Deposit Insurance Coverage of Revocable Trust Accounts

FDIC
Federal Deposit Insurance Corporation
Division of Compliance and Consumer Affairs
Washington, D.C. 20429 1-877-275-3342

April 1, 1999

Re: **Deposit Insurance Coverage of Revocable Trust Accounts**

Dear Depositor:

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

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

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

The separate insurance coverage of revocable trust accounts is dependent upon the settlor's intention that upon the death of the settlor, the funds in the account "shall belong" to the settlor's spouse, children, grandchildren, parents, brothers or sisters. ("Child" includes a biological child, adopted child, and stepchild of the owner. "Grandchild" includes a biological child, adopted child, and stepchild of any of the owner's children. "Parent" includes a biological parent, adoptive parents, and stepparents of the owner. "Brother" includes a full brother, half brother, brother through adoption, and stepbrother. "Sister" includes a full sister, half sister, sister through adoption, and stepsister.) This requirement does not necessarily mean that the funds must be distributed outright to the beneficiary upon the settlor's death. However, it does mean that the beneficiary must have a vested interest in his or her share of the trust fund upon the settlor's death (as defined by the Guidelines, page 4). Revocable trust documents, however, frequently contain one or more contingencies which make it impossible for the beneficiary to have a vested interest in the trust. These are referred to as "defeating contingencies" (see the Guidelines, pages 5 - 6). When a defeating contingency exists, the trust funds are insured as if they were the individually owned funds of the trust settlor or grantor. For example, Mr. Jones has $100,000 in an individually-owned bank account and $150,000 in the same bank in a trust account subject to a defeating contingency; the FDIC would treat the $150,000 as if it were the individually-owned funds of Mr. Jones. The $150,000 would be added to the $100,000 for a total of $250,000, and Mr. Jones would be insured for only $100,000.

The same treatment is given to a trust account when the beneficiary of the trust is someone other than the parent, sibling, spouse, child or grandchild of the settlor. (See pages 6 - 7 of the Guidelines for an example of what happens when husband-and-wife settlors name one beneficiary who is a child and one beneficiary who is a nephew.) The same treatment will also occur when a trust account is not titled properly (see page 2 of the Guidelines), or when a depositor fails to list his beneficiaries by name in his depository institution's deposit account records (page 2 of the Guidelines).

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

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

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

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

I hope that this information will prove useful to you.

Sincerely,

Hugh Eagleton

Senior Consumer Affairs Specialist

Enclosures

(livtrltr4199)

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April 1, 1999

Insurance of Revocable Trust Accounts Including Living Trusts

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

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

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

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

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

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

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

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

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

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

In order to understand how the above regulation works, one must first have some general knowledge about the FDIC's insurance rules. Under the FDIC's rules, deposits in a bank or savings association are insured according to the "right" or "capacity" in which they are held. The terms "right" and "capacity" refer to the manner in which the accounts are held, such as jointly-owned accounts, trust accounts or individually-owned accounts. **All** accounts (including savings or checking accounts and certificates of deposit) owned by a depositor in the **same** right and capacity

within the same insured institution will be added together and insured for up to $100,000. (Of course, a depositor cannot be insured for more than he/she holds in all such accounts.) Deposits maintained in **different** rights and capacities are separately insured for up to $100,000. What the rule quoted above means is that, if a revocable trust beneficiary is the parent, sibling, spouse, child or grandchild of the trust owner, that may entitle the trust owner, or "settlor," to even more insurance coverage than he/she would otherwise receive -- up to $100,000 **times** the number of settlors living when the depository institution goes into default **times** the number of qualifying beneficiaries (parent, sibling, spouse, child or grandchild of the settlor) then living who have a vested interest in the trust upon the death of the last settlor to die.

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

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

The Insurance Coverage of More Difficult Revocable Trust Accounts

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

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

> (1) there must be one or more qualifying beneficiaries to benefit from the trust (that is, one or more of the beneficiaries upon the death of the last settlor must be the spouse, child, grandchild, parent or sibling of a settlor); and
>
> (2) a qualifying beneficiary, at the death of the last settlor, must have a vested or non-contingent interest in the trust (such that the funds might be said to "belong" to the beneficiary). This "vested or non-contingent interest" for revocable trusts is defined far differently from the "vested or non-contingent interest" for irrevocable trusts and should not be confused with the irrevocable trust's definition.

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

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

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

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

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

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

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

The Basic Operation of the Rule

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

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

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

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

Upon the death of the first spouse, the trust remains revocable (because the surviving spouse still has the power to revoke it), and the rules for revocable trusts continue to apply. Once again, the qualifying beneficiaries who will have a vested interest in the trust upon the death of the last settlor are the four children. Thus, if the depository institution should fail when the surviving spouse is alive, the trust would be insured for a maximum amount equal to the number of settlors then living (1) **times** the number of qualifying beneficiaries then living (4) **times** $100,000 = $400,000. Upon the death of the surviving spouse -- that is, upon the death of the last settlor -- the trust usually becomes irrevocable (because usually only the settlors have the power to revoke the trust and once they have died that power is gone). Because the trust is irrevocable, one must apply the regulation for irrevocable trusts. According to that regulation, in order for a beneficiary's interest to receive separate insurance coverage, the beneficiary need not be only the spouse, child, grandchild, parent or sibling of the settlor. Instead, the rule for irrevocable trusts adds together all of the "non-contingent trust interests" of the same beneficiary that are created by the same settlor (in one or more irrevocable trusts) and insures that beneficiary's total interest which is derived from that settlor for up to $100,000, with such coverage remaining separate from that provided for other accounts maintained by the settlors, trustees or beneficiaries of the irrevocable trust (or trusts) at the same insured depository institution. In addition, each trust interest in any irrevocable trust established by two or more settlors is deemed to be derived from each settlor pro rata to his or her actual contribution to the trust. Meanwhile, all interests of an irrevocable trust which are deemed to be contingent are added together and insured for up to $100,000, separately from the coverage for non-contingent interests. The FDIC defines a "non-contingent trust interest" as it applies to irrevocable trusts as a trust interest capable of

determination without evaluation of contingencies except for those covered by the present worth or life expectancy tables of the Internal Revenue Code. *See* 12 C.F.R. § 330.13; 12 C.F.R. § 330.1(l).

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

The Effect of a Defeating Contingency

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

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

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

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

What Happens to the Interests of Nonqualifying Beneficiaries?

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

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

nephew's beneficial interest derived from the wife will be combined with any individually-owned funds of the wife and insured in the aggregate to $100,000. As to the remaining amounts -- the $100,000 held by the husband for the benefit of his son and the $100,000 held by the wife for the benefit of this same son -- each amount will be separately insured for up to the maximum amount of $100,000, or a total of $200,000 in insurance coverage for their son's interest in the trust.

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

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

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

(livtr4199)