1	3	4	100%/4 = **25.0%**	**75.0%**
1	4	5	100%/5 = **20.0%**	**80.0%**
1	5	6	100%/6 = **16.7%**	**84.3%**
1	6	7	100%/7 = **14.3%**	**85.7%**
1	7	8	100%/8 = **12.5%**	**87.5%**
1	8	9	100%/9 = **11.1%**	**88.9%**
1	9	10	100%/10 = **10.0%**	**90.0%**

Example 28 Formal Revocable Trust – One Owner One Life Estate Beneficiary and Three Remainder Beneficiaries Who Have an Equal Beneficiary Interest	
Account Title	**Balance**
Mark Carter Living Trust	$400,000

Facts: Mark Carter has a living trust that gives his wife, Ruth, a life estate interest. Upon Ruth's death, the couple's three children are designated as remainder beneficiaries.

Analysis:

1. *Who are the owners of the trust?* Mark Carter is the sole owner of the trust.

2. *Who are the primary beneficiaries upon the death of the owner?* Mark's wife, Ruth, and his three children are the beneficiaries named in the trust agreement.

3. *Are the primary beneficiaries qualifying or non-qualifying beneficiaries?* Both the wife and three children are qualifying beneficiaries.

4. *Is everyone named in the trust living – both owners and beneficiaries?* Yes. The owner and all four beneficiaries are living.

5. *What is the dollar amount or percentage interest the owner has allocated to each primary beneficiary?* The wife has a life estate interest. The three children have remainder interests in the trust and will receive equal shares of the remaining trust funds after the wife dies. Under the FDIC's special rule for life estate interests, the wife and the children are treated as equal beneficiaries of the trust for deposit insurance purposes. Therefore, to calculate FDIC insurance coverage, assume that the four beneficiaries each have a 25% beneficiary interest in the trust.

6. *Is the trust properly identified in the bank's records?* The account title "The Mark Carter Living Trust" would meet the FDIC requirement.

Coverage for Example 28 can be stated as:		
Owner to Beneficiary	**Balance**	**Insured Amount**
Mark to Ruth (wife) – 25% interest in the deposit	$100,000	$100,000
Mark to Child 1 – 25% interest in the deposit	100,000	100,000
Bill to Child 2 – 25% interest in the deposit	100,000	100,000
Bill to Child 3 – 25% interest in the deposit	100,000	100,000
Total	**$400,000**	**$400,000**

All four beneficiaries – the wife and the three children – have a 25% interest for calculation of deposit insurance coverage. Therefore, the maximum amount of deposit insurance coverage available for deposits held by the Mark Carter Living Trust at one bank is $400,000.

Determining Beneficiaries' Interests When Remainder Beneficiaries Have Unequal Interests (Different Shares or Dollar Amounts)

Calculation of the interests of life estate beneficiaries and remainder beneficiaries becomes more complicated when the remainder beneficiaries have different interests in the trust assets:

- The first step is to calculate the life estate beneficiary's interest in the trust prior to calculating the interests of other named beneficiaries. This is done by adding up the total number of all beneficiaries (including the life estate beneficiary) named in the trust and dividing that number into 100%, which will equal the life estate beneficiary's interest under the trust agreement. The life estate beneficiary's interest is then subtracted from 100% to obtain the residual amount. The residual amount is the percentage of the deposit allocated to the remainder beneficiaries to calculate deposit insurance coverage.

- Since the remainder beneficiaries receive different percentages or different dollar amounts, each remainder beneficiary's interest must be calculated pursuant to the terms of the trust agreement.

Example 29
Formal Revocable Trust
Multiple Beneficiaries Including a Life Estate Beneficiary and Remainder Beneficiaries
Beneficiaries Have Unequal Beneficiary Interests

Account Title	Balance
Teresa Short Revocable Trust	$400,000

<u>Facts:</u> A deposit account has been opened at an FDIC-insured bank in the name of the Teresa Short Revocable Trust. The balance of the account is $400,000. Under the terms of the trust agreement, following the death of the owner (Teresa Short), the owner's spouse (Bill Short) shall receive payments of interest during his lifetime. In addition, the spouse may receive payments of principal at the discretion of the trustee. Following Bill's death, any remaining funds shall be distributed as follows: (1) 20% to daughter Ann, (2) 30% to son Barry, and (3) 50% to daughter Catherine. All of the primary beneficiaries meet the FDIC's kinship requirement for qualifying beneficiaries.

Since we have a trust description that answers the requisite six questions, we can proceed to determine insurance coverage of the beneficiaries' interest:

i. Place the beneficiaries in the proper order.

ii. After placing the beneficiaries in the proper order, allocate funds to the initial beneficiary (the life estate beneficiary). In calculating the life estate interest, divide the account balance by the total number of beneficiaries to produce an average beneficiary interest.

iii. After allocating this amount to the life estate beneficiary, subtract this amount from the balance of the account. Then allocate the remaining amount to the remainder beneficiaries in accordance with the terms of the trust agreement.

iv. Apply the $100,000 limit for each qualifying beneficiary.

In the above example, the initial beneficiary is Bill Short. There are four beneficiaries in total: Bill and the three children. Under the procedure described above, Bill's life estate interest is one-fourth or 25% of $400,000. This means that Bill's life estate interest is $100,000.

The subtraction of $100,000 (Bill's life estate interest) from $400,000 (the balance of the account) leaves $300,000. This is the amount available for allocation to the remainder beneficiaries. Under the terms of the trust agreement, these funds ($300,000) must be allocated as follows: (1) 20% to Ann, (2) 30% to Barry and (3) 50% to Catherine. This allocation produces the following results: (1) Ann's interest is $60,000, (2) Barry's interest is $90,000 and (3) Catherine's interest is $150,000.

All of the beneficiaries are qualifying beneficiaries. This means that each beneficiary's interest is separately insurable up to $100,000. Application of the $100,000 limit produces the following results:

Coverage for Example 29 can be stated as:				
Owner to Beneficiary	**Beneficiary's % Interest**	**Ownership Share**	**Insured Amount**	**Uninsured Amount**
Teresa to Bill (spouse)	**25.0%**	$100,000	$100,000	$ 0
Teresa to Ann (daughter)	20% of 75% = **15.0%**	60,000	60,000	0
Teresa to Barry (son)	30% of 75% = **22.5%**	90,000	90,000	0
Teresa to Catherine (daughter)	50% of 75% = **37.5%**	150,000	100,000	50,000
Total	**100.0%**	**$400,000**	**$350,000**	**$50,000**

Determining the Maximum Deposit Amount With Full FDIC Insurance Coverage

When an owner wants to determine the maximum amount his formal revocable trust can deposit at one bank and have all of the funds fully insured, the owner could use the following formula:

> ***Divide $100,000*** *(FDIC insurance limit for the trust interests of a qualifying beneficiary)*
> ***by the largest percentage interest of any beneficiary in the trust deposits***

In Example 29 above, under the FDIC's special rule for calculating a life estate interest, Bill Short's interest in the account balance is 25%. This means that 75% of the account is available for allocation to Ann, Barry and Catherine. Catherine is the beneficiary with the largest interest; Catherine's interest in the remaining assets is 50%. Catherine's interest in the entire account balance is 37.5% (50% of 75%). Therefore, the maximum amount that the Teresa Short Revocable Trust can deposit at one bank and have all the funds fully insured = $100,000 divided by 37.5% (.375) = $266,667. This is the maximum amount that the Teresa Short Revocable Trust should place in this account if the owner wants the funds to be fully insured. With this balance, Catherine's 37.5% beneficiary interest would be $100,000 exactly (37.5% of $266,667 = $100,000).

A deposit by the Teresa Short Revocable Trust at one bank in excess of $266,667 would push Catherine's interest in the deposit account beyond the $100,000 insurance limit.

Coverage for Example 29 can be stated as: **The Teresa Short Revocable Trust – Maximum Fully Insured Amount = $266,666**				
Owner to Beneficiary	**Beneficiary's % Interest**	**Ownership Share**	**Insured Amount**	**Uninsured Amount**
Teresa to Bill (spouse)	**25.0%**	$ 66,666	$ 66,666	$0
Teresa to Ann (daughter)	20% of 75% = **15.0%**	40,000	40,000	0
Teresa to Barry (son)	30% of 75% = **22.5%**	60,000	60,000	0
Teresa to Catherine (daughter)	50% of 75% = **37.5%**	100,000	100,000	0
Total	**100.0%**	**$266,666**	**$266,666**	**$0**

Note that all of the calculations above are based on the assumption that the owner and all beneficiaries are living. The calculation of coverage would be different if a beneficiary is deceased.

When a Life Estate Beneficiary Dies

When a beneficiary with a life estate interest in a formal revocable trust dies, the residual assets (if any) will pass to one or more remainder beneficiaries as provided in the trust agreement. Example 30 (below) shows the impact on FDIC insurance coverage of revocable trust deposits when the life estate beneficiary of a revocable trust dies and the trust assets pass to the remainder beneficiaries.

Example 30 Formal Revocable Trust Multiple Beneficiaries Including a Life Estate Beneficiary and Remainder Beneficiaries Beneficiaries Have Unequal Beneficiary Interests	
Account Title	**Balance**
Teresa Short Revocable Trust	$400,000

Facts: Using the Teresa Short Revocable Trust example above, assume that Bill (the owner's spouse with the life estate interest) is deceased. In this scenario, daughter Catherine's interest in the deposit account (the largest beneficial interest) would be larger since the funds available for distribution to the three children would not be reduced by Bill's life estate interest. Catherine's interest in the trust account would be 50% instead of 37.5%. Thus, the maximum amount that could be fully insured at one bank is $200,000 instead of $266,666.66. The $200,000 amount is determined as follows: $100,000 (the insurance limit) divided by 50% (representing the largest beneficiary interest) = $200,000.

With a deposit balance of $200,000, the Teresa Short Revocable Trust's funds would be allocated to the beneficiaries as follows:

Coverage for Example 30 can be stated as: **Teresa Short's Revocable Trust – After the Life Estate Beneficiary Has Died** **Maximum Fully Insured Amount = $200,000**				
Owner to Beneficiary	**Beneficiary % Interest**	**Ownership Share**	**Insured Amount**	**Uninsured Amount**
Teresa to Ann	20%	$ 40,000	$ 40,000	$0
Teresa to Barry	30%	60,000	60,000	0
Teresa to Catherine	50%	100,000	100,000	0
Total	**100%**	**$200,000**	**$200,000**	**$0**

If the Teresa Short Revocable Trust were to deposit more than $200,000 at one FDIC-insured bank after the life estate beneficiary (Bill) has died, some portion of the trust's deposits would be uninsured. If the trust deposits at one bank exceed $200,000, then Catherine's beneficiary interest (50%) in the trust deposits would exceed the $100,000 insurance limit.

Chapter 6: Irrevocable Trusts

An irrevocable trust account is a deposit account held in the name of a trust established by statute or written trust agreement that cannot be terminated or revoked by the grantors. In order for a trust deposit to qualify for FDIC insurance coverage as an irrevocable trust account, the trust must be a valid trust under state law.

An irrevocable trust may come into existence upon the death of an owner of a formal revocable trust (or if a trust has multiple owners, the portion of the trust attributed to the revocable trust owner who has died). The reason is that the owner no longer can revoke or change the terms of the trust.

Even though an irrevocable trust may arise from a formal revocable trust, the FDIC's rules for the two types of trusts are different. The FDIC's rules for irrevocable trust accounts are explained in detail below.

FDIC Rules for Insurance Coverage of Irrevocable Trust Deposits

The applicable section of the FDIC's insurance regulations is 12 C.F.R. § 330.13. That section provides, in part, as follows:

> Funds representing the "non-contingent trust interest(s)" . . . 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 beneficiaries of the irrevocable trust(s) at the same insured depository institution. Each "trust interest" . . . 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. 12 C.F.R. § 330.13(a).

Under this section of the FDIC's regulations, the interests of a beneficiary in all deposit accounts established by the same grantor and held at a bank under an irrevocable trust are added together and insured up to $100,000. If an irrevocable trust has two or more grantors, then coverage is provided separately for the beneficiaries named by each grantor.

FDIC Recordkeeping Requirements for Irrevocable Trusts

Under the FDIC's regulations, a bank deposit cannot be insured as an irrevocable trust account unless the account records of the insured bank disclose the existence of a trust relationship. This requirement can be satisfied by titling the account in the name of the trust (for example, The Smith Family Trust).

No Kinship Requirement for Irrevocable Trusts

Per beneficiary coverage does not depend upon the kinship between the grantor and the beneficiaries of the irrevocable trust. In other words, in the irrevocable trust ownership category, the FDIC does not draw a distinction between qualifying and non-qualifying beneficiaries. Even if the beneficiaries are not the grantor's spouse, children, grandchildren, parents or siblings, per beneficiary coverage is possible. Indeed, per beneficiary coverage is possible even if the beneficiaries are not people but organizations such as charitable organizations.

Per beneficiary Coverage Available for Non-contingent Interests Only

Per beneficiary coverage is only available when the beneficiary's interest is a non-contingent trust interest. This term is defined as follows:

> *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 § 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. 12 C.F.R. § 330.1(l).

In the case of any irrevocable trust in which the interests of some or all of the beneficiaries do not satisfy this definition of non-contingent trust interest, the deposits representing the contingent interests are added together and insured up to $100,000 in the aggregate. 12 C.F.R. § 330.13(b).

The following are examples of situations in which the FDIC would *not* provide per beneficiary coverage because the beneficiaries' interests are contingent interests under the FDIC's regulations:

- The trust agreement does not name the beneficiaries or provide any means of identifying the beneficiaries. In this situation, per beneficiary would not be possible because the trust includes no beneficiaries.

- The trust agreement provides that the trustee may divert funds from some beneficiaries to other beneficiaries (for example, for the medical needs of the second group of beneficiaries). In this situation, the interests of the first group of beneficiaries would be contingent upon the discretion of the trustee.

- The trust agreement provides that the beneficiaries shall receive no funds unless some condition is satisfied (for example, the beneficiaries must graduate from college). In this situation, the interests of the beneficiaries would be contingent upon the satisfaction of the condition.

It is important to note that FDIC regulations require the use of IRS actuarial tables to compute the value of a life estate interest under an irrevocable trust. The computation is based on the life estate beneficiary's estimated remaining life expectancy and the balance of the trust account. This requirement is significantly different from the FDIC's rule for valuation of life estate interests in revocable trust deposits.

Single Account Coverage for Interests Retained by Grantor

Under the FDIC's regulations, an irrevocable trust account cannot be insured on a per beneficiary basis to the extent that the grantor retains an interest in the deposit funds. See 12 C.F.R. § 330.1(q), which provides that the term "trust interest" does not include any interest retained by the settlor. If the grantor retains an interest, then the funds are insured to the grantor in the single ownership category.

Summary

Under FDIC regulations, the deposits contributed by a grantor to an irrevocable trust account are insured as follows:

- To the extent that the grantor retains an interest in the trust assets, the funds are insured to the grantor in the single ownership category. In the case of most irrevocable trust accounts, the grantor does not retain an interest because the grantor is deceased (that is, the irrevocable trust sprung from a revocable trust when the grantor died). Consequently, in most cases, the funds are not insured to the grantor in the single ownership category. Rather, the funds are insured as described below.

- To the extent that the interests of some or all of the beneficiaries are subject to contingencies, the deposits are added together and insured up to $100,000 for the entire trust. Per beneficiary coverage is not available for contingent trust interests.

- To the extent that the interests of a beneficiary are non-contingent, the funds for each beneficiary are separately insured up to $100,000.

Important Note: The FDIC's experience indicates that, in many cases, the interests of beneficiaries of an irrevocable trust are subject to contingencies that negate eligibility for per beneficiary coverage. When irrevocable trust deposits do not represent the non-contingent interests of identifiable beneficiaries, the FDIC cannot provide insurance coverage up to $100,000 on a per beneficiary basis. Rather, coverage is limited to $100,000 for the entire trust account.

In light of the prevalence of contingencies in irrevocable trust agreements, the trustee of an irrevocable trust may wish to place no more than $100,000 of an irrevocable trust's funds at any insured bank. A grantor or trustee of an irrevocable trust account should consult with a legal or financial advisor if there are questions about conditions or contingencies in the trust.

Calculating Coverage for Irrevocable Trust Accounts

While the FDIC's irrevocable trust regulations (12 C.F.R. § 330.13) do not prescribe a specific methodology for calculating FDIC insurance coverage for deposits based on irrevocable trust agreements, answers to the following questions are required to determine coverage for irrevocable trust deposits. Answers to these questions should be analyzed together to accurately calculate the FDIC deposit insurance coverage for a specific trust agreement.

The six questions that must be answered to determine FDIC insurance coverage for an irrevocable trust account are:

1. *Who are the grantors of the trust?*

2. *Who are identified as the primary beneficiaries?*

3. *What is dollar amount or percentage interest allocated by each grantor to each primary beneficiary? (This includes any specific lump sum amounts to be distributed to any beneficiary prior to the allocation by percentages.)*

4. *Are there any contingencies or conditions associated with the beneficiaries receiving their beneficiary interests?*

5. *Is everyone named in the trust deposit living – both grantors and beneficiaries? If the grantor is living, does the grantor retain an interest in the trust?*

6. *Is the trust properly identified in the bank's records?*

Note that these six questions for irrevocable trusts are different from the questions used to calculate coverage for formal revocable trusts. The differences between the two sets of questions – that is, the questions used for formal revocable trusts vs. irrevocable trusts – are:

- There is no kinship requirement for irrevocable trusts, so there is no need to determine whether a beneficiary is a qualifying beneficiary for an irrevocable trust.

- For irrevocable trusts, we need to determine whether there are any contingent interests or conditions that affect the distribution to one or more of the primary beneficiaries.

The other questions used for formal revocable trusts are also relevant for irrevocable trusts. For irrevocable trusts, you still will need to identify the grantors and all of the beneficiaries, and determine whether the grantors and beneficiaries are living. You will also need to determine whether there is a life estate beneficiary, which would require calculation of the life estate beneficiary's interest using IRS actuarial tables. The analysis of primary and alternative beneficiaries is still relevant in performing the calculation (provided none of the beneficiaries' interests is contingent). Finally, you will need to verify whether the FDIC's account titling requirements have been met.

Example 31
Formal Revocable Trust Converts to Irrevocable Trust Upon Grantor's Death
(After the Expiration of the Six-Month Grace Period)

Facts: Martha Green, who was the sole owner of a family trust, died last year. Before her death, Martha opened a certificate of deposit in the name of her trust, which identifies her five children as equal beneficiaries upon her death. Under the trust agreement, each beneficiary must reach the age of 21 to receive an equal share of the trust assets. In addition, under the trust, the trustee can reallocate 100% of the funds to any beneficiary for medical needs as deemed necessary. Now that Martha has died and the trust is irrevocable, the trustee is wondering what is the maximum amount of trust assets he can keep on deposit at the bank and ensure the funds are fully insured.

Analysis:

1. *Who are the grantors of the trust?* There is one grantor named in the trust agreement, Martha Green.

2. *Who are the primary beneficiaries?* There are five primary beneficiaries named in the trust agreement, Martha's children.

3. *What is the dollar amount or percentage interest allocated by each grantor to each primary beneficiary?* Each child is to receive an equal share.

4. *Are there any contingencies or conditions associated with the beneficiaries receiving their beneficiary interests?* The fact that the trustee can reallocate 100% of the funds to any beneficiary for medical needs as deemed necessary indicates that the beneficiaries' interests are contingent.

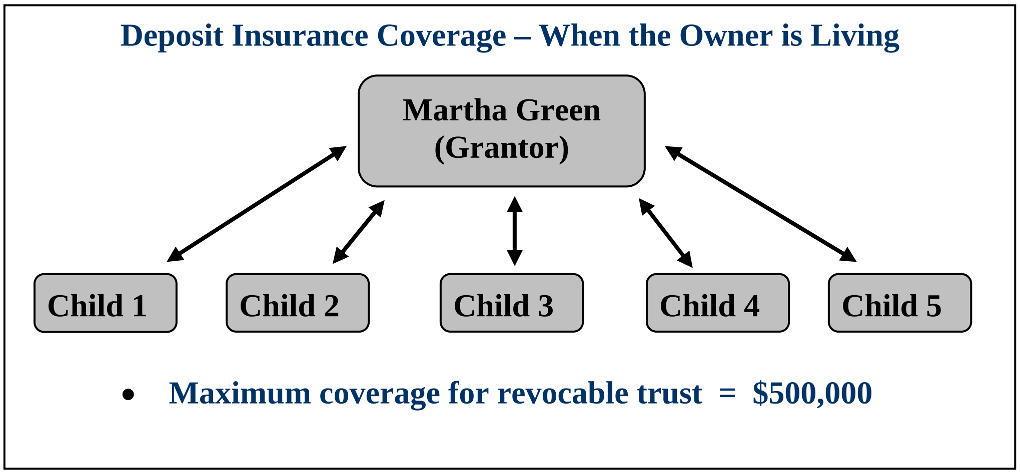
5. *Is everyone named on the trust deposit living – both grantors and beneficiaries?* The beneficiaries are living. The grantor, Martha Green, has died and therefore cannot retain an interest in the trust.

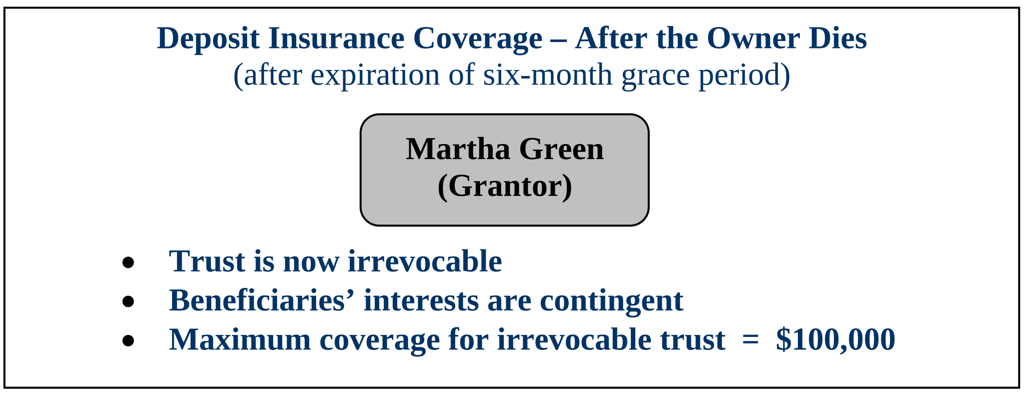
6. *Is the trust properly identified in the bank's records?* The account title "The Martha Green Family Trust" would meet the FDIC requirement.

With the answers to the above questions, you can determine the maximum amount of FDIC insurance coverage available at one bank under this trust agreement. In this example, the maximum fully insured amount at one bank for this trust agreement is $100,000. This coverage limit is $100,000 in total because the interests of all the beneficiaries are contingent upon specific conditions identified in the trust.

Note that when Martha Green was living, her trust deposits would have been insured as revocable trust deposits up to $500,000 ($100,000 per qualifying beneficiary). FDIC rules for revocable trusts specifically state that the FDIC will ignore any contingencies when determining coverage for revocable trust deposits. Therefore, contingencies are only a factor in determining FDIC coverage for irrevocable trusts. This example illustrates how the death of the owner of a revocable trust can result in a significant reduction in FDIC coverage for the trust's deposits, and the importance of reviewing FDIC insurance coverage after the owner of a revocable trust dies.

The following diagrams illustrate the impact of the trust owner's death on FDIC insurance coverage of bank deposits held in the name of the Martha Green Family Trust.





Example 32
Death of a Formal Revocable Trust Owner – Trust Splits into A/B Trust
(After Expiration of Six-Month Grace Period)

<u>Facts</u>: Thomas and Laura Mitchell (husband and wife) established a joint revocable trust five years ago. Thomas died one year ago and, at that time, the joint trust split into A and B trusts. Following Thomas's death, two deposit accounts were opened: (1) an account in the name of the A trust and (2) an account in the name of the B trust. These are the only deposit accounts held by the A and B trusts at the same bank. The terms applicable to the A and B trusts are described below:

- The A trust is revocable and Laura is the sole owner. The terms are similar to the A trust (that is, the couple's four children – Alex, Bonny, Carl and Donna – are entitled to receive equal shares of the trust assets after Laura's death).

- The B trust is irrevocable and contains Thomas's interest in the original trust. Laura has a life estate interest in the B trust and is entitled to receive the net income from the trust at least quarterly. Eric Mitchell (not a grantor or beneficiary) is named as the trustee. The B trust provides that the trustee can invade the trust assets to provide for care if Laura incurs a catastrophic medical illness or condition. Upon Laura's death, Thomas and Laura's four children – Alex, Bonny, Carl and Donna – are to receive equal shares of the remaining trust assets.

Analysis of Coverage for the A Trust:

1. *Who are the owners of the trust?* Laura Mitchell is the sole owner of this revocable trust. (Reminder: Since Eric Mitchell is a trustee and not an owner, his designation as trustee is irrelevant in calculating FDIC deposit insurance coverage for this deposit.)

2. *Who are identified as the primary beneficiaries upon the death of the owner?* Four beneficiaries are identified in the trust: Alex Mitchell, Bonny Mitchell, Carl Mitchell and Donna Mitchell

3. *Are the primary beneficiaries qualifying or non-qualifying beneficiaries?* All four of the beneficiaries are the owner's children and, thus, are qualifying beneficiaries.

4. *What is the dollar amount or percentage interest the owner has allocated to each primary beneficiary?* The four beneficiaries share equally in the trust assets. Therefore, each of the beneficiaries has a 25% interest in the trust assets.

5. *Is everyone named on the trust deposit living – both owners and beneficiaries?* Yes.

6. *Is the trust properly identified in the bank's records?* An account titled "The Laura Mitchell Survivor's (A) Trust" would meet the FDIC requirement.

With the answers to the above questions, you can determine the maximum fully insured amount at one FDIC-insured bank under this trust agreement. The total A trust is insured for $400,000 ($100,000 for the trust interests of each of Laura Mitchell's four children). The dollar amount attributable to each beneficiary is $100,000 since each beneficiary is entitled to an equal share of the trust assets.

Coverage for Example 32 – The Laura Mitchell Survivor's (A) Trust – can be stated as:		
Owner to Beneficiary	**Beneficiary % Interest**	**Maximum Fully Insured Amount**
Laura to Child 1	25%	$100,000
Laura to Child 2	25%	100,000
Laura to Child 3	25%	100,000
Laura to Child 4	25%	100,000
Total Insured	**100%**	**$400,000**

<u>Analysis of Coverage for B Trust:</u>

1. *Who are the grantors of the trust?* Thomas Mitchell is the sole grantor and is deceased. Since six months have passed since Thomas' death, the FDIC's grace period does not apply. (Reminder: Since Eric Mitchell is a trustee and not a grantor, his designation as trustee is irrelevant in calculating FDIC deposit insurance coverage for this deposit.)

2. *Who are identified as the primary beneficiaries?* Five beneficiaries are named: Laura Mitchell has a life estate interest in the trust; Alex Mitchell, Bonny Mitchell, Carl Mitchell and Donna Mitchell are remainder beneficiaries.

3. *What dollar amount or percentage interest has each grantor allocated to each primary beneficiary?* There is a life estate beneficiary interest requiring an actuarial computation, and four remainder beneficiaries who share equally in the remainder assets. FDIC regulations require computation of the value of a life estate interest in an irrevocable trust using IRS actuarial tables, which is significantly different from the FDIC's rules for coverage of revocable trust deposits. The computation is based on Laura's estimated remaining life expectancy and the balance of the trust funds. For this example, we have assumed that Laura's life estate interest in the trust deposits is valued at $30,000.

4. *Are there any contingencies or conditions associated with the beneficiaries receiving their beneficiary interest?* The trust provides for equal shares of the trust assets for the four children after Laura's death. However, since the trust states that the trustee can invade the trust to provide for Laura's care if she incurs a catastrophic medical illness or condition, this contingency results in all four of the children's interests being insured by the FDIC as contingent interests. All four of the children's interests in the trust are added together and insured up to $100,000.

5. *Is everyone named in the trust living – both grantors and beneficiaries?* Thomas Mitchell is deceased, which resulted in the establishment of the B trust as an irrevocable trust.

6. *Is the trust properly identified in the bank's records*? A deposit account titled "The Thomas and Laura Mitchell Marital ('B') Trust" would satisfy the FDIC titling requirement. The trustee's records must contain the list of all named beneficiaries in the trust. The identities and interests of the beneficiaries' interests must be ascertainable from the records of the trustee or the institution.

With the answers to the above questions, you can determine the maximum amount of deposit insurance coverage available at a single FDIC-insured institution under this trust agreement. As explained above, Laura's life estate interest in the trust deposits is assumed to be $30,000. The four children's contingent interests are added together and insured up to $100,000. The maximum fully insured amount for the B trust is $130,000.

Coverage for Example 32 – The Thomas Mitchell Decedent's (B) Trust – can be stated as:		
Beneficiary Interests	**Beneficiary % Interest or $ Allocation**	**Maximum Fully Insured Amount**
Thomas to Four Children	100%	$100,000
Laura's Life Estate Interest	Computed to be $30,000	$30,000
Total Insured		**$130,000**

Summary of the deposit insurance coverage for the A and B trusts: Deposits opened at one FDIC-insured bank using the B trust are insured up to $130,000. Deposits at one bank using the A trust can be insured up to $400,000.

When both of the original co-owners were alive, naming their four children as beneficiaries, the trust deposits could have been insured up to $800,000. The death of one owner, and the split of the revocable trust into the A and B trusts, resulted in the reduction of deposit insurance coverage for the combined trust funds.

If the trust had not split into AB trusts and instead became a revocable trust with one owner under the same terms and conditions of the B trust, then the reduction in the deposit insurance coverage would have been $400,000. That is, the revocable trust owned solely by Laura Mitchell would be eligible for up to $400,000 in deposit insurance coverage at one FDIC-insured bank.

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PART 330—DEPOSIT INSURANCE COVERAGE

Sec.

AUTHORITY: 12 U.S.C. 1813(*l*), 1813(m), 1817(i), 1818(q), 1819(Tenth), 1820(f), 1821(a), 1822(c).
SOURCE: The provisions of this Part 330 appear at 55 Fed. Reg. 20111, May 15, 1990, except as otherwise noted.

§ 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 subsection 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 § 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. {{4-28-06 p.2352}}

(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) Standard maximum deposit insurance amount, referred to as "the SMDIA" hereafter, means $100,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the FDI Act (12 U.S.C. 1821(a)(1)(F)). The current SMDIA is $100,000. All the examples in this regulation use the current SMDIA of $100,000.

(o) *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.

(p) *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.

(q) *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.

[Codified to 12 C.F.R. § 330.1]

[Section 330.1 amended at 58 Fed. Reg. 29963, May 25, 1993, effective December 19, 1993; 63 Fed. Reg. 25756, May 11, 1998, effective July 1, 1998; 71 Fed. Reg. 14631, March 23, 2006, effective April 1, 2006]

§ 330.2 Authority and 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.

[Codified to 12 C.F.R. § 330.2]

[Section 330.2 amended at 58 Fed. Reg. 29963, May 25, 1993, effective June 24, 1993; 63 Fed. Reg. 25756, May 11, 1998, effective July 1, 1998]

§ 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 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
{{4-28-06 p.2353}}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
{{4-28-06 p.2354}}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).

[Codified to 12 C.F.R. § 330.3]

[Section 330.3 amended at 63 Fed. Reg. 25757, May 11, 1998, effective July 1, 1998; 64 Fed. Reg. 15656, April 1, 1999]

§ 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.

[Codified to 12 C.F.R. § 330.4]

[Section 330.4 amended at 63 Fed. Reg. 25757, May 11, 1998, effective July 1, 1998]

§ 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.

{{8-31-06 p.2355}}

(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 the 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 {{8-31-06 p.2356}}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.

[Codified to 12 C.F.R. § 330.5]

[Section 330.5 amended at 63 Fed. Reg. 25758, May 11, 1998, effective July 1, 1998; 64 Fed. Reg. 15656 April 1, 1999]

§ 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 the SMDIA 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 § 330.1(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 the SMDIA 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 the SMDIA 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 the SMDIA 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 an insurance coverage provided for the individual deposit accounts of the executor, administrator, other personal representative or the beneficiaries of the estate.

[Codified to 12 C.F.R. § 330.6]

[Section 330.6 amended at 60 Fed. Reg. 7709, February 9, 1995, effective March 13, 1995; 63 Fed. Reg. 25759, May 11, 1998, effective July 1, 1998; 71 Fed. Reg. 14631, March 23, 2006, effective April 1, 2006]

{{4-28-06 p.2357}}

§ 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 the SMDIA, separately from any other accounts maintained by that person in the same insured depository institution.

[Codified to 12 C.F.R. § 330.7]

[Section 330.7 amended at 60 Fed. Reg. 7710, February 9, 1995, effective March 13, 1995; 63 Fed. Reg. 25759, May 11, 1998, effective July 1, 1998; 71 Fed. Reg. 14631, March 23, 2006, effective April 1, 2006]

§ 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 the SMDIA 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.

[Codified to 12 C.F.R. § 330.8]

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[Section 330.8 amended at 63 Fed. Reg. 25759, May 11, 1998, effective July 1, 1998; 71 Fed. Reg. 14631, March 23, 2006, effective April 1, 2006]

§ 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 twice the SMDIA, 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 the SMDIA. (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.

(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 {{4-28-06 p.2359}}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.

[Codified to 12 C.F.R. § 330.9]

[Section 330.9 amended at 63 Fed. Reg. 25759, May 11, 1998, effective July 1, 1998; 64 Fed. Reg. 15656, April 1, 1999; 64 Fed. Reg. 62102, November 16, 1999; 71 Fed. Reg. 14631, March 23, 2006,

effective April 1, 2006]

§ 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 the SMDIA 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 the SMDIA 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 the SMDIA. 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

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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 trust accounts*. (1) This section also applies to revocable trust accounts held in connection with a formal revocable trust created by an owner/grantor and over which the owner/grantor retains ownership during his or her lifetime. These trusts are usually referred to as living trusts. If a named beneficiary in a living trust is a qualifying beneficiary under this section, then the account held in connection with the living trust if eligible for the per-qualifying-beneficiary coverage described in paragraph (a) of this section. This coverage will apply only if, at the time an insured depository institution fails, a qualifying beneficiary would be entitled to his or her interest in the trust assets upon the grantor's death and that ownership interest would not depend on the death of another trust beneficiary. If there is more than one grantor, then the beneficiary's entitlement to the trust assets must be upon the death of the last grantor. The coverage provided in this paragraph (f) shall be irrespective of any other conditions in the trust that might prevent a beneficiary from acquiring an interest in the deposit account upon the account owner's death.

(*Example 1:* A is the owner of a living trust account with a deposit balance of $300,000. The trust provides that, upon A's death, her husband shall receive $100,000 and each of their two children shall receive $100,000, but only if the children graduate from college by age twenty-four. Assuming A has no other revocable trust accounts at the same depository institution, the coverage on her living trust account would be $300,000. The trust names three qualifying beneficiaries. Coverage would be provided up to $100,000 per qualifying beneficiary regardless of any contingencies.)

(*Example 2:* B is the owner of a living trust account with a deposit balance of $200,000. The trust provides that, upon B's death, his wife shall receive $200,000 but, if the wife predeceases B, each of the two children shall receive $100,000. Assuming B has no other revocable trust accounts at the same depository institution and his wife is alive at the time of the institution failure, the coverage on his living trust account would be $100,000. The trust names only one beneficiary (B's spouse) who would become the owner of the trust assets upon B's death. If when the institution fails B's wife has predeceased him, then the account would be insured to $200,000 because the two children would be entitled to the trust assets upon B's death.)

(2) The rules in paragraph (c) of this section on the interest on non-qualifying beneficiaries apply to living trust accounts. (*Example:* C is the owner of a living trust account with a deposit balance of $200,000. The trust provides that upon C' s death his son shall receive $100,000 and his nephew shall receive $100,000. The account would be insured for *at least* $100,000 because one qualifying beneficiary (C's son) would become the owner of trust interests upon C's death. Because the nephew is a non-qualifying beneficiary entitled to receive an interest in the trust upon C's death, that interest would be considered C's single-ownership funds and insured with any other single-ownership funds C might have at the same institution. Assuming C has no other single-ownership funds at the institution, the full $200,000 in the living trust account would be insured ($100,000 in C's revocable trust account ownership capacity and $100,000 in C's single-ownership account capacity).

(3) For living trusts accounts that provide for a life-estate interest for designated beneficiaries and a remainder interest for other beneficiaries, unless otherwise indicated in the trust, each life-estate holder and each remainder-man will be deemed to have equal interests in the trust assets for deposit insurance purposes. Coverage will then be provided under the rules in this paragraph (f) up to the SMDIA per qualifying beneficiary.

(*Example 1:* D creates a living trust providing for his wife to have a life-estate interest in the trust assets with the remaining assets going to their two children upon the wife's death. The assets in the trust are $300,000 and a living trust deposit account is opened for that full amount. Unless otherwise indicated in the trust, each beneficiary (all of whom here are qualifying beneficiaries) would be deemed to own an equal share of the $300,000; hence, the full amount would be insured. This result would be the same even if the wife has the power to invade the principal of the trust, inasmuch as defeating contingencies are not relevant for insurance purposes.)

(*Example 2:* E creates a living trust providing for a life estate interest for her spouse and remainder interests for two nephews. The life estate holder is a qualifying beneficiary (E's spouse) but the remainder-men (E's nephews) are not. Assuming a deposit account balance of $300,000, the living trust account would be insured for *at least* $100,000 because there is one qualifying beneficiary (E's {{6-30-06 p.2361}}spouse). The $200,000 attributable to E's nephews would be insured as E's single-ownership funds. If E has no other single-ownership funds at the same institution, then $100,000 would be insured separately as E's single-ownership funds. Thus, the $300,000 in the living trust account would be insured for a total of $200,000 and $100,000 would be uninsured.)

(4) In order for a depositor to qualify for the living trust account coverage provided under this paragraph (f), the title of the account must reflect that the funds in the account are held pursuant to a formal revocable trust. There is no requirement, however, that the deposit accounts records of the depository institution indicate the names of the beneficiaries of the living trust and their ownership interests in the trust.

(5) Effective April 1, 2004, this paragraph (f) shall apply to all living trust accounts, unless, upon a depository institution failure, a depositor who established a living trust account before April 1, 2004, chooses coverage under the previous living trust account rules. For any depository institution failures

occurring between January 13, 2004 and April 1, 2004, the FDIC shall apply the living trust account rules in this revised paragraph (f) if doing so would benefit living trust account holders of such failed institutions.

[Codified to 12 C.F.R. § 330.10]

[Section 330.10 amended at 58 Fed. Reg. 29963, May 25, 1993, effective June 24, 1993, except for paragraph (a), which is effective December 19, 1993; 60 Fed. Reg. 7710, February 9, 1995, effective March 13, 1995; 63 Fed. Reg. 25760, May 11, 1998, effective July 1, 1998; 64 Fed. Reg. 15657, April 1, 1999; 68 Fed. Reg. 2829, January 21, 2004, effective April 1, 2004; 71 Fed. Reg. 14631, March 23, 2006, effective April 1, 2006]

§ 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 the SMDIA 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 (15 U.S.C. 80a-8) 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. An exception to this paragraph (a)(2) shall exist for any trust or other business arrangement established by a state or that is a state agency or state public instrumentality as part of a qualified tuition savings program under section 529 of the Internal Revenue Code (26 U.S.C. 529)), A deposit account of such a trust or business arrangement shall not be deemed to be the deposit of a corporation provided that: The funds in the account may be traced to one or more particular investors or participants; and the existence of the trust relationships is disclosed in accordance with the requirements of § 330.5. If these conditions are satisfied, each participant's funds shall be insured as a deposit account of the participant.

(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 the SMDIA 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 the SMDIA in the aggregate, separately from the accounts of the person(s) or entity(ies) comprising the unincorporated association. An unincorporated association shall be deemed
{{6-30-06 p.2362}}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 the SMDIA in the aggregate.

[Codified to 12 C.F.R. § 330.11]

[Section 330.11 amended at 60 Fed. Reg. 7710, February 9, 1995, effective March 13,1995; 63 Fed. Reg. 25761, May 11, 1998, effective July 1, 1998; 70 Fed. Reg. 33692, June 9, 2005; 70 Fed. Reg. 62059, October 28, 2005, effective December 27, 2005; 71 Fed. Reg. 14631, March 23, 2006, effective April 1, 2006]

§ 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(p)) 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 the SMDIA 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(o)) 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).

[Codified to 12 C.F.R. § 330.12]

[Section 330.12 amended at 58 Fed. Reg. 29664, May 25, 1993, effective June 24, 1993, except for paragraphs (c) and (d)(3), which are effective December 19, 1993; 58 Fed. Reg. 40688, July 29, 1993; 60 Fed. Reg. 7710, February 9, 1995, effective July 1, 1995; 63 Fed. Reg. 25761, May 11, 1998, effective July 1, 1998; 71 Fed. Reg. 14631, March 23, 2006, effective April 1, 2006]

§ 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 the SMDIA 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(q)) in any irrevocable trust {{10-31-06 p.2363}}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 the SMDIA in the aggregate. Such insurance coverage shall be in addition to the coverage provided for the funds 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 the SMDIA, separately from the funds of any other such estate.

[Codified to 12 C.F.R. § 330.13]

[Section 330.13 amended at 58 Fed. Reg. 29964, May 25, 1993, effective December 19, 1993; 63 Fed. Reg. 25761, May 11, 1998, effective July 1, 1998; 71 Fed. Reg. 14631, March 23, 2006, effective April 1, 2006]

§ 330.14 Retirement and other employee benefit plan accounts.

(a) "Pass-through" insurance. Any deposits of an employee benefit plan in an insured depository institution shall be insured on a "pass-through" basis, in the amount of up to the SMDIA for the non-contingent interest of each plan participant, provided the rules in § 330.5 are satisfied. Deposits eligible for coverage under paragraph (b)(2) of this section that also are deposits of a employee benefit plan or deposits of an 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 $250,000 for the non-contingent interest of each plan participant, provided the rules in § 330.5 are satisfied.

(b) *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. 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 $250,000 per participant:

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

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

(iii) 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.

(c) *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.

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(3) *Amounts taken into account*. For the purposes of applying the rule under paragraph (b)(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.

(d) *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 the SMDIA in the aggregate.

(e) *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 the SMDIA, separately from any other deposits.

(f) *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 assocation 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 § 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.

[Codified to 12 C.F.R. § 330.14]

[Section 330.14 amended at 63 Fed. Reg. 25762, May 11, 1998, effective July 1, 1998; 64 Fed. Reg. 15657, April 1, 1999; 71 Fed. Reg. 14631 March 23, 2006, effective April 1, 2006; 71 Fed. Reg. 53550, September 12, 2006, effective October 12, 2006]

§ 330.15 Accounts held by government depositors.

(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 the SMDIA in the aggregate for all time and savings deposits; and

(ii) Up to the SMDIA 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 the SMDIA in the aggregate for all time and savings deposits; and

(B) Up to the SMDIA 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 {{6-30-06 p.2365}}unit is located, shall be insured in the amount of up to the SMDIA 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 the SMDIA in the aggregate for all time and savings deposits; and

(B) Up to the SMDIA 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 the SMDIA 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 the SMDIA in the aggregate for all time and savings deposits; and

(B) Up to the SMDIA 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 the SMDIA 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 the SMDIA in the aggregate for all time and savings deposits; and

(ii) Up to the SMDIA 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
{{6-30-06 p.2366}}beneficiaries, and the beneficial interest of each noteholder or bondholder in the deposit shall be separately insured up to the SMDIA.

(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.