

## Chapter 1

### ***Introduction to the Claims Manual***

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#### **Contents**

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This chapter contains the Introduction to the FDIC Claims Deposit Insurance Manual – Volume II (“Claims Manual – Volume II”):

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#### **Overview**

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The Division of Resolutions and Receiverships (DRR) Claims Manual-Volume II provides policies and procedures for performing the deposit insurance determination function associated with a failed financial institution. The manual also contains the regulatory framework that provides for separate insurance in each type of ownership category.

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#### **Scope of Manual**

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The Claims Manual – Volume II provides the framework in which to make deposit insurance determinations. Because deposit insurance coverage is based on the concept of ownership rights and capacities, and since ownership categories are insured separately from one another, separate chapters have been developed for each type of ownership category. Contained within those chapters are the specific requirements that must be met before a depositor may qualify for deposit insurance under that category. Links to examples reflecting the correct application of the requirements are also presented. Since this manual focuses on the policies and general procedures to be employed when determining deposit insurance, it does not provide guidance for every situation that may arise.

The Claims Manual – Volume II should be used in conjunction with other reference and resource tools that contain relevant material relating to deposit insurance. These include but are not limited to:

[Deposit Brokers' Web Site](#)  
[FDIC DRR Claims Computer Based Instruction \(CBI\)](#)  
[FDIC DRR Certificate in Deposit Insurance Claims](#)  
[FDIC – Rules and Regulations; Part 330](#)  
[Deposit Insurance Coverage](#)  
[Claims Manual – Volume I](#)  
[Claims Administration System \(CAS\) Participant Guide](#)

Generally, the Claims Manual – Volume II will not duplicate the guidance and materials found in the above referenced resources. Therefore, Claims personnel performing deposit insurance determinations should be familiar with the above referenced materials.

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## Organization of Manual

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The Claims Manual is divided into two (2) Volumes. Volume I primarily focuses on the policies and procedures relative to performing the Claims function (matters other than deposit insurance determinations) while Volume II focuses on how to perform the deposit insurance determination function.

Within Volume II, separate chapters have been created for each ownership category and, generally, parallel the order found in 12 C.F.R. 330.

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## Chapter Organization

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Each Chapter within the manual will typically have the following component parts:

**Overview** - This provides useful background information on the specific topic of that Chapter.

**Policy Statement** - Provides guidance relative to the rules.

**Legal Reference** - Provides the statute(s) and regulations applicable to the deposit insurance determination process associated with a particular ownership category.

**Definitions** - An explanation of terms common to that type of ownership category.

**Insurance Determination** - A procedures component that discusses how to accomplish the tasks at hand.

This organizational structure is intended to provide the reader with a systematic approach for finding material within each chapter, thereby enhancing the value and usability of the manual.

**The following supporting documentation is located in the Policy and Procedure Manager Program (PPM):**

**Documentation** - Lists the material that may be needed for determining insurance coverage on a depositor.

**Examples** - Provides situations and the proper application of requirements when calculating insurance coverage.

**Exhibits** - Provides the forms that need to be completed when performing insurance coverage for that category type.

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## Chapter 2

### Overview of the Deposit Insurance Determination Process

#### Contents

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#### Overview

The deposit insurance regulations provide separate deposit insurance coverage for funds based on ownership rights and capacities. In the following chapters, the determination of deposit insurance for each category of ownership will be discussed. This chapter is intended to provide an overview of the deposit insurance determination process regardless of the ownership category.

#### Policy Statement

It is the policy of the FDIC to make deposit insurance determinations in accordance with the Rules and Regulations promulgated pursuant to the Federal Deposit Insurance Act (FDI Act) and applicable statutes.

#### Legal Reference

Many of the general insurance principles are included within the Federal Deposit Insurance Act (FDI Act) 12 U.S.C. 1821 as well as 12 C.F.R 330.

## Definitions

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Certain words and terms important in the deposit insurance determination process are defined in law and/or regulation. However, the following terms are unique to the FDIC's claims process:

### **Download**

The capture of the deposit liabilities in the form of electronic data from the failed (or failing) institution as of a certain date.

### **Claim / Group**

One or more accounts, aggregated by ownership type that is over or potentially over the limit of deposit insurance (\$250,000).

### **Claims Association / Grouping**

The process of aggregating accounts by depositor and ownership category.

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## Insurance Determination Process

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The process of making deposit insurance determinations is a combination of manual and electronic tasks. The Receivership Liability System (RLS) and the Claims Administration System (CAS) are used for many of these functions; however, there are still manual steps that must be performed.

Once the institution has been closed, the Business Information Section (BIS) of DRR obtains an electronic download of the deposit liabilities as of the closing date. BIS reconciles the download to the institution's deposit trial balances and loads the data to CAS or RLS. While BIS is doing that reconciling, Claims Specialists are reconciling and entering into CAS or RLS the institution's outstanding official items. See the Claims Manual Volume I, Section IV Chapter D: Download & Reconciliation of Official Items and CAS Participant Guide. Once the data (deposit liabilities and official items) is in CAS or RLS, the Claims Specialist (or administrator) performs the insurance determination process, setting parameters as described in the Claims Manual Volume I, [Section IV Chapter F: Insurance Determinations](#) the CAS Participant's Guide, and the RLS User's Manual, Appendix E: RLS Grouping Process Information.

After this initial grouping is performed, the Claims Specialist produces a grouping report from RLS or the Claims Association Report from CAS. The reports are reviewed and edited as described in the Claims Manual Volume I, Section IV Chapter F: Insurance Determinations or the CAS Participant Guide.

Once a final grouping report or exception processing is completed, additional RLS/CAS reports are produced. These include the Excess Register, the Excess Register-Pass Hold, the Uninsured Deposit Analysis form, and the XX/PH Worksheet for each individual group. In CAS, the Aggregation Summary Report is available online. These reports are described in the Claims Manual Volume I, Section IV Chapter F: Insurance Determinations. If needed, signature cards, certificate of deposit records and other depositor documentation available at the institution are obtained in order to make insurance determinations for those groups over or potentially over the insurance limit.

The Claims Specialist may also contact the depositor to complete the insurance determination. See the Claims Manual Volume I, Section IV Chapter J: Meeting With Customers of a Failed Institution, for information on meeting with the depositor to complete the determination. As an example, the Claims Specialist may ask for additional documentation, such as a Declaration for Testamentary Deposit form, in order to finalize the insurance determination for account(s) insured under the revocable trust category.

In some circumstances, the Claims Specialist may also request a legal opinion from FDIC Legal before finalizing the insurance determination.

To finalize the insurance determination, the Claims Specialist must process the paperwork and RLS/CAS transactions to either issue a Receivership Certificate to the depositor (if the depositor is uninsured), release the funds on hold if the depositor is determined to be fully insured, or a combination of both in the case of a depositor who is partially insured and partially uninsured. CAS automatically produces the Uninsured Determination. These procedures are described in the Claims Manual Volume I, Section IV Chapter K: Account Hold Release Process.

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The process of making deposit insurance determinations is a combination of manual and electronic tasks. The Claims Administration System (CAS) is used for many of these functions; however, there are still manual steps that must be performed. Once the institution has been closed, the Business Information Section (BIS) of DRR obtains an electronic download of the deposit liabilities. BIS reconciles the download to the institution's deposit trial balances and loads the data to CAS. Claims Agents input Official Items into an Excel template. Once completed and balanced with Proforma the spreadsheet will be loaded into CAS by BIS. See the Claims Manual Volume I, [Section IV Chapter D: Download & Reconciliation of Official Items](#).

Once the data (deposit liabilities and official items) are in CAS, the Claims Agents perform Exceptions Processing.

Once the Exceptions Processing is completed, the Claims Agent will Initiate Transactions and move the failed institution to the Post Closing Phase in CAS, [See CAS Participant Guide – Section \(Closing – Initiate Transactions\)](#).

In the Post Closing Phase, Claims Agents will gather, on an as needed basis, signature cards, certificate of deposit records and other depositor documentation available at the institution in order to make insurance determinations for those accounts over or potentially over the insurance limit.

The Claims Agent may also contact the depositor to complete the insurance determination. See the Claims Manual Volume I, [Section IV Chapter J: Meeting With Customers of a Failed Institution](#), for information on meeting with the depositor to complete the determination. The Claims Agent may ask for additional documentation, such as a Declaration for Testamentary Deposit form, in order to finalize the insurance determination for account(s) insured under the revocable trust category.

In some circumstances, the Claims Agent may also request a legal opinion from FDIC Legal before finalizing the insurance determination.

To finalize the insurance determination, the Claims Agent must process the paperwork and CAS transactions to either issue a Notice of Insured Determination Letter to the depositor (if the depositor is uninsured), release the funds on hold if the depositor is determined to be fully insured, or a combination of both in the case of a depositor who is partially insured and partially uninsured. At the time of Initiate Transaction in CAS, a RC number will automatically generate. The Notice of Insured Determination Letter and Request for Additional Information letters are available to be produced in bulk. These procedures are described in the Claims Manual Volume I, [Section IV Chapter K: Account Hold Release Process](#).

The general flow of work relating to the deposit insurance determination process is as follows. Steps 1 through 7 occur in the Closing Phase and the remaining steps are Post Closing

#### ACTIONS

1. BIS obtains the deposit download
2. BIS reconciles deposit trial balances
3. Claims prepares the Official Item spreadsheet
4. BIS imports the Official Items into CAS
5. Claims performs Exceptions Processing in CAS
6. Claims Initiates Transactions in CAS
7. CAS generates RC Transactions for uninsured deposits
8. Claims generates Notice of Insurance Determination (NID) and Request for Additional Information Letters
9. Claims uses APSS to speak with depositors and obtain additional information.
10. Claims obtains Legal opinions as needed or required.
11. Claims makes final insurance determinations
12. Claims processes paperwork / CAS transactions to release account holds or issue NID letters.

## Chapter 3

### Deposit Insurance Rules and Regulations

#### Contents

This chapter contains the following information on Deposit Insurance Rules and Regulations:

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#### Overview

“The Federal Deposit Insurance Act provides that the net amount due to any depositor at an insured depository institution shall not exceed the Standard Maximum Deposit Insurance Amount (SMDIA)...” 12 U.S.C. § 1821(a)(1)(B). The Act also provides that the FDIC, in applying this \$250,000 limit, “shall aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor in the same capacity and the same right for the benefit of the depositor...” 12 U.S.C. § 1821(a)(1)(C). On the basis of this statutory language, the FDIC has recognized certain categories of deposit accounts (accounts held by a depositor in the same “capacity and right”) that are insured separately up to the \$250,000 limit (SMDIA).

What follows are the FDIC deposit insurance regulations. The rules and regulations described here are delineated in Part 330-Deposit Insurance Coverage. The provisions of this Part 330 appear at 63 Fed. Reg. 25756, can be found at <http://www.fdic.gov/regulations/laws/rules/2000-5400.html> May 11, 1998, except as otherwise noted. Part 330 is periodically updated.

## Chapter 4

### **General Insurance Principles**

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#### Contents

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#### Overview

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Certain concepts or “principles” are the basis for determining deposit insurance coverage. These concepts are embedded in law or regulation. Knowledge of these concepts is required in order to make proper deposit insurance determinations. Such concepts or “principles” are discussed in this chapter.

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#### Policy Statement

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It is the policy of the FDIC to make deposit insurance determinations in accordance with the Rules and Regulations promulgated pursuant to the Federal Deposit Insurance Act (FDI Act) and applicable statutes.

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#### Legal Reference

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Many of the general insurance principles are included within the Federal Deposit Insurance Act (FDI Act) 12 U.S.C.1821, 12 U.S.C.

1813 as well as [12 C.F.R. 330.3](#), [12 C.F.R. 330.4](#), [12 C.F.R. 330.5](#) and [12 C.F.R. 204.8](#).

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## Definitions

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Certain words and terms important in the deposit insurance process are defined in law and/or regulation. Because of the significance of those definitions, some of them are included verbatim below:

### Deposit

See 12 U.S.C. 1813 (I). (**Verbatim**)

(I) The term “deposit” means--

1. the unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the bank or savings association, or a letter of credit or a traveler’s check on which the bank or savings association is primarily liable: Provided, That, without limiting the generality of the term “money or its equivalent”, any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts, or other instruments forwarded to such bank or savings association for collection.

2. trust funds as defined in this act received or held by such bank or savings association, whether held in the trust department or held or deposited in any other department of such bank or savings association.

3. money received or held by a bank or savings association, or the credit given for money or its equivalent received or held by a bank or savings association, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to, escrow funds, funds held as security for an obligation due to the bank or savings association or others (including funds held as dealers reserves) or for securities loaned by the bank or savings association, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes: Provided, That there shall not be included

funds which are received by the bank or savings association for immediate application to the reduction of an indebtedness to the receiving bank or savings association, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness.

4. outstanding draft (including advice or authorization to charge a bank's or savings association's balance in another bank or savings association), cashier's check, money order, or other officers check issued in the usual course of business for any purpose, including without being limited to those issued in payment for services, dividends, or purchases, and

5. such other obligations of a bank or savings association as the Board of Directors, after consultation with the Comptroller of the Currency, Director of Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System, shall find and prescribe by regulation to be deposit liabilities by general usage, except that the following shall not be a deposit for any of the purposes of this Act or be included as part of the total deposits or of an insured deposit:

(A) any obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State, unless-

- (i) such obligation would be a deposit if it were carried on the books and records of the depository institution, and would be payable at, an office located in any State; and
- (ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State;

(B) any international banking facility deposit, including an international banking facility time deposit, as such term is from time to time defined by the Board of Governors of the Federal Reserve System in regulation D or any successor regulation issued by the Board of Governors of the Federal Reserve System.

(C) any liability of an insured depository institution that arises under an annuity contract, the income of which is tax deferred under section 72 of the Internal Revenue Code of 1986.

### **Insured Deposit**

See 12 U.S.C. 1813 (m). (**Verbatim**)

1. IN GENERAL. - Subject to paragraph (2), the term "insured deposit" means the net amount due to any depositor for deposits in an insured depository institution as determined under sections 7(i) and 11(a).

2. In the case of any deposit in a branch of a foreign bank, the term, "insured deposit" means an insured deposit as defined in paragraph (1) of this

subsection which-

- (A) is payable in the United States to-
  - (i) an individual who is a citizen or resident of the United States,
  - (ii) a partnership, corporation, trust or other legally cognizable entity created under the laws of the United States or any State and having its principal place of business within the United States or any State, or
  - (iii) an individual, partnership, corporation, trust, or other legally cognizable entity which is determined by the Board of Directors in accordance with its regulations to have such business or financial relationships in the United States as to make the insurance of such deposit consistent with the purposes of this Act; and
- (B) meets any other criteria prescribed by the Board of Directors by regulation as necessary or appropriate in its judgment to carry out the purposes of this Act or to facilitate the administration thereof.

3. UNINSURED DEPOSITS. - The term “uninsured deposit” means the amount of any deposit of any depositor at any insured depository institution in excess of the amount of the insured deposits of such depositor (if any) at such depository institution.

4. PREFERRED DEPOSITS. - The term “preferred deposits” means deposits of any public unit (as defined in paragraph (1)) at any insured depository institution which are secured or collateralized as required under State law.

### **Coverage for Certain Employee Benefit Plan Deposits**

See 12 U.S.C. 1821 (a)(1)(D) (**Verbatim**)

- (i) Pass-through insurance The Corporation shall provide pass-through deposit insurance for the deposits of any employee benefit plan.
- (ii) Prohibition on acceptance of benefit plan deposits An insured depository institution that is not well capitalized or adequately capitalized may not accept employee benefit plan deposits.
- (iii) Definitions For purposes of this subparagraph, the following definitions shall apply:
  - (I) **Capital Standards** - The terms “well capitalized” and “adequately capitalized” have the same meanings as in section 1831o of this title.
  - (II) **Employee Benefit Plan** - The term “employee benefit plan” has

the same meaning as in paragraph (5)(B)(ii), and includes any eligible deferred compensation plan described in section 457 of title 26.

(III) **Pass-through Deposit Insurance** - The term “pass-through deposit insurance” means, with respect to an employee benefit plan, deposit insurance coverage based on the interest of each participant, in accordance with regulations issued by the Corporation.

### **International Banking Facility or IBF**

See 12 C.F.R. 204.8 (**Verbatim**)

(a) (1) International banking facility or IBF means a set of asset and liability accounts segregated on the books and records of a depository institution, United States branch or agency of a foreign bank, or an Edge or Agreement Corporation that includes only international banking facility time deposits and international banking facility extensions of credit.

### **International Banking Facility Time Deposit or IBF Time Deposit**

See 12 C.F.R. 204.8 (**Verbatim**)

(a) (2) *International banking facility time deposit or IBF time deposit* means a deposit, placement, borrowing or similar obligation represented by a promissory note, acknowledgment of advance, or similar instrument that is not issued in negotiable or bearer form, and

(i)(A) That must remain on deposit at the IBF at least overnight;  
and

(B) That is issued to

(1) Any office located outside the United States of another depository institution organized under the laws of the United States or of an Edge or Agreement Corporation;

(2) Any office located outside the United States of a foreign bank;

(3) A United States office or a non-United States office of the entity establishing the IBF;

(4) Another IBF; or

(5) A foreign national government, or an agency or instrumentality thereof<sup>10</sup>, engaged principally in activities which are ordinarily performed in the United States by governmental entities; an international entity of which the United States is a member; or any other foreign international or supranational entity specifically designated by the Board<sup>11</sup>;

or

(ii) (A) That is payable

(1) On a specified date not less than two business days after the date of deposit;

(2) Upon expiration of a specified period of time not less than two business days after the date of deposit; or

(3) Upon written notice that actually is required to be given by the depositor not less than two business days prior to the date of withdrawal;

(B) That represents funds deposited to the credit of a non- United States resident or a foreign branch, office, subsidiary, affiliate, or other foreign establishment (foreign affiliate) controlled by one or more domestic corporations provided that such funds are used only to support the operations outside the United States of the depositor or of its affiliates located outside the United States; and

(C) That is maintained under an agreement or arrangement under which no deposit or withdrawal of less than \$100,000 is permitted, except that a withdrawal of less than \$100,000 is permitted if such withdrawal closes an account.

<sup>10</sup> *Other than states, provinces, municipalities, or other regional or local governmental units or agencies or instrumentalities thereof.*

<sup>11</sup> *The designated entities are specified in 12 C.F.R. 204.125.*

*The numbering of the above footnotes was taken verbatim from 12 C.F.R. 204.8.*

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## General Principles

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When determining deposit insurance coverage many different rules and regulations come into effect. While the Claims Specialist will ultimately refer to the specific regulation for purposes of calculating coverage, there are basic principles that are common to all the insurance regulations. These basic principles must be understood and applied correctly in order to arrive at the proper insurance determination. For purposes of this section we have combined the more common principles as outlined and found in 12 C.F.R. 330.3, 12 C.F.R. 330.4, and 12 C.F.R. 330.5. They are as follows:

### **1. Ownership rights and capacities (12 C.F.R. 330.3).**

FDIC deposit insurance coverage is based on “ownership rights and

capacities” (i.e., qualifying for coverage under separate insurance categories in accordance with the regulations). All deposits that are maintained in the same right and capacity are added together and insured in accordance with the regulations relating to deposit insurance of that particular deposit insurance ownership category.

FDIC deposit insurance is not determined on a per-account basis. You cannot increase deposit insurance by dividing funds owned in the same ownership category among different accounts. The type of account, whether checking, savings, certificate of deposit, or outstanding official item such as cashier’s checks, or other form of deposit, has no bearing on the amount of deposit insurance coverage. The use of Social Security numbers or tax identification numbers does not determine deposit insurance coverage. Switching the order of names on the account does not alter deposit insurance coverage.

The regulations specify the qualifying requirements for obtaining deposit insurance coverage in each insurance category. If the funds in an account do not meet the qualifying requirements set forth for separate coverage in a particular category, the funds may revert to another category (usually single ownership) before deposit insurance is calculated. However, if the qualifying requirements of a particular deposit insurance ownership category are met, the insurance coverage is calculated according to the rules governing that category. If there are funds that exceed the insurance limit in a particular category, those funds are uninsured. Uninsured funds cannot qualify for additional insurance under another category.

**2. Deposits maintained in separate insured depository institutions or in separate branches of the same insured depository institution (12 C.F.R. 330.3).**

Deposit accounts maintained in two separately chartered insured institutions are separately insured, even if the institutions are affiliated, such as by having a common holding company. Multiple deposits within the same institution (even if they are placed at separate branches) are aggregated under the applicable account ownership category.

Some financial institutions maintain Internet branches or divisions that allow depositors to open and transact business on accounts over the Internet. Usually these “virtual branches” have a different name than the “brick and mortar” bank but are not separately chartered.

Deposits at these virtual branches or divisions are aggregated with any deposits the customer may have at the “brick and mortar” part of the bank.

**3. Deposits maintained by foreigners and deposits denominated in foreign currency (12 C.F.R. 330.3).**

Any person or entity can have FDIC insurance on a deposit. A depositor does not have to be a United States citizen, or even a resident of the

United States.

FDIC deposit insurance for any deposit denominated in foreign currency is to be paid in U.S. dollars equivalent in value to the amount of the deposit denominated in foreign currency. If an institution fails, the value of the deposit will be determined using the rate of exchange “noon rates” for U.S. dollars as of the date the institution is closed.

**4. Deposits in insured branches of foreign banks (12 C.F.R. 330.3).**

Deposits in an insured branch of a foreign bank which are payable by contract (e.g., signature card, certificate of deposit, opening account application) in the United States, are entitled to FDIC deposit insurance coverage. Deposits held by a depositor in the same right and capacity in more than one insured branch of the same foreign bank are aggregated together when determining the amount of deposit insurance coverage.

**5. Deposits payable solely outside of the United States and certain other locations (12 C.F.R. 330.3).**

Obligations of an insured depository institution which are payable solely outside of the U.S. are not deposits for insurance purposes. Deposit insurance coverage is provided only for deposits that are payable at a location within the U.S., including Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa and the Trust Territory of the Pacific Islands.

If there is a branch of a U.S. federally insured bank located in a foreign country, and funds can be withdrawn from either inside that country or the U.S., those funds are covered by FDIC deposit insurance.

**6. International banking facility deposits (12 C.F.R. 330.3).**

An “international banking facility (IBF) time deposit,” as defined by the Board of Governors of the Federal Reserve System in Regulation D, or in any successor regulation, is not considered an insured deposit.

**7. Bank investment contracts (12 C.F.R. 330.3).**

As required by section 11(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 are not insured deposits for purposes of this part.

**8. Application of state or local law to deposit insurance determinations (12 C.F.R. 330.3).**

Deposit insurance is for the benefit of the owner or owners of the 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. For example, in order for funds held in the name of a partnership to be insured separately from the personal funds of the partners, the partnership must be a legitimate partnership under state law.

Deposit insurance coverage is also a function of the deposit account records of the insured depository institution and of the provisions of this part (12 C.F.R. 330.3), which, in the interest of uniform national rules for deposit insurance coverage, are controlling for purposes of determining deposit insurance coverage.

Whenever reference to state law is necessary, the question arises as to which state's law should govern. Generally, the substantive law of the state in which the insured institution is located or the law of the state which would be applied under conflict of law principles should be followed. Whenever a question of state law arises under a trust agreement, contract, or other agreement which contains a reasonable choice of law provisions, the law of the state specified in the agreement should be followed to make the insurance determination.

**9. Determination of the amount of a deposit (12 C.F.R. 330.3).**

As a general rule, the insurance regulations provide that 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 a stated interest or dividend rate, the rate for this purpose shall be whatever rate was paid in the immediately preceding payment period.

**(a) Interest or dividend checks issued by a financial institution.**

These types of checks are commonly referred to as official items. An account holder may request the financial institution pay them their earned interest on a periodic basis (e.g., monthly or quarterly). The method used by most financial institutions in paying this interest involves the issuance of an interest check (also referred to as dividend checks). When a financial institution fails, any dividend or interest check which has not cleared (i.e., has not been paid by the failed institution as of the date of failure) is added back to any other account the depositor may have under the same ownership rights. Whether an interest or dividend check is outstanding (i.e., final payment has not occurred) as of the date of failure is determined with reference to the law of the state in which the principal office of the insured institution is located. In general, most states have enacted the Uniform Commercial Code (U.C.C), which sets forth when final payment of a check occurs.

The UCC states that, “in determining whether a check in the process of collection constitutes final payment for purposes of debiting an account, Articles 3 and 4 of the U.C.C. provides that final payment occurs when the item (i.e., the check) either (1) is paid in cash; (2) is settled without the right of revocation; or (3) is provisionally settled but not timely revoked” (U.C.C. 4-213(I)). If an interest or dividend check in the process of collection fails to meet any of these requirements, it is to be considered part of the account for insurance purposes.

(b) **Cashier’s checks.**

These types of checks are referred to as official items and are included in the definition of a deposit. Ownership is determined by the holder of the check, which in most cases is the payee. If the payor (the person who bought the cashier’s check) is still the holder of the check, it is insured to the payor and is added to any account the payor may have had at the defaulted institution.

(c) **Discounted certificates of deposit.**

Discounted certificates of deposit are often referred to as zero coupon CDs and are sold for less than their face value (purchase price). The difference between the purchase price and the face value represents the earnings, or interest, to be paid on the account. The deposit amount is the original purchase price plus accrued earnings up to the date of calculation (the accreted value). The regulations specify that accrued earnings are calculated using whatever interest rate is necessary with annual compounding to increase the original purchase price to the face value at maturity over the life of the CD.

(d) **Waiver of minimum requirements.**

In the case of an account where there are restrictions on the withdrawal of funds from the account, e.g., a time deposit whose maturity date has not occurred, the insurance regulations specifically provide that interest 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.” Fixed payment dates, fixed or minimum terms, and unexpired qualifying or notice period will not be taken into account when calculating the amount of deposit insurance coverage.

(e) **Aggregation of deposits.**

For purpose of determining the net amount due to any depositor, the Corporation shall aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor

in the same capacity and the same right for the benefit of the depositor.

**10. Continuation of insurance coverage following the death of a deposit owner (12 C.F.R. 330.3).**

The death of a deposit owner shall not affect the insurance coverage of the deposit for a period of six (6) months following the owner's death, unless the account is restructured. During this "grace period," the FDIC will insure the deceased person's accounts as if he or she were still alive for six (6) months after his or her death. The FDIC will not apply the grace period if the result would be a reduction in coverage. Even though it is not necessary to seek affirmative proof that all parties on an account are still living before making an insurance determination, if an account holder's death comes to the attention of the Claims Specialist, the resulting effect on insurance coverage should be analyzed.

**11. Continuation of separate deposit insurance after merger of insured depository institutions (12 C.F.R. 330.4).**

When the deposits of one insured financial institution are acquired, whether by merger, consolidation, other statutory assumption or contract, the newly acquired deposits are separately insured from any other funds a depositor may already have at the acquiring institution for a period of six (6) months (commonly referred to as a "grace period").

Non-time deposits (e.g., checking or savings accounts) acquired by an insured bank are separately insured for six (6) months after the date of merger.

Time-deposits (e.g., certificates of deposit) acquired by an insured bank are separately insured until the earliest maturity date or six (6) months after the merger date, whichever occurs later. Such certificates of deposit that mature during the six (6) month period and are renewed for the same term and in the same dollar amount (whether with or without accrued interest) will continue to be separately insured until the first maturity date after the six (6) month period.

Certificates of deposit that mature during the six (6) month period and are renewed on any other basis, or not renewed on any other basis, and become regular savings or demand deposits, will be separately insured only until the end of the six (6) month period.

**12. Recognition of deposit ownership and fiduciary relationships (12 C.F.R. 330.5).**

The insurance regulations give general guidance as to the use of account records to determine deposit ownership and the use of FDIC discretionary ability to consider additional evidence. In addition, the regulation dealing with each ownership category may provide more specific rules relating to the use of account records.

(a) **Recognition of deposit ownership.**

FDIC presumes that deposited funds are owned in the manner indicated on the deposit account records of the insured depository institution. The FDIC uses the account records of the insured depository institution to determine the identity of the account holder and the type of account ownership. If the account records are clear and unambiguous, those records shall be considered binding on the depositor. However, if account records are ambiguous or unclear as to the manner in which the funds are owned, the FDIC may choose to consider additional evidence for the purpose of establishing ownership right and capacity. The insurance regulations give the FDIC sole discretion to determine whether the account records are clear. If the FDIC determines the account records to be unclear or ambiguous, the FDIC may consider additional ownership evidence in determining the ownership of the account. This discretionary ability to consider additional evidence is intended to be used as a means to clarify, verify, and confirm the appropriate ownership. The final determination of ownership should still be consistent with at least some account records (e.g., the determination should not be completely contrary to all of the account records).

Conversely, if FDIC has reason to believe that actual ownership is misrepresented so as to increase the amount of deposit insurance, all available evidence may be considered and the determination made on the basis of actual, rather than misrepresented, ownership. This is only employed when a determination of the insured amount based on the misrepresented ownership would be greater than the insured amount of a determination based on actual ownership.

(b) **Recognition of deposit ownership in custodial accounts.**

In the case of custodial deposit accounts, 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 institution and represents at any given time the same fractional share as his or her share of the total commingled funds.

Simply put, if an agent has commingled funds of multiple owners, and the agent then deposits some but not all of these commingled funds into an FDIC-insured institution, the FDIC will determine each owner's fractional share of the deposit by looking to the owner's fractional share of the total commingled funds. For example, imagine that the agent holds \$500,000 of commingled

funds on behalf of multiple owners. One of these owners is J. Smith, whose interest in the commingled funds is \$50,000 or 10%. If the agent places \$70,000 of the commingled funds on deposit at a particular bank, the FDIC will assume that the share of this deposit owned by J. Smith is \$7,000 or 10%.

(c) **Fiduciary Relationship.**

An account may be insured to a person other than the named account holder only if the account records of the insured institution expressly disclose, by way of specific references, the existence of the fiduciary relationship. These relationships include, but are not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian. 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. The 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.

If the deposit account records of an insured depository institution disclose the existence of a relationship which might provide a basis for additional insurance 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.

(i) **Multi-tiered fiduciary relationships.**

In deposit accounts where there are multiple levels of fiduciary relationships, there are two methods of satisfying the requirements of this section to obtain insurance coverage for the interests of the true beneficial owners of a deposit account. The first method involves complete disclosure of the existence of each relationship in the chain in the account records of the insured institution. The ownership details (names and interests) are disclosed at each level and the person on whose behalf the party at the level is acting. The second method is to disclose generally in the account records that the first level fiduciary is acting on behalf of others who may in turn be acting as fiduciaries for still others. The existence of additional levels can be disclosed on the business records of parties at subsequent levels. The ownership details

(names and interests) can be disclosed at each level and the person on whose behalf the party at the 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.

(ii) **Exceptions for negotiable instruments and items forwarded for collection by depository institution acting as agent.**

The insurance regulations list various negotiable instruments that will be insured to the owner, despite the absence of ownership disclosure in the institution's records, as long as the instrument was in fact negotiated prior to the date of default. Affirmative proof must be offered to substantiate the claim. In addition, when another insured depository institution is acting solely as agent and has forwarded items for collection to the defaulted institution, the holders of such items will be recognized to the same extent as if their name(s) and interest(s) were disclosed on the deposit account records. These claims must be established by the execution and delivery of prescribed forms.

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## Examples

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### Example 1:

#### Scenario

#### Fully Insured

Deposits in an insured branch of a foreign bank.

#### Situation

The failed institution, The Bank of Foreign Land, has a branch in New York City. The bank is headquartered in Foreign Land. One of the deposit accounts in the New York City branch is titled "Joe Smith" and has a balance of \$249,000.

#### Analysis/Determination

After reviewing information found at [www.fdic.gov](http://www.fdic.gov) relating to financial institutions and at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/) and consulting with Legal, the Claims Specialist determines that the deposits in the New York City branch are eligible for deposit insurance. The Claims Specialist then applies the insurance regulations applicable to the single ownership category (covered under 12 C.F.R. 330.6). The account is fully insured.

**Example 2:**

**Scenario**

**Uninsured**

International banking facility (IBF) deposit.

**Situation**

The failed institution has an account titled “National Caribbean Bank”.  
The balance in the account is \$350,000.

**Analysis/Determination**

The Claims Specialist reviews the records of the failed institution and after consultation with the Legal Division verifies that the account in the name of the “National Caribbean Bank” is considered an IBF deposit. Therefore, the account is not considered a deposit for insurance purposes. It is treated as a creditor claim and a Notice of Insurance Determination in the amount of \$350,000 is issued to the “National Caribbean Bank.” For details concerning processing of creditor claims, refer to the Claims Manual, Volume I, [Section V, Chapter A: Non-depositor claims](#).

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**Example 3:**

**Scenario**

**Fully Insured**

Official check.

**Situation**

At the time of financial institution failure, Jane Doe has a CD for \$250,000 and an interest check issued in her name in the amount of \$358.

**Analysis/Determination**

During the interview process with Jane Doe, utilizing the Depositor Interview form, the Claims Specialist determines that the interest check is outstanding and adds the \$358 interest check to the \$250,000 balance of the CD. The Specialist then applies the insurance regulations applicable to the single ownership category (12 C.F.R 330.6) and determines that Jane Doe is insured for \$250,000 under the Single Category and insured for \$358 under the Noninterest-bearing Transactions accounts category.

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**Example 4:**

**Scenario**

**Fully Insured**

Death of a depositor.

**Situation**

There is a CD titled “John Brown ITF for Jane Brown” for \$225,000 in the failed institution. He also has another CD titled “John Brown” for \$75,000.

**Analysis/Determination**

The Claims Specialist attempts to contact John Brown. However, the Claims Specialist is only able to speak with Jane Brown, John’s wife and the Executor of his estate, who advises the Claims Specialist that John Brown died three months before the institution failed. Jane provides a copy of John’s death certificate and a copy of the appointment of Jane as executor of John’s estate. With this information, the Claims Specialist is able to confirm that John Brown died within the 6 month period immediately prior to the institution’s failure. At the Claims Specialist’s request, Jane also completes a Declaration for Testamentary Trust form, as executor of John’s estate, which confirms that Jane is a qualified beneficiary of the ITF account. The Claims Specialist then applies the grace period (12 C.F.R. 330.3) and insures John’s accounts as if he were still alive. Therefore, it is determined that the revocable trust account for \$225,000 is fully insured under the revocable trust category (12 C.F.R. 330.10) as Jane is the beneficiary and John’s other account of \$75,000 is found to be fully insured under the single ownership category (12 C.F.R. 330.6).

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**Example 5:**

**Scenario**

**Fully Insured**

Merger of insured depository financial institutions.

**Situation**

Bill Bon has a checking account for \$223,000 at the Long Branch Bank. He also has a checking account for \$48,250 at the Gold Bank. The Long Branch Bank merges with the Gold Bank and one (1) month later the financial institution (Gold Bank) fails.

**Analysis/Determination**

The Claims Specialist confirms, after consultation with Legal and DRR Franchise Marketing staff, that the merger took place one (1) month before Gold Bank failed. This is within the six month grace period as specified in 12 C.F.R. 330.4. Therefore, the Claims Specialist reviews the two accounts as though they were in separate institutions. Since each account contains less than the limit of deposit insurance (\$250,000), each is fully insured under the single ownership category. (12 C.F.R. 330.6).

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## Chapter 5

### Single Ownership Accounts

#### Contents

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This chapter contains the following information on Single Ownership Accounts:

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<a href="#">Legal Reference</a>	5-1
<a href="#">Definitions</a>	5-2
<a href="#">Insurance Determination</a>	5-3
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<a href="#">Examples</a>	5-5

#### Overview

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The deposit insurance regulations provide separate deposit insurance coverage for certain single ownership accounts. Such accounts include those in the owner's name or those established by an individual for a business that is a sole proprietorship. Oftentimes, when an account fails to qualify for insurance coverage under another ownership category, it reverts to single ownership.

#### Policy Statement

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It is the policy of the FDIC to make deposit insurance determinations in accordance with the Rules and Regulations promulgated pursuant to the Federal Deposit Insurance Act (FDI Act) and applicable statutes.

#### Legal Reference

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Single ownership accounts are insured according to the rules set forth in 12

C.F.R. 330.1, 12 C.F.R. 330.5, 12 C.F.R. 330.6 and 12 C.F.R. 330.7.

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## Definitions

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### **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 treated as the individual account(s) of the named decedent.

### **Accounts that fail to qualify for insurance in other account ownership categories**

Such accounts typically revert to single ownership accounts.

### **Convenience Account**

An account the owner of which has given signatory authority to another person. However, the records of the financial institution must clearly indicate, by way of special reference, that the funds are owned by the person titled on the account, and the other signatory is only authorized to transact business on the owner's behalf.

### **Fiduciary Accounts held for an individual**

Generally, these are accounts held by a third party on behalf of an individual in a fiduciary capacity as agent, nominee, conservator, custodian, or guardian. This fiduciary capacity must have been disclosed in the institution's records. Examples of such accounts are brokered deposit accounts and Uniform Gifts to Minors Act accounts (UGMA). Refer to [Chapter 6: Accounts Held by an Agent, Nominee, Guardian, Custodian, or Conservator](#) for additional information.

### **Individual Accounts**

Funds owned by a natural person (human being) and deposited in one or more deposit accounts in his or her own name. Exception: Despite this general requirement, 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, fiduciary capacity or other reasons), the account shall be treated as a joint ownership account 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.

### **Official items payable to one person**

Bank checks, usually drawn on the failed financial institution and made payable to one person, that are outstanding (and not negotiated, except for collection) when the financial institution is closed. Examples include cashier's checks, teller checks, loan disbursement checks, interest or dividend checks, expense reimbursement checks, and money orders.

### **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.

### **Sole Proprietorship Accounts**

Funds owned by an unincorporated business which is a "sole proprietorship" (as defined in [12 C.F.R. 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.

### **Uniform Gifts to Minors Act**

Various states have laws that allow an adult to make an irrevocable gift to a minor. Funds given to a minor by this method are held in the name of a custodian for the minor's benefit. These are commonly referred to as "UGMA" accounts. See Chapter 6: Accounts Held by an Agent, Nominee, Guardian, Custodian, or Conservator for additional information.

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## **Insurance Determination**

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All funds held in single ownership capacity by any one natural person in the same institution are aggregated and insured up to the limit of deposit insurance (\$250,000). The following types of accounts need to be reviewed and balances added together when determining deposit insurance coverage in this category:

1. Individual accounts.
2. Accounts held in the name of a business that is a sole proprietorship.
3. Convenience accounts– insured as individual funds of the owner.
4. Accounts held in the name of a decedent, or by executors or administrators of a decedent estate–insured as the single ownership account of the decedent, not as funds owned by the executor, administrator, or other personal representative of the decedent.
5. Single name accounts containing community property funds.
6. Accounts held on behalf of one or more individuals pursuant to a fiduciary relationship– insured as individual funds of the owner (i.e., UGMA account).
7. Official items payable to one person (i.e., interest checks, cashier's checks).

8. Accounts that fail to qualify for insurance in other account ownership categories.

The only signature on the above accounts should be the owner of the funds, except for:

- Accounts with a Power of Attorney.
- Convenience accounts.
- Fiduciary accounts.
- Sole proprietorship accounts. It is possible that the account(s) may contain more than one signature but the funds are owned by the business owner. If there are two or more signatures and it is determined that the funds are equally owned by more than one owner (“mom & pop” businesses), then the account should be insured as a joint account.
- Accounts of a decedent.

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## Documentation

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Documentation to be reviewed and/or utilized in making the deposit any insurance determination may include the following:

1. Signature cards and/or certificates of deposits, passbooks, or other account records.
2. Depositor records such as death certificates, estate documents, or court documents such as the appointment of administrator, if applicable.
3. Documentation evidencing a fiduciary relationship as described in 12 C.F.R. 330.5 and [Chapter 6: Accounts Held by an Agent, Nominee, Guardian, Custodian, or Conservator](#). Those relationships may include brokered deposits, UTMA accounts, or other custodial accounts.
4. Power of Attorney form ([Power of Attorney](#)). This form may be used if the depositor has not previously executed a Power of Attorney (POA). A POA must be obtained by the Claims Agent before discussing the account with anyone other than the owner. The POA should indicate the person with whom the Claims Specialist may discuss the account.
5. Declaration of Power of Attorney form ([Declaration for Power of Attorney](#)). This form should be obtained when a previously executed POA has been provided. The signor of this document is attesting that the Power of Attorney appointing him as attorney-in-fact has not been revoked or terminated by the depositor.

In CAS, the case file is worked online and any supporting documents are scanned into FACTS.

## Examples of Insurance Coverage

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### Example 1:

#### Scenario

#### Partially Insured

Account in the name of the executor of an estate.

#### Situation

At the failed institution there is an account titled “Elisa Smith as executor of the estate of Anita Smith”. There is \$600,000 in the account.

#### Analysis/Determination

The Claims Agent contacts Elisa Smith who advises that the funds were those of her Aunt Anita. The beneficiaries of Aunt Anita’s estate are Anita’s six children. The Claims Agent advises Elisa that the funds are insured under the single ownership category as funds of the deceased. Therefore, the account is insured for \$250,000 and a Notice of Insurance Determination is issued for the uninsured amount of \$350,000.

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**Example 2:**

**Scenario**

**Fully Insured**

Single ownership account and an UGMA account.

**Situation**

At the failed financial institution, there are two accounts. One is titled “Trisha Down, Custodian under UTMA for Beth Down, Minor” with a balance of \$60,000. The second account is titled “Trisha Down” for \$200,000.

**Analysis/Determination**

The Claims Agent realizes that the first account is insured as the single ownership account of Beth Down. As Beth Down has no other single ownership accounts, it is fully insured for \$60,000. The account titled “Trisha Down” is also fully insured as a single ownership account of Trisha Down for \$200,000, as Trisha Down has no other accounts at the failed institution.

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**Example 3:**

**Partially  
Insured**

**Scenario**

Single ownership account and a deposit placed by a broker.

**Situation**

Conor Mckee has an account at the failed institution of \$250,000. In addition, there is an account titled “Smith Brokerage as Agent for others” totaling \$10,000,000.

**Analysis/Determination**

The Claims Agent determines that the account of Conor Mckee is fully insured in the single ownership category for \$250,000. While the Claims Agent is dealing with Smith Brokerage concerning its account and after obtaining the appropriate documentation (see [Chapter 6: Accounts Held by an Agent, Nominee, Guardian, Custodian, or Conservator](#)), it is discovered that funds placed by Smith Brokerage include \$99,000 of Conor Mckee’s money, as Conor Mckee had placed the money with Smith Brokerage and, unbeknownst to all, the brokered deposit was placed in the same institution in which Conor had a direct deposit relationship. As that \$99,000 must be aggregated with other single ownership funds of Conor Mckee, and as the limit of deposit insurance has already been paid for Conor’s direct deposit, the \$99,000 is uninsured and a Notice of Insurance Determination is issued for that amount.

**Example 4:**

**Scenario**

**Fully Insured**

An account and an official item.

**Situation**

At the failed institution, there is an account titled “Dan Jones” in an amount of \$220,000. There is also a cashier’s check outstanding titled “Dan Jones” for \$60,000.

**Analysis/Determination**

In his interview with Dan Jones, the Claims Agent is able to confirm that both of the accounts belong to the same Dan Jones. Mr. Jones had obtained the cashier’s check in order to open an account at a nearby credit union, but had not done so by the time the institution failed. The \$220,000 is fully insured in the single ownership category. The cashier’s check is considered fully insured in the Non-interest bearing category until the expiration of the Transaction Accounts Guarantee authority under Dodd / Frank. (See [Claims Manual Volume II Chapter 17.](#))

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**Example 5:**

**Scenario**

**Partially Insured**

Two accounts, one of which reverts to the single ownership category.

**Situation**

At the failed institution, there is an account entitled “Rita Johnson POD Rita Johnson” for \$190,000. There is a second account titled “Rita Johnson” for \$77,000.

**Analysis/Determination**

The Claims Agent meets with Rita Johnson and has Rita execute a [Declaration for Testamentary Deposit](#) form for the POD account. From that form, the Claims Agent is able to determine that the beneficiary, Rita Johnson, is the same person as the Grantor. Since the Grantor and beneficiary can not be the same person under the revocable trust category of ownership, the funds in that account revert to the single ownership category of Rita. (See [Chapter 9: Revocable Trust Accounts for details](#)). Therefore, the funds in the POD account are aggregated with Rita’s other account, bringing the total of funds to be reviewed for insurance under Rita’s single ownership category to \$267,000. Rita is insured for \$250,000 and a Notice of Insurance Determination is issued for the uninsured amount of \$17,000.

## Chapter 6

### Accounts Held by an Agent, Nominee, Guardian, Custodian, or Conservator

#### Contents

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This chapter contains the following information on Accounts Held by an Agent, Nominee, Guardian, Custodian, or Conservator:

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#### Overview

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[12 C.F.R. 330.7](#) discusses insurance coverage for accounts held by an agent, nominee, guardian, custodian, or conservator. The general rule for such accounts is that funds in such accounts are insured as though they are the funds of the principal or owner of the account rather than funds of the agent, nominee, guardian, custodian, or conservator. Such funds are aggregated with other funds of the same principal or owner (whether deposited directly by that principal or owner or deposited by an agent, nominee, custodian, or conservator on behalf of the same principal or owner) in the same right and capacity and are insured up to the limit of deposit insurance (\$250,000). The concept of insurance for funds thus held is sometimes referred to as “pass through” insurance since the insurance coverage is for the principal or owner and not for the party who “holds” the funds.

[12 C.F.R. 330.7](#) (e) provides an exception to the general rule mentioned above. For accounts opened by the U.S. Department of the Interior on behalf of American Indians, the funds will be insured separately from any other accounts owned by the same individual American Indian in the single ownership category. Since 1996, accounts which fall within the purview of [12 C.F.R. 330.7](#)(e) are most likely to be in the name of the Office of the Special Trustee for American Indians (Office of the Special Trustee), which is part of

the U.S. Department of the Interior. Previously, the accounts were most likely to be in the name of the Bureau of Indian Affairs (BIA).

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## Policy Statement

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It is the policy of the FDIC to make deposit insurance determinations in accordance with the Rules and Regulations promulgated pursuant to the Federal Deposit Insurance Act (FDI Act) and applicable statutes.

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## Legal Reference

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Accounts held by an agent, nominee, guardian, custodian or conservator are provided pass through insurance in accordance with 12 C.F.R. 330.7.

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## Definitions

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### Agent

A person authorized by another person, called a principal, to act on the latter's behalf in transactions involving a third party. The following three characteristics typically apply to an agent:

- Acts on behalf of and is subject to the control of the principal;
- Does not have title to the principal's property;
- Owes the duty of obedience to the principal's orders.

### BIA

Bureau of Indian Affairs (BIA). Until 1996, the bureau within the U.S. Department of Interior which was most likely to be the custodian of funds subject to deposit insurance under [12 C.F.R. 330.7\(e\)](#).

### Broker

A person who acts as an intermediary between a buyer and seller, usually charging a commission.

### Brokered Deposit

Deposits placed by a deposit broker. The FDIC places special restrictions and regulations on financial institutions concerning the acceptance and insurance

of these accounts.

### **Custodian**

A person, bank, or financial institution that keeps custody of individual or corporate property.

### **Deposit Broker**

Any person engaged in the business of placing deposits, or facilitating the placement of deposits of third parties with insured depository institutions; or the business of placing deposits with insured depository institutions to sell interests in those deposits to third parties.

### **Fiduciary**

A person holding a position of trust or confidence recognized by law.

### **Guardian**

A person legally designated to act on behalf of a minor or a person who is determined to be incapable of handling his or her own affairs.

### **Mortgagee**

A mortgage holder.

### **Mortgage Servicing**

Administration of a mortgage loan, including collecting monthly payments and penalties on late payments, tracking the amount of principal and interest paid at any particular time, acting as escrow agent for funds to cover taxes and insurance, and if necessary, curing defaults and foreclosing when a homeowner is seriously delinquent.

### **Mortgagor**

One who mortgages one's property.

### **Nominee**

A person or firm, such as a bank official or brokerage house, into whose name securities or other properties are transferred by agreement to facilitate transactions, although the customer remains the true owner.

### **Office of the Special Trustee for American Indians**

An entity within the U.S. Department of the Interior which, since 1996, is the most likely custodian of funds which may be insured in accordance with 12 C.F.R. 300.7(e). Frequently referred to as Office of the Special Trustee.

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## Insurance Determination

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### Agency or Nominee Accounts

Funds (e.g. Brokered deposits) owned by a principal or principals and deposited into one or more deposit accounts in the name of an agent, nominee, guardian, or custodian, or conservator shall be insured to the same extent as if deposited in the name of the principal(s) or owners(s). These deposits will be added to all other (i.e., aggregated with) deposits of the principal or owner that are owned in the same right and capacity and insured up to the limit of deposit insurance (\$250,000). However, when such funds are deposited by an insured depository institution acting as trustee of an irrevocable trust, the insurance coverage shall be governed by the provisions of 12 [C.F.R 330.12](#) (see [Chapter 11: Accounts Held by Depository Institutions as Trustee of an Irrevocable Trust](#)). Fiduciary accounts may involve multiple levels of fiduciary relationships.

In deposit accounts involving multiple levels of fiduciary relationships there are two options of satisfying the FDIC's disclosure rules in order to obtain insurance coverage for the interests of the true beneficial owners of the funds:

Option 1:

- A) Indicate on the deposit account records the existence of each and every level of the fiduciary relationship, and
- B) Identify, at each level, the name and interests of the entity on whose behalf the party at each level is acting.

Option 2:

- A) Indicate on the deposit account records that the depositor is acting in a fiduciary capacity on behalf of certain persons or entities who may, in turn, be acting in a fiduciary capacity for others; and
- B) Indicate the existence of additional levels of fiduciary relationships in records maintained in good faith and in the normal course of business by parties at subsequent levels; and
- C) Indicate at each of the levels the names and interests of the persons on whose behalf the party at that level is acting.
- D) 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.

Failure to meet the disclosure requirements will result in the funds being

insured as the funds of the fiduciary in either the single ownership or corporate ownership categories.

### **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 (UGMA), and deposited into one or more accounts in the name of the guardian, custodian, or conservator, shall, for the purposes of this part, be deemed to be agency or nominee accounts.

Funds owned by a principal or principals and deposited into one or more deposit account in the name of an agent, nominee, guardian, or custodian, or conservator shall be insured to the same extent as if deposited in the name of the principal(s) or owners(s). These deposits will be added to all other deposits of the principal or owner that are owned in the same right and capacity and insured up to the limit of deposit insurance (\$250,000).

The Claims Specialist may require a guardian, custodian, or conservator to fill out and execute Declaration for Custodian Deposit in order to make a proper deposit insurance determination.

### **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 [12 C.F.R 330.9](#) (see [Chapter 8: Joint Ownership Accounts](#)).

### **Mortgage Servicing Accounts**

A mortgage servicing account is an account maintained by a mortgage servicer in a custodial or fiduciary capacity. The funds in the account may consist of payments by mortgagors (borrowers) of principal and interest on mortgage loans. The duty of the mortgage servicer, after collecting these funds, is to forward the funds to the mortgagee (lender) or other parties who may have purchased the loans (investors). The funds in the account also may include payments by mortgagors of taxes and insurance. The duty of the mortgage servicer, after collecting these funds, is to forward the funds – at the appropriate time – to the taxing authority or insurance company.

Funds representing payments of principal and interest: These funds are insured on a “per mortgagor” basis. This means that the funds paid into the account by each mortgagor are insured separately up to the insurance limit (\$250,000). Notwithstanding this “per mortgagor” coverage, the funds are *not* aggregated with other deposit accounts held by the mortgagors (if any) at the same insured depository institution.

Funds representing payments of taxes and insurance: These funds also are insured on a “per mortgagor” basis. In other words, the ownership interest of each mortgagor is separately insured up to the insurance limit (\$250,000). Unlike funds representing payments of principal and interest, however, each mortgagor’s funds are aggregated with the mortgagor’s other deposit accounts (if any) at the same insured depository institution.

### **Custodian Accounts for American Indians**

In accordance with 12 C.F.R. 330.7(e), a custodial account in the name of the Office of Special Trustee for American Indians, or an agency with similar authority, containing funds for the benefit of individual American Indians. The interests of each American Indian in all accounts held by the Office of Special Trustee, or similarly authorized agency, are added together and insured up to the limit of deposit insurance (\$250,000). This coverage is separate from any insurance coverage the same American Indian may have as a result of funds he has placed directly at the same institution. To meet the requirements for deposit insurance under 12 C.F.R. 330.7(e), the following standards must be met:

- a) The account records must indicate that the funds are held by the disbursing agent in an agency capacity.
  - b) The disbursing agent must hold the funds pursuant to 25 U.S.C. 162a or similar authority.
  - c) The American Indian must have an ascertainable interest in the funds.
- 

### **Documentation**

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Documentation to be reviewed and/or utilized in making the deposit insurance determination may include the following:

1. Signature cards, certificates of deposit, passbooks electronic records or other account records which expressly disclose that an account is being held by an agent, nominee, guardian, custodian, or conservator.
2. [Declaration for Custodian Deposit form](#)
3. [Affidavit of Agency Account form](#)
4. Breakdown of accounts by owner and amount, for each agent, nominee, guardian, custodian, or conservator.

In CAS, the case file is worked online and any supporting documents are scanned into FACTS.

## Examples of Insurance Coverage

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### Example 1:

#### Partially Insured

#### Scenario

Deposit broker acting as agent.

#### Situation

The failed institution has an account titled “Broker, Inc as Agent for Others” in the amount of \$3,000,000.

#### Analysis/Determination

The Claims Agent notifies Broker, Inc. and requests that they submit to the FDIC their investor information as outlined in the Deposit Broker’s Processing Guide, which is located on our web page at <http://www.fdic.gov/deposit/deposits/brokers>. Broker, Inc. executes an [Affidavit of Agency Account](#) form and submits it to the Claims Agent. When the information is received, the Claims Agent determines that there are twelve participants (investors), each with a \$250,000 share of the one deposit account titled “Brokers, Inc. as Agent for Others”. The investor information is then grouped and run against the entire deposit database of the failed bank. In addition to having \$250,000 invested with Broker, Inc., two of the investors each have \$250,000 on deposit, placed directly by them at the failed bank. Since both the brokered account and the account opened directly by the depositor are held in the same right and capacity, each is uninsured for \$250,000. Deposit insurance is afforded first to the account opened directly by the depositor, then to any subsequent brokered identified accounts. Therefore, for this account, \$2,500,000 is fully insured and Broker, Inc. as Agent for Others is issued a Notice of Insurance Determination for \$500,000.

Note: Brokered deposits are not a separate insurance category, but rather are covered under 12 C.F.R. 330.7, which may provide pass through insurance (as discussed in this chapter). The interest of each principal/owner in a brokered account is aggregated with other accounts held in the same ownership right and capacity at the institution and insured up to the limit of deposit insurance.

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**Example 2:**

**Fully Insured**

**Scenario**

Deposit of mortgage servicing company.

**Situation**

ABC Mortgage Servicing Corporation has an account with a balance of \$800,000.

**Analysis/Determination**

The CAS report reflects only one account in the name of ABC Mortgage Servicing Corporation. The signature card provides a contact person and a phone number. The contact person is contacted, and she/he explains that the account is comprised of payments by mortgagors of principal and interest. She/He also provides information as to the amount of such payments by each mortgagor. Under the FDIC's regulations, the amount of principal and interest payments collected by each mortgagor is insured separately up to the \$250,000 limit. In this case, the balance of \$800,000 represents payments from 400 mortgagors. None of the mortgagors made a payment in excess of \$250,000. Therefore, the account is fully insured.

Note: The payments from each mortgagor are not aggregated with the mortgagor's personal accounts (if any) at the failed bank. Rather, a mortgage servicing account with payments of principal and interest is insured in a separate ownership category up to \$250,000 for the payments of each mortgagor. In contrast, payments of taxes and insurance are not treated as a separate ownership category. Rather, such payments in a mortgage servicing account are treated as custodial funds held by the mortgage servicer on behalf of the mortgagors. Therefore, each mortgagor's funds are aggregated with the mortgagor's personal accounts (if any) at the failed bank.

**Example 3:**

**Scenario**

**Partially Insured**

Deposits of an American Indian Tribe.

**Situation**

The “American Indian Nation Tribe” has two accounts on deposit at the failed bank that total \$600,000.

**Analysis/Determination**

“The American Indian Nation Tribe” CAS case file reflects two accounts. The Claims Agent determines that the accounts were not deposited through the Office of Special Trustee. One account is a demand deposit account in the amount of \$300,000 and the other is a time deposit account containing \$300,000. The tribe is located in the same state as the failed bank.

The “American Indian Nation Tribe” accounts are not insured under the provisions of 12 C.F.R. 330.7(e). The Claims Agent refers to 12 C.F.R. 330.15 (a) (5) for insurance. 12 C.F.R. 330.15 is discussed in [Chapter 15: Public Unit Accounts](#). Under 12 C.F.R. 330.15 (a)(5)(i), the demand deposit is insured for \$250,000; under 12 C.F.R. 330.15(a)(5)(ii), and the time deposit account is separately insured for \$250,000, regardless of the state in which the institution is located. However under the Noninterest-bearing Transaction accounts ownership category the demand deposit account is fully insured (Claims manual chapter 17). Therefore, the deposits are insured for \$550,000, and a Notice of Insurance Determination is issued for the uninsured amount of \$50,000.

**Example 4:**

**Scenario**

**Fully Insured**

Deposit in the name of “Office of the Special Trustee”.

**Situation**

The “Office of Special Trustee” has an account at the failed bank with a balance of \$5,000,000.

**Analysis/Determination**

The Claims Agent contacts the Office of Special Trustee and has them complete and execute a “[Declaration for Agency Account – Office of Special Trustee](#)” form and supply a listing of American Indians whose funds the Office of Special Trustee has on deposit at the failed institution. The Claims Agent reviews the documentation submitted. The funds on deposit are for the benefit of individual American Indians. The listing contains 645 names. No individual American Indian has an interest of more than \$250,000 of the \$5,000,000 total deposit. Therefore, the entire amount on deposit is insured per 12 C.F.R. 330.7(e).

Note: The interest of each American Indian is not aggregated with that Person’s personal accounts (if any) at the failed bank.

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## Chapter 7

### **Annuity Contract Accounts**

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#### Contents

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This chapter contains the following information on Annuity Contract Accounts:

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#### Overview

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The deposit insurance regulations provide separate deposit insurance coverage for certain annuity contract accounts.

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#### Policy Statement

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It is the policy of the FDIC to make deposit insurance determinations in accordance with the Rules and Regulations promulgated pursuant to the Federal Deposit Insurance Act (FDI Act) and applicable statutes.

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#### Legal Reference

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Annuity contract accounts are insured according to the rules set forth in [12 C.F.R 330.5 and 12 C.F.R. 330.8.](#)

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## Definitions

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### **Annuity Contract Accounts**

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.

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## Insurance Determination

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Annuity contract accounts shall be insured as a separate category of deposit insurance in the amount up to the limit of deposit insurance per annuitant (\$250,000), provided that, pursuant to state statute:

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

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

A depository institution normally will not have any or current information or documentation to verify that requirements (1) through (3) have been met. Information and documentation normally will be requested from the insurance company.

Typically, an annuity account is established at an insured depository institution in the name of the insurance company or other corporation, and it will disclose that the account is held for the benefit of one or more annuitants or contract owners. The annuity account can be titled, for example, "American Insurance Co. Custodian for John Smith." or "American Insurance Co. Annuitants' Account". Such designations or similar language is sufficient to disclose the existence of an annuity relationship upon which the payment of deposit insurance could be based.

All annuity accounts for which a deposit insurance determination is being made under these provisions should be analyzed on a case by case basis and a legal opinion obtained to support the final deposit insurance determination.

This is necessary as a minor change in the facts as stated in the supporting documentation of two similarly structured accounts may result in major differences in the deposit insurance determination. If the account balance does not exceed \$250,000 and there are no known or suspected aggregation issues, documentation is not necessary.

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Documentation to be reviewed and/or utilized in making the deposit insurance determination may include the following:

1. Signature card(s), certificates of deposit, passbooks, electronic records or other account records which expressly disclose that an account is an annuity in the name of an insurance company or other corporation and is being held for the benefit of one or more annuitants.
2. Corporation Resolution(s) of the insurance company.
3. Copy of annuity contract.
4. Letter (sometimes referred to as a “letter of affirmation”) from the insurance company, signed by a corporate officer, stating that the account meets the three statutory requirements outlined above and, in addition, a breakdown of the balance of the account by annuitant.

In CAS, case files are worked on line and any supporting documents are scanned into FACTS. Using FACTS, forward all the above documentation to Legal for review. Legal will determine whether the account qualifies for deposit insurance under the provisions of 12 C.F.R. 330.5 and 12 C.F.R. 330.8 as discussed in this chapter.

## Examples of Insurance Coverage

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### Example 1:

#### Scenario

#### Fully Insured

Common annuitant/owner with multiple deposit accounts.

#### Situation

John Hancock Insurance Company set up an account at the failed financial institution titled “John Hancock Insurance Company for Bill Jones” for \$250,000. Bill Jones also has an account at the failed financial institution with a balance of \$50,000.

#### Analysis/Determination

The Claims Agent reviews the signature card of the “John Hancock Insurance Company for Bill Jones” account and obtains the phone number and contact person for the insurance company. He places a call to the company representative and requests a letter of affirmation and a copy of the annuity contract. Upon receipt, the Claims Agent reviews the letter and annuity contract and refers the matter to Legal. Legal determines that the account met all the statutory requirements under 12 C.F.R. 330.8. Therefore, the “John Hancock Insurance Company for Bill Jones” account for \$250,000 is fully insured under the provisions of this chapter. Bill Jones’ account of \$50,000 is fully insured as a single ownership account.

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**Example 2:**

**Scenario**

**Fully Insured**

Deposit account of insurance company held for benefit of annuitants.

**Situation**

New York Life Insurance Company set up an account at the failed financial institution titled “New York Life Insurance Company as Custodian for”. The balance in the account as of closing was \$1,000,000.

**Analysis/Determination**

The Claims Agent contacts a representative from New York Life Insurance Company and requests a letter of affirmation and copy of the annuity contract. Subsequently, he receives the letter from New York Life with a breakdown of the balance of the account by annuitant. New York Life also provides a copy of the annuity contract. The Claims Agent refers this to Legal. Legal’s review states that the documentation revealed that the balance in the account was comprised of 5 annuitants, each having a balance of \$200,000, and the insurance company was in compliance with the 3 statutory requirements under 12 C.F.R. 330.8. As each annuitant had a balance under \$250,000, the account is fully insured.

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**Example 3:**

**Scenario**

**Partially Insured**

Deposit account of insurance company held for benefit of annuitants.

**Situation**

Benbrook Insurance Company set up an account at the failed financial institution titled “Benbrook Insurance Company as Custodian” and the balance as of closing was \$1,200,000.

**Analysis/Determination**

The Claims Agent contacts the insurance company and requests that a letter of affirmation be forwarded, together with a breakdown of the account by annuitant and a copy of the annuity contract. Upon receipt, the documentation is referred to Legal. The documentation shows that the balance in the account was for the benefit of 15 annuitants. Additionally, with the exception of one annuitant (who had \$300,000 for his benefit); all annuitants had interests under \$250,000. The letter of affirmation stated the company was in compliance with the 3 statutory requirements under 12 C.F.R. 330.8. As there was one annuitant that had an interest of \$300,000, the account is insured for \$1,150,000 and uninsured for \$50,000. A Notice of Insurance Determination is issued to the insurance company for the \$50,000.

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**Example 4:**

**Scenario**

**Partially Insured**

Deposit account of insurance company held for benefit of annuitants.

**Situation**

State Farm Insurance Company set up an account at the failed financial institution titled “State Farm Insurance Company as Custodian” and the balance as of closing was \$1,000,000.

**Analysis/Determination**

The Claims Agent contacts the insurance company and requests that a letter of affirmation be forwarded, together with a breakdown of the account by annuitant and a copy of the annuity contract. Upon receipt, the Claims Agent reviews the documentation and forwards it to Legal. The documentation indicates that the balance in this account was for the benefit of 50 annuitants, all of whom had interests under \$250,000. The letter of affirmation also revealed that the company failed to meet one of the three statutory requirements under 12 C.F.R. 330.8. As the account failed for insurance under the provisions of 12 C.F.R. 330.5 and 12 C.F.R. 330.8 as discussed in this chapter, it is insured to \$250,000 as a corporation (see [Chapter 10: Accounts of a Corporation, Partnership or Unincorporated Association](#)) and uninsured in the amount of \$750,000. A Notice of Insurance Determination is issued to the insurance company for the uninsured amount of \$750,000.

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**Example 5:**

**Scenario**

**Partially Insured**

Common annuitant/owner with multiple deposit accounts.

**Situation**

John Hancock Insurance Company set up an account at the financial institution titled “John Hancock Insurance Company ITF Bill Jones” for \$230,000. Bill Jones also has a demand deposit account at the same institution in the amount of \$50,000.

**Analysis/Determination**

An analysis of the records available at the financial institution revealed that the account titled “John Hancock Insurance Company ITF Bill Jones” did not represent an annuity and thus did not meet the statutory requirements under 12 C.F.R. 330.8. Rather, the funds were being held by the John Hancock Insurance Company as a true custodian and insured under 12 C.F.R. 330.7(a). (See [Chapter 6: Accounts Held by an Agent, Nominee, Guardian, Custodian, or Conservator](#).) Therefore, the funds in that account are aggregated with any other accounts held by Bill Jones in the single ownership category. Bill Jones’ demand deposit account for \$50,000 is a single ownership account. Therefore, Bill Jones has \$280,000 in deposits to be reviewed for insurance under the single ownership category. \$250,000 is insured and \$30,000 is uninsured. A Notice of Insurance Determination is issued to John Hancock for the uninsured amount of \$30,000.

**Note:** The reason that the Notice of Insurance Determination is made out to John Hancock is that deposit insurance for the \$50,000 in the account of Bill Jones has already been paid. Therefore, the uninsured amount must be taken from the John Hancock account.

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## Chapter 8

### Joint Ownership Accounts

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#### Contents

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#### Overview

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The deposit insurance regulations provide separate deposit insurance coverage for accounts held in the joint ownership capacity. Joint ownership accounts are owned by two or more natural persons. Each co-owner must have equal withdrawal rights, and in most cases, each must have personally signed a deposit account signature card. Each co-owner's interest in all joint accounts held at the same institution are added together and insured up to the limit of deposit insurance (\$250,000).

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#### Policy Statement

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It is the policy of the FDIC to make deposit insurance determinations in accordance with the Rules and Regulations promulgated pursuant to the Federal Deposit Insurance Act (FDI Act) and applicable statutes.

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#### Legal Reference

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Joint ownership accounts are insured in accordance with [12 C.F.R.](#)

[330.9.](#)

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## Definitions

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### **Joint Account**

A deposit account co-owned by two or more natural persons.

### **Jointly Held Community Property**

In states with community property laws, a jointly held account of a husband and wife is owned as community property. Upon the death of a spouse, one-half of the community property belongs to the surviving spouse and the other half belongs to the deceased spouse's estate.

### **Joint Tenants with Right of Survivorship**

A joint tenancy with right of survivorship ("JTWROS") account allows each joint tenant ("owner") to withdraw funds from the account and upon the death of a joint tenant the account belongs to the surviving owner(s).

### **Natural Person**

A human being.

### **Tenancy by the Entirety**

A tenancy by the entirety is only possible when the joint owners are husband and wife. This type of joint account provides a right of survivorship. Upon the death of either spouse the funds belong to the surviving spouse.

### **Tenancy in Common**

There is no right of survivorship in a tenancy in common account. Upon the death of one of the owners in the joint account, his or her interest in the account becomes a part of that tenant's estate rather than passing to the surviving owner(s).

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## Insurance Determination

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Joint ownership accounts are insured separately if all of the following conditions are met:

- All co-owners are natural persons. Entities such as corporations,

partnerships, and decedents' estates are not natural persons. Therefore, accounts owned by such an entity fails to qualify for insurance under the joint ownership category.

- Each co-owner possesses withdrawal rights on the same basis. If one co-owner can withdraw funds on his or her signature alone, but the other co-owner can withdraw funds only with the signatures of both co-owners, then this requirement has not been satisfied; the co-owners do not have withdrawal rights on the same basis.
- Each of the co-owners has personally signed a deposit account signature card for all joint accounts except certificates of deposit, deposit obligations evidenced by a negotiable instrument, or any account maintained by an agent, nominee, guardian, custodian or conservator on behalf of two or more natural persons. This limits the applicability of this requirement to passbook, checking, money market, and other non-certificate deposit accounts.

If the above criteria are met, and the records of the insured depository institution are clear and unambiguous as to the ownership of the accounts, the account(s) shall be deemed to be jointly owned. The interests of each individual in all joint accounts he or she owns at the same FDIC insured depository institution are added together and insured up to the limit of deposit insurance (\$250,000). If any of the conditions are not met, the account(s) fails to qualify for deposit insurance coverage in the joint ownership category and in most cases will revert to the single ownership category.

## Special Issues

### Death of a joint account owner

If an account is held in the names of two or more persons and one of the persons is deceased on the date of the closing of the financial institution, the account will generally be insured as a joint ownership account of the surviving joint owners, or if there is only one surviving owner, as the individual (single ownership) account of that owner.

Pursuant to [12 C.F.R. 330.3](#), General Principles, the insurance of joint accounts shall not be affected by the death of a joint account owner, if the death occurs within the period six months immediately prior to the closing of the institution. The operation of this grace period, however, shall not result in a reduction of insurance coverage. Therefore, if one of the co-owners dies, the account shall be insured for six months as if the co-owner were still alive.

For example, Mary and John Smith have \$340,000 in a joint account, and John dies two weeks prior to the failure of the institution. The account is insured as if John was still alive, and \$340,000 is insured in the joint ownership category. However, if John had died seven months prior to the

failure, the account is insured as Mary's single ownership account and aggregated with any other single ownership accounts of Mary.

When a joint account holder dies more than six months prior to the failure of the financial institution, further analysis is required to determine the insurance coverage. The joint account is reviewed to determine whether it provides for right of survivorship or no right of survivorship to surviving owners.

Commonly used terms applicable to accounts with right of survivorship include joint tenants with right of survivorship ("JTWROS"), tenancy by the entirety, and jointly held community property. In each of these situations, the funds belong to the surviving owner(s). However, a decedent's interest in a tenancy in common account becomes part of the decedent's estate rather than passing to the surviving owner(s).

For example, if Mary and John Smith have \$340,000 in a joint account with right of survivorship (JTWROS) and John dies outside the grace period (more than six months), the entire account belongs to Mary in the single ownership capacity and is added to any other single ownership accounts of Mary. As a result, Mary is uninsured \$90,000 in the single ownership category.

If Mary and John Smith have \$340,000 in a joint account without right of survivorship (i.e., a tenancy in common) and John dies outside the grace period (more than six months), John's interest in the account becomes part of his estate upon death and is aggregated with any other accounts of his estate. In this scenario, \$170,000 is insured to the estate (single ownership category) and the remaining \$170,000 is aggregated with any other single ownership accounts of Mary.

### **Withdrawal Rights**

### **The effect of different Social Security numbers in the determination of insurance**

The use of Social Security numbers ("SSN") does not determine insurance coverage. The coverage does not increase by using one owner's SSN on one account and another owner's SSN on another account.

### **Non-qualifying joint accounts**

Whenever an account held in the names of two or more persons (or entities) does not qualify for joint ownership insurance coverage, the Claims Specialist must determine the actual ownership interests in order to make an insurance determination. The Claims Specialist cannot assume that the interests of the named owners are equal, but instead must identify actual ownership. Though the interest of each named owner may be evident from the deposit account records, it is more likely that the Claims Specialist will need to have the owners prepare and sign a Declaration for Joint Ownership Deposit (Refer to [Declaration for Joint Ownership Deposit](#)).

### Financial privacy of co-owners

Joint account determinations can involve situations requiring sensitivity to the financial privacy of all parties. When discussing uninsured funds relating to a group of accounts with more than one ownership combination, explain the situation to the co-owners and determine whether the parties wish to discuss all accounts as a group or separately by accounts with the named parties.

### Steps to Determine Deposit Insurance

#### Step 1. Aggregate all accounts in which any one owner has an interest.

Account # 1	Mary Jones and John Jones	\$300,000
Account #2	John Jones and Joseph Jones	<u>\$300,000</u>
		\$600,000

Since John is in both accounts, the two (2) accounts are aggregated.

#### Step 2. Determine each owner's interest in the joint accounts.

Assuming equal ownership, Mary owns ½ of Account # 1 or \$150,000. John owns ½ of both Account # 1 and Account # 2 or a total of \$300,000. Joseph owns ½ of Account # 2 or \$150,000.

#### Summary of Insurance Coverage

	Total	Insured	Uninsured
Mary	\$150,000	\$150,000	-0-
John	\$300,000	\$250,000	\$50,000
Joseph	<u>\$150,000</u>	<u>\$150,000</u>	-0-
Total	\$600,000	\$550,000	\$50,000

#### Step 3. Determine distribution of uninsured funds.

When uninsured funds result from applying Step 2 of the insurance determination to a group of accounts, the uninsured amount should be prorated among all the joint accounts involving the owner(s) with the uninsured interest. If the uninsured amount is not prorated a depositor who is not uninsured could be negatively affected. In this example, John is the only one uninsured, but if all the funds are taken out of the account with Mary, she would be disproportionately affected. John is insured for \$250,000 and uninsured for \$50,000. The uninsured amount should be prorated between the two accounts in which John has an interest based on his percent of ownership.

Determine the proper pro-ration for any one joint owner in two steps:

1. Divide the uninsured amount of that owner by that owner's total interest in the accounts, expressing the answer as a % (in the case of John that is \$50,000/\$300,000, or 16.667%).
2. Multiply the owner's interest in each account by that percentage.

This step is outlined below:

Account	Account Balance	John's Interest	% of Uninsured (amount of uninsured divided by John's interest)	Pro-rated amount of Uninsured
1	\$300,000	\$150,000	16.6667%	\$25,000
2	\$300,000	\$150,000	16.6667%	\$25,000
Total	\$600,000	\$300,000	16.6667%	<b>\$50,000</b>

In our example each account is debited for the uninsured amount as indicated above. Only John has a claim for the \$50,000 and the Receivership Certificate is issued to John.

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Documentation to be reviewed and/or utilized in making the deposit insurance determination may include the following:

1. Signature card(s), certificates of deposit, passbooks or other account records of the financial institution, including electronic records.
2. Declaration for Joint Ownership Deposit (refer to [Declaration for Joint Ownership Deposit](#)). (To be used in non-qualifying joint accounts.)
3. Death Certificate. In the event that one or more of the depositors on a Joint Ownership account is deceased, the date of death in relation to the date of bank failure may influence the ownership status. Pursuant to [12 C.F.R. 330.3](#), General Principles, the insurance of joint accounts shall not be affected by the death of a joint account owner, if the death occurs within the period six months immediately prior to the failure.

4. In instances where the ownership of an account is ambiguous, it may be necessary to obtain copies: of documents that reflect who owns the Funds. These may include:
- a) Copies of tax returns reflecting who reports the payment of interest.
  - b) Copies of checks used to open accounts indicating the source of the funds.

In CAS, case files are worked online and any supporting documents are scanned into FACTS.

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## Examples of Insurance Coverage

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### Example 1:

#### Scenario

#### Fully Insured

Three co-owners.

#### Situation

The failed institution has a certificate of deposit (CD) account titled John Smith, Mary Smith and Joseph Smith with a balance of \$660,000.

#### Analysis/Determination

The Claims Agent reviews the CD, verifies there are three owners, with the assumption that all co-owners are alive on the date of the failure. John, Mary and Joseph are natural persons, each one is named on the CD, and each shares withdrawal rights on the same basis. Since the three conditions of insurance in the joint ownership category are satisfied, the account qualifies for insurance under the joint ownership category and each depositor is insured for \$220,000 in the joint ownership category.

**Example 2:**

**Scenario**

**Fully Insured**

Truncated Account Title.

**Situation**

The failed institution has a CD account titled John Smith and Mary Smith with a balance of \$720,000.

**Analysis/Determination**

The CAS case file for this account show John Smith and Mary Smith as the owners of the account. However, upon meeting with the depositors, the Claims Agent reviews the CD and determines that there are actually three names on the account, John Smith and Mary Smith and Joseph Smith (as shown on the CD). Joseph Smith is not listed in the account title or the address field in CAS. All co-owners are natural persons, are alive, and share withdrawal rights on the same basis. Since the conditions for insurance in the joint ownership category are satisfied, the account is a qualifying joint account and the account is insured for \$720,000.

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**Example 3:**

**Scenario**

**Partially Insured**

One co-owner's interest in three accounts found to exceed insurance limit.

**Situation**

Bart, Mary and Dennis Walker have three joint ownership accounts at the failed financial institution. Two of the accounts are titled "Bart Walker or Mary Walker" in the amount of \$250,000 each and the third account is titled "Bart Walker or Dennis Walker" in the amount of \$40,000.

**Analysis/Determination**

The Claims Agent determines that Bart and Mary own equal shares of the first two accounts for \$250,000 each and Bart and Dennis own equal shares of the third account for \$40,000. All co-owners were alive on the date the institution failed. After reviewing the accounts the Claims Agent realizes there is a string (one co-owner's interest in all three accounts exceeds the insurance limit) The Claims Agent then reviews accounts and sees that Bart's interest in all three accounts totals \$270,000, Mary's interest in the two accounts totals \$250,000 and Dennis' interest totals \$20,000. As Bart's interests exceed the limit of insurance for this ownership category he is found to be insured for \$250,000 and uninsured for \$20,000. Both Mary and Dennis are fully insured as their respective interest is less than the insured limit. When aggregating the total insured and uninsured the accounts are insured for \$520,000 and uninsured for \$20,000. In calculating the amount of uninsured to be debited from each account the Claims Agent makes the following calculations:

1. Divide \$20,000 by \$270,000 (amount of uninsured by Bart's total interest); the result is 7.4074%.
2. Multiply 7.4074% by Bart's interest in each account, \$125,000 for the 1st and 2nd and \$20,000 for the 3rd.
- 3 Result is \$9,260 debited from each of the 1st and 2nd Accounts. And \$ 1,480 is debited from the 3<sup>rd</sup> account.

Account	Account Balance	Bart's Interest	% of Uninsured (amount of uninsured divided by Bart's interest)	Pro-rated amount of Uninsured
1	\$250,000	\$ 125,000	7.4074%	\$ 9,260
2	\$250,000	\$ 125,000	7.4074%	\$ 9,260
3	\$ 40,000	\$ 20,000	7.4074%	\$ 1,480
Total	\$540,000	\$ 270,000	7.4074%	<b>\$20,000</b>

In this example each account is debited for the uninsured amount indicated above. Only Bart has a claim for the \$20,000 and the Notice of Insurance Determination is issued to Bart.

**Example 4:**

**Scenario**

**Fully Insured**

Death of a co-owner within the six month grace period.

**Situation**

John, Mary and Joseph Smith have one joint ownership account at the failed financial institution entitled “John Smith or Mary Smith or Joseph Smith” in the amount of \$600,000.

**Analysis/Determination**

The Claims Agent receives a call from Mary Smith upon the institution’s failure inquiring about the insurance on her accounts and advises him that John is her husband and Joseph is her son and John died two weeks before the institution failed. Since John died within six months prior to the institution’s failure, the six-month grace period applies and the account is insured as if all owners were alive on the date of failure. The Claims Agent determines that John, Mary and Joseph owned equal shares of the account, or \$200,000 each. Since the conditions for insurance in the joint ownership category were satisfied, the account is deemed fully insured.

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**Example 5:**

**Scenario**

**Partially Insured**

Death of a co-owner outside of the six month grace period with account styled with right of survivorship.

**Situation**

The failed institution had one account titled “Barbara and Robert Mays, JTWROS” in the amount of \$340,000. Also, the failed institution had an account titled “Robert Mays” with a balance of \$20,000.

**Analysis/Determination**

Upon the institution’s failure, Robert contacts the Claims Agent about the account with his deceased wife Barbara. The Claims Agent reviews the death certificate provided by Robert and determines that Barbara died eight months before the failure of the financial institution, but Robert did not have the account restyled. The Claims Agent also discovers that Robert had a single ownership account in the amount of \$20,000.

Barbara and Robert owned equal shares of the joint account. Since Barbara died eight months prior to the institution’s closing, no grace period can be afforded to the decedent (Barbara), and with the account structured as a JTWROS all funds are now Robert’s and are covered under 12 C.F.R. 330.6 in the single ownership category (See [Chapter 5: Single Ownership Accounts](#)). These funds of \$340,000 are aggregated with Robert’s other single ownership account of \$20,000 and insured to \$250,000 with a Notice of Insurance Determination issued for the uninsured amount of \$110,000.

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**Example 6:**

**Scenario**

**Partially Insured**

Death of a co-owner outside the six month grace period with account styled as tenants in common.

**Situation**

At the failed institution, Patricia and Mark Smith had an account in the amount of \$520,000 titled “Patricia Smith and Mark Smith, Tenants in Common”.

**Analysis/Determination**

Upon the institution’s failure, the Claims Agent obtained the signature card and it was determined Mark and Patricia owned equal shares of the account. However, he also discovered that Mark died seven months before the institution failed, but the account was not restyled. Since the account was owned as “tenants in common”, Mark’s interest became part of his estate. As estates are not eligible for insurance coverage under the joint ownership category, since a deceased person (Mark) is not considered a natural person, the account fails and both co-owners interests revert to coverage under 12 C.F.R. 330.6 in the single ownership category (See [Chapter 5: Single Ownership Accounts](#)). Neither Mark, his estate, nor Patricia had other accounts at the institution. Therefore, Patricia was insured in the single ownership category for \$250,000 and uninsured for \$10,000 with a Notice of Insurance Determination issued to her and Mark’s estate was insured in the single ownership category for \$250,000 and uninsured for \$10,000 with a Notice of Insurance Determination issued to him.

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**Example 7:**

**Scenario**

**Partially Insured**

Account which fails under the joint ownership category.

**Situation**

The failed institution had a checking account titled “Smith Electronics, Inc. and John Smith”, in the amount of \$340,000.

**Analysis/Determination**

Upon review of the grouping report the Claims Agent recognizes that the account is purported to be a joint account, but one of the qualifications of a joint account is that the all owners must be natural persons. He contacts John Smith, as the Treasurer of Smith Electronics, Inc. and discovers that Mr. Smith was only named on the account as a signer and has no ownership interest in the account. Smith Electronics, Inc. is the sole owner of the account. Since all owners of a joint account must be natural persons and Smith Electronics, Inc. is a corporation, the account does not qualify for coverage under the joint ownership category. The account is insured as a business account under 12 C.F.R. 330.11 (See [Chapter 10: Accounts of a Corporation, Partnership or Unincorporated Association](#)) in the amount of \$250,000 with a Notice of Insurance Determination issued for the amount of \$90,000.

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**Example 8:**

**Scenario**

**Partially Insured** Account fails to have both co-owner signatures on the signature card.

**Situation**

Wayne and Mary Jones established a checking account at the failed institution titled “Wayne Jones and Mary Jones” in the amount of \$510,000. Also, both Wayne and Mary established single ownership accounts each of which had a balance of \$50,000.

**Analysis/Determination**

Upon review of the signature card for the account the Claims Agent discovered that Mary did not sign the card. Both Wayne and Mary were alive on the date the institution failed. One of the requirements of joint checking accounts is that all owners must sign the signature card. The Claims Agent had the owners prepare and sign a [Declaration for Joint Ownership Deposit](#) and determined that Wayne and Mary owned the funds equally. Since the account did not meet the conditions for coverage in the joint ownership category, the account was insured under 12 C.F.R 330.6 in the single ownership category (See [Chapter 5: Single Ownership Accounts](#)). It was also discovered that Mary and Wayne had single ownership accounts of \$50,000 each. Each owner’s share of \$255,000 in the joint account was aggregated with their single ownership accounts of \$50,000 and each were found to be insured for \$250,000 and uninsured for \$55,000. Separate Notices of Insurance Determination in the amount of \$55,000 each were issued to Mary and Wayne.

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**Example 9:**

**Scenario**

**Fully Insured**

Non-equal withdrawal rights.

**Situation**

Prior to the institution's failure, James, Margaret and Michael Hines opened a checking account in the amount of \$740,000 at the institution.

**Analysis/Determination**

Upon the institution's failure, the Claims Agent received a call from the Hines' regarding the insurance on their account. The Claims Agent reviewed the signature card and noted that James and Margaret had equal withdrawal rights, but that Michael's withdrawal required either James or Margaret's signature in addition to his signature. James, Margaret and Michael were alive on the date the institution failed, and all had signed the signature card. However, since one of the requirements to qualify for insurance under the joint ownership category was not met (each co-owner must possess withdrawal rights on the same basis) the account failed for coverage in the joint ownership category and reverted to coverage under 12 C.F.R. 330.6 in the single ownership category (See [Chapter 5: Single Ownership Accounts](#)). The Claims Agent had the owners prepare and sign a [Declaration for Joint Ownership Deposit](#) and determined that James, Margaret and Michael did equally own the funds. They had no other accounts so the deposits were insured in the single ownership category; the account was deemed fully insured for \$740,000.

**Note:** If James, Margaret and Michael had funds in single ownership accounts, these funds would have been aggregated with the funds from the joint account and insured up to the limit of deposit insurance (\$250,000) for each.

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## Chapter 9

### Revocable Trust Accounts

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#### Contents

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This chapter contains the following information on Revocable Trust Accounts:

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#### Overview

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The deposit insurance regulations provide separate deposit insurance coverage for funds owned by one or more individuals and deposited into an account in which the owner(s)/grantor(s) evidence(s) an intention that upon the death of the owner(s)/grantor(s) the funds shall belong to one or more eligible beneficiaries. Such accounts are called revocable trust accounts. Revocable trust accounts can be either formal or informal. Revocable trust accounts are insured up to the limit of deposit insurance (\$250,000) for each owner/eligible beneficiary relationship. This deposit insurance is separate from deposit insurance provided to owners or beneficiaries of the account in either the single or joint ownership categories. Informal revocable trust accounts are sometimes known as tentative or “Totten” trust accounts, or “payable-on-death” (POD) accounts or “testamentary” trust accounts.

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## Policy Statement

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It is the policy of the FDIC to make deposit insurance determinations in accordance with the Rules and Regulations promulgated pursuant to the Federal Deposit Insurance Act (FDI Act) and applicable statutes.

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## Legal Reference

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Revocable trust (Testamentary Accounts) accounts are insured in accordance with [12 C.F.R. 330.10](#).

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## Definitions

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### Formal Revocable Trust

Also known as “living” or “family” trusts, these trusts are governed by a formal trust document, usually drafted by an attorney. A living trust is one in which an owner creates and retains control over the funds during his lifetime.

### Grace Period

To ensure that families dealing with the death of a family member have adequate time to review and, if necessary restructure their accounts, the FDIC will insure the deceased person’s accounts as if he or she were still alive 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 would be a reduction in 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.

The grace period provided following the death of an account holder does not apply to the beneficiaries of an account. Immediately upon the death of a beneficiary, the insurance coverage of the account is reduced by \$250,000 per owner/grantor.

### Informal Revocable Trust

Often called a “Totten” trust, “in trust for” (ITF) accounts, or “payable- on-

death” (POD) accounts, these are governed solely by the terms of the signature card, certificate of deposit or other deposit contract between the owners and the insured financial institution.

### **Life Estate Interest**

A trust interest in which the beneficiary is given the right to receive income from the trust or to use the trust assets during his lifetime.

### **Owners/Grantors/Trustors/Settlers**

The creator of the trust, usually designed as the owner/grantor of the trust, is the person who funds the trust. This person may also be referred to as the “trustor,” or “settlor.”

### **Eligible Beneficiary**

For purposes of this section, a beneficiary includes a natural person as well as a charitable organization and other non-profit entity recognized as such under the Internal Revenue Code of 1986, as amended.

### **Revocable Trust Account**

Any account that evidences an intention that upon the death of the owner(s)/grantor(s) the funds will pass to one or more named beneficiaries. These accounts are insured separately from other ownership categories of the grantor as long as the beneficiary is as defined above.

### **Right of Survivorship**

If a joint revocable trust account with a right of survivorship is held by two co-owners and one of them dies, all of the funds are then owned by the surviving account holder. As a result of the co-owner’s death, the maximum insurance coverage of the account is reduced by \$250,000 for each eligible beneficiary.

### **Trustee**

The person designated to administer an agreement for the benefit of another. The grantor of the trust can also be the trustee of that same trust.

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## **Insurance Determination**

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Revocable trust accounts are insured up to the limit of deposit insurance (\$250,000) for each grantor/eligible beneficiary relationship. Revocable trust accounts (formal and informal) are insured separately from single ownership accounts and joint ownership accounts of the owner or the beneficiary. However, formal and informal revocable trust accounts are not insured separately from each other.

While the rules are different for informal revocable trust accounts and formal revocable trust accounts, the \$250,000 per eligible beneficiary insurance limit applies to all revocable trust accounts that an owner has at the same institution. As an example, suppose a father has a POD account naming his son and daughter as beneficiaries and he has a living trust account naming the same beneficiaries. The funds in both accounts are aggregated and the total insured up to \$250,000 per owner/eligible beneficiary relationship.

### Informal Revocable Trusts

In order to qualify for insurance coverage under the revocable trust category, informal revocable trust accounts must meet all of the following requirements:

- The beneficiaries must be specifically identified by name in the deposit account records of the failed institution.
- The owner's intention that, upon his death, the funds shall belong to the named beneficiary must be shown in the title of the account using commonly accepted terms such as "in trust for," "as trustee for," or "payable-on-death." These terms may be abbreviated as "ITF," "ATF," or "POD."
- The named beneficiary must be an eligible beneficiary. Subject to applicable state law, a depositor can name any person or any organization as the beneficiary of a revocable trust account. However, per-beneficiary insurance coverage is available only when the beneficiary is "eligible."

If an informal revocable trust account has been created by more than one grantor, insurance will be determined as if each co-owner maintained a separate revocable trust account for each beneficiary. The grantors' interests are deemed to be equal unless otherwise stated in the failed institution's deposit account records. If there are several eligible beneficiaries, their interests are deemed equal unless otherwise specified in the failed institution's account records.

If an informal revocable trust account fails to meet the above requirements, the account reverts to a single ownership account of the grantor and is aggregated with any other single ownership account owned by the grantor and insured up to the limit of deposit insurance (\$250,000).

It is important to note that the special insurance coverage provided for informal revocable trusts 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 records. It is not sufficient to only identify a class of beneficiaries such as "children." The beneficiaries must be listed by name.

Account(s) established by one grantor for the benefit of one or more beneficiaries are insured separately from any other accounts of the grantor as long as the beneficiary is an eligible beneficiary.

If the same grantor establishes more than one account for the same eligible beneficiary, the accounts are aggregated and are insured up to the limit of deposit insurance (\$250,000) for each owner/qualified beneficiary relationship.

### Formal Revocable Trusts

The owner of a formal revocable trust account, sometimes referred to as “living” or “family” trust, is insured up to \$250,000 per beneficiary if all of the following requirements are met:

- The beneficiary must be an eligible beneficiary.
- The qualifying beneficiary must become entitled to his interest in the trust when the owner dies – deposit insurance is based on the beneficiaries who meet this requirement at the time the bank fails. For example, assume a living trust names an owner’s three children as beneficiaries but states that each beneficiary’s share will pass to the beneficiary’s children if the beneficiary dies before the owner. Assuming all three children are alive at the time the bank fails, only the children -- not the grandchildren -- are beneficiaries for insurance purposes. (That’s because the grandchildren are not entitled to any trust assets while their parent is alive.) In this scenario, coverage up to \$750,000 (\$250,000 per beneficiary) is available for the trust’s deposit accounts.

The account title at the bank must indicate that the account is held by a trust. This rule can be met by using “living trust”, “family trust”, or similar terms in the account title.

Formal revocable trusts often 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). Issues concerning life estate interests and whether or not the principal of the trust can be invaded are complex. Generally, trusts which contain language relating to these topics should be referred to FDIC Legal for a legal opinion. Also, if an owner/grantor has died, it may be desirable to refer the documentation to FDIC Legal for a legal opinion.

If the revocable trust document and supporting deposit account records fail to satisfy any of the above requirements, funds deposited pursuant to the revocable trust are insured as the single ownership funds of the grantor(s).

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## General Guidelines for Reviewing Revocable Trust Agreements

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While there is no requirement that the Claims Specialist obtain a legal opinion prior to making an insurance determination on accounts insured under the revocable trust category of ownership, he may choose to refer all of the documentation to the Legal Division for a legal opinion.

If the Claims Specialist requests a legal opinion, then he must provide a copy of the complete trust and the Declaration for Trust to the Legal Division. Legal will provide an opinion as to the beneficiaries of the trust, their interest(s) in the trust, and whether the beneficiaries are qualifying.

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## Naming Up to Five Different Beneficiaries

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As mentioned above, revocable trust accounts generally are insured up to the insurance limit (\$250,000) for each owner/beneficiary relationship. In other words, each owner (or grantor) is insured up to the insurance limit on a “per beneficiary” basis. In calculating this “per beneficiary” coverage, the FDIC distinguishes between the following situations: (1) cases in which the owner has named up to five different beneficiaries; and (2) cases in which the owner has named more than five different beneficiaries.

In the first situation (up to five different beneficiaries), the FDIC does not allocate the owner’s fund to the various designated beneficiaries before applying the SMDIA. Rather, the FDIC simply multiplies the number of designated beneficiaries by the SMDIA. If the resulting product (number of beneficiaries X \$250,000) exceeds the combined amount of the owner’s funds in this category (revocable trust accounts), the owner’s funds are fully insured. If the product (number of beneficiaries X \$250,000) is less than the combined amount of the owner’s funds in this category, however, the owner’s funds are partially uninsured. Specifically, the funds in excess of the product (number of beneficiaries X \$250,000) are uninsured.

(Example 1: Account Owner “A” has a living trust account (and no other accounts in the revocable trust category) with a balance of \$1 million. The trust has four beneficiaries; “B,” “C,” “D” and “E.” Under the terms of the trust agreement, following the death of A, the sum of \$500,0 is payable to B; \$300,000 is payable to C; \$10 is payable to D; and all remaining funds (\$199,990) are payable to E. In this situation, with no more than five different beneficiaries, the fact that the trust provides for unequal payments to the various beneficiaries is irrelevant. Rather than allocating the trust funds to the beneficiaries before applying the SMDIA, the FDIC simply multiplies the

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number of designated beneficiaries (4) by SMDIA (\$250,000). This yields a product of \$1,000,000 (4 X \$250,000 = \$1,000,000). This product represents the owner's maximum amount of coverage. Because this product is not less than the amount of the owner's funds in this category (in fact, the maximum coverage matches the account balance of \$1 million), the owner's funds are fully insured.)

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### **Naming More Than Five Different Beneficiaries**

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Notwithstanding the general coverage provisions in the overview paragraph of this section, for funds owned by an individual in one or more revocable trust accounts naming more than five different beneficiaries and whose aggregate balance is more than five times the SMDIA, the maximum revocable trust account coverage for the account owner shall be the greater of either: five times the SMDIA or the aggregate amount of the interests of each different beneficiary named in the trusts, to a limit of the SMDIA per different beneficiary.

(Example 1: Account Owner "A" has a living trust with a balance of \$1 million and names two friends, "B" and "C" as beneficiaries.

At the same FDIC-insured institution, A establishes a payable-on-death account, with a balance of \$1 million naming his two cousins, "D" and "E" as beneficiaries. Coverage is determined under the general coverage provisions in paragraph (a) of this section, and not this paragraph (e). This is because all funds that A holds in both living trust accounts and payable-on-death accounts, at the same FDIC-insured institution, are aggregated for insurance purposes. Although A's aggregated balance of \$2 million is more than five times the SMDIA, A names only four different beneficiaries, and coverage under this paragraph (e) applies only if there are more than five different beneficiaries. A is insured in the amount of \$1 million (4 beneficiaries times the SMDIA), and uninsured for the remaining \$1 million.)

(Example 2: Account Owner "A" has a living trust account with a balance of \$1,500,000. Under the terms of the trust, upon A's death, A's three children are each entitled to \$125,000, A's friend is entitled to \$15,000, and a designated charity is entitled to \$175,000. The trust also provides that the remainder of the trust assets shall belong to A's spouse.

In this case, because the balance of the account exceeds \$1,250,000 (5 times the SMDIA) and there are more than five different beneficiaries named in the trust, the maximum coverage available to A would be greater of: \$1,250,000 or the aggregate of each different beneficiary's interest to a limit of \$250,000 per beneficiary. The beneficial interests in the trust for purposes of determining coverage are: \$125,000 for each of the children (totaling \$375,000), \$15,000 for the friend, \$175,000 for the charity, and \$250,000 for

the spouse (because the spouse's \$935,000 is subject to the \$250,000 per-beneficiary limitation). The aggregate beneficial interests total \$815,000. Thus, the maximum coverage afforded to the account owner would be \$1,250,000, the greater of \$1,250,000 or \$815,000.)

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## Documentation

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Documentation to be reviewed and/or utilized in making the deposit insurance determinations for the revocable trust category of ownership may include the following:

1. Signature cards certificates of deposit, electronic records or other account records. If it is an informal revocable trust, the account title must include commonly accepted terms such as, but not limited to, “in trust for”, “trustee for”, “payable-on-death to”, or any acronym therefore. In addition, the beneficiaries of the account must be specifically named.

If it is a formal revocable trust, the signature card or account records must indicate that it is a trust; however, the names of the beneficiaries need not be included.

2. [Declaration For Testamentary Deposit](#). To be used with informal revocable trusts with only one or more grantor(s).
3. [Declaration for Revocable Trust](#). To be used with formal revocable trusts. Legal should be consulted to determine if the trust is valid under state law.
4. A complete copy of the trust agreement if it is a formal revocable trust account.

In CAS the case is worked online and any supporting documents are scanned into FACTS

## Examples of Insurance Coverage

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### Example 1:

#### Scenario

#### Partially Insured

Informal revocable trust, multiple owners, single beneficiary.

#### Situation

The failed institution had an account titled “John Doe & Jane Doe in trust for Megan Doe” in the amount of \$600,000.

#### Analysis/Determination

The Claims Agent obtains an executed [Declaration For Testamentary Deposit \(Multiple Grantors\)](#) form from the grantors (John and Jane Doe), which indicates that Megan is their granddaughter, an eligible beneficiary. Further, the co-owners own the funds equally. Therefore, \$300,000 is attributed to John in trust for Megan, and \$300,000 is attributed to Jane in trust for Megan. Since no one grantor/eligible beneficiary relationship can be insured for more than \$250,000, each grantor/eligible beneficiary relationship is insured for \$250,000 and uninsured for \$50,000. Therefore, \$500,000 is deemed insured and a Notice of Insurance Determination is issued for the uninsured portion of \$100,000.

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**Example 2:**

**Scenario**

**Fully Insured**

Formal revocable trust with a life estate interest.

**Situation**

John and Mary Doe had one account titled, “John and Mary Doe, trustees of the John Doe Revocable Trust” in the amount of \$750,000 at the failed institution.

**Analysis/Determination**

The Claims Agent obtains a complete copy of the trust agreement as well as a completed [Declaration for Revocable Trust](#) form from John and Mary Doe. After review of the documentation received, the Claims Agent refers the documentation to the Legal Division for a legal opinion. After review of the documentation provided, the attorney advises that John is the sole grantor; the three beneficiaries are Mary, his wife, with a life estate interest; Claire his daughter; and Brigit, his granddaughter. John, Mary, Claire, and Brigit are all living. A beneficiary with a life estate interest is considered an equal beneficiary unless the trust document specifies otherwise, which in this case it doesn't. Since all three beneficiaries share equally and are eligible, and the account title disclosed the trust intent, the account is deemed insured for \$250,000 per grantor/qualifying relationship, or \$750,000 in total. Therefore, the account is fully insured for \$750,000.

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**Example 3: Scenario**

**Fully Insured** Multiple informal revocable trusts with common owners and beneficiaries.

**Situation**

The failed institution had the following accounts - one titled “John and Mary Smith in trust for Nancy, Ken & Barb” in the amount of \$1,250,000 and another titled “Mary Smith in trust for Anna & Barb” in the amount of \$350,000.

**Analysis/Determination**

The Claims Agent obtains a completed [Declaration For Testamentary Deposit \(Multiple Grantors\)](#) form from John and Mary Smith for the account titled “John and Mary Smith in trust for Nancy, Ken & Barb” (Trust #1). Mary Smith provides a completed [Declaration For Testamentary Deposit](#) form for the account titled “Mary Smith in trust for Anna & Barb” (Trust #2). In Trust #1, John and Mary list their beneficiaries as Nancy, Ken, and Barb. In Trust #2, Mary lists her beneficiaries as Anna and Barb. All beneficiaries are living. All beneficiaries are eligible. The Claims Agent determines the amount allocated to each grantor/beneficiary relationship based on the combination of both trusts is as follows:

Trust #	Grantor	Beneficiary	
1	John Smith	ITF Nancy	\$250,000
1	John Smith	ITF Ken	\$250,000
1	John Smith	ITF Barb	\$250,000
1	Mary Smith	ITF Nancy	\$250,000
1	Mary Smith	ITF Ken	\$250,000
1 & 2	Mary Smith	ITF Barb	\$250,000
2	Mary Smith	ITF Anna	\$250,000

In the case of joint revocable trust accounts (owned by two grantors), each grantor’s funds are insured separately. In this case, John’s funds (from Trust #1) amounted to \$625,000 (one-half of the account balance). Having named three beneficiaries (Nancy, Ken and Barb), John is entitled to coverage on his funds up to \$750,000 (3 X \$250,000 = \$750,000). Thus, John’s funds in the amount of \$625,000 are fully insured.

Mary’s funds (from Trust #1 and Trust #2) amounted to \$975,000 (\$625,000 from the Trust #1 account and \$350,000 from the Trust #2 account). Having named a total of four beneficiaries (Nancy, Ken, Barb and Anna), Mary is entitled to coverage on her funds up to \$1,000,000 (4 X \$250,000 = \$1,000,000). Thus, Mary’s funds in the amount of \$975,000 are fully insured

**Example 4:**

**Scenario**

**Fully Insured**

Informal revocable trust, multiple grantors, eligible and ineligible beneficiaries.

**Situation**

Jack and Debbie have two accounts titled “Jack and Debbie ITF Johnny and Annie’s Place Dog Shelter” with a balance of \$400,000 at the failed institution.

**Analysis/Determination**

The Claims Agent has Jack and Debbie complete a [Declaration For Testamentary Deposit \(Multiple Grantors\)](#) form. The form indicates the funds are equally owned and in trust for Johnny, their son, and Annie’s Place, a dog shelter. Johnny is living. The Claims Agent allocates the funds as follows:

<b>Grantor</b>	<b>Beneficiary</b>
Jack ITF Johnny	\$250,000
Jack ITF Annie’s	\$250,000
Debbie ITF Johnny	\$250,000
Debbie ITF Annie’s	\$250,000

The accounts are insured for \$500,000 in the Revocable Trust category for Jack and Debbie ITF their son. Since Annie’s Place is a non-eligible beneficiary of Jack and Debbie, (Annie’s Place is not an IRS approved charity) the funds allocated to it fail the test to be included in the Revocable Trust category; therefore, the ownership reverts to the single ownership category of Jack and Debbie, respectively. Because Jack and Debbie do not have any other accounts in the single ownership category, they are insured for \$500,000 (\$250,000 each) in the single ownership category. Therefore, the accounts are deemed fully insured.

**Example 5:**

**Scenario**

**Partially Insured**

One owner with both an informal and formal revocable trust.

**Situation**

The failed institution has two accounts for Mark Smith in the total amount of \$600,000 with one account titled “Mark Smith POD Julie and Mike”, and another account titled “Mark Smith Revocable Living Trust Agreement”.

**Analysis/Determination**

In a discussion with Mark Smith, the Claims Agent discovers that the owner and beneficiaries are identical for the two accounts. Therefore, the Claims Agent has Mark complete only the [Declaration for Revocable Trust](#) form. Mark also provides a complete copy of the trust. After reviewing, the Claims Agent refers the documentation to the Legal Division for advice on the formal trust agreement. The Legal Division advises that there are two equal qualifying beneficiaries of the living trust, Julie and Mike, who are Mark’s grandchildren. Since the beneficiaries are the same in each account (the POD account and the living trust account), the funds are added together and are allocated as follows:

<b>Grantor</b>	<b>Beneficiary</b>	
Mark	ITF Julie	\$300,000
Mark	ITF Mike	\$300,000

Since no one grantor/eligible beneficiary relationship can be insured for more than \$250,000, the accounts are deemed insured for \$500,000 and a Notice of Insurance Determination is issued for the uninsured amount of \$100,000.

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**Example 6:**

**Scenario**

**Partially Insured**

Deceased beneficiary.

**Situation**

The failed institution has one account for Joseph Jones in the total amount of \$600,000, titled “Joseph Jones POD Joshua, Jamie and Jeremy.”

**Analysis/Determination**

The Claims Agent has Joseph Jones complete a [Declaration For Testamentary Deposit](#) form. Joseph indicates that there are three beneficiaries on the account - Joshua, Jamie and Jeremy, his children. However, he also indicates that Jeremy is deceased. While Jeremy passed away within the six month period immediately prior to the failure of the institution, the grace period afforded to the owner(s) of an account is not afforded to the beneficiary. The amounts allocated to each grantor/eligible beneficiary relationship are \$300,000 for Joshua and \$300,000 for Jamie. Since no one grantor/eligible beneficiary relationship can be insured for more than \$250,000, the account is deemed insured for \$500,000 and a Notice of Insurance Determination is issued for the uninsured amount of \$100,000.

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**Example 7:**

**Scenario**

**Partially Insured**

Two owners, one of whom is deceased, with right of survivorship.

**Situation**

The failed institution has one account titled “Maria and Dominic ITF Guido, Luigi, Salvatore, and Antonio” with a balance of \$1,100,000.

**Analysis/Determination**

At the request of the Claims Agent, Maria executes a [Declaration For Testamentary Deposit \(Multiple Grantors\)](#) form. Upon review and discussion with Maria, the Claims Agent learns that Dominic passed away one year prior to the failure of the bank. He also learns that Maria and Dominic owned the funds as joint tenants with right of survivorship. The beneficiaries are all sons of Maria and Dominic and, therefore, are eligible beneficiaries of Maria. Since it is beyond the six month grace period, all the funds in the account are deemed to be owned by Maria. Therefore, \$250,000 is allocated for each of the four grantor/qualifying beneficiary relationships. The account is deemed insured for \$1,000,000, and a Notice of Insurance Determination is issued for the uninsured amount of \$100,000.

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**Example 8: Scenario**

**Fully Insured** Deposits in excess of \$1,250,000 with more than five beneficiaries.

**Situation**

John Smith held two accounts at the failed institution. The first account, with a balance of \$1,000,000, was titled as follows: “John Smith POD Jane Smith (spouse).” The second account, with a balance of \$300,000, was titled as follows: “John Smith POD Andrew, Barbara, Carl, Darlene, Edward and Frances Smith (children).”

**Analysis/Determination**

In obtaining a [Declaration for Testamentary Deposit](#) form from John Smith, the Claims Agent learns that all named parties are living.

In this case, the grantor (John Smith) holds a total of \$1,300,000 in revocable trust accounts. For these funds, the grantor has named seven beneficiaries: Jane, Andrew, Barbara, Carl, Darlene, Edward and Frances. When the amount of a grantor’s revocable trust deposits exceeds \$1,250,000, and the number of beneficiaries exceeds five, the FDIC allocates the deposits to the various beneficiaries before applying the \$250,000 limit. Here, the allocation produces the following results:

To Jane:	\$1,000,000 (all of the first account)
To Andrew:	\$50,000 (one-sixth of the second account)
To Barbara:	\$50,000 (one-sixth of the second account)
To Carl:	\$50,000 (one-sixth of the second account)
To Darlene:	\$50,000 (one-sixth of the second account)
To Edward:	\$50,000 (one-sixth of the second account)
To Frances:	\$50,000 (one-sixth of the second account)

In general, when a grantor’s deposits exceed \$1,250,000 and the number of beneficiaries exceeds five, the funds payable to each beneficiary are insured only up to \$250,000. Thus, in this case, the \$1,000,000 payable to Jane would be insured for \$250,000 and uninsured for \$750,000. The \$50,000 payable to each of the other beneficiaries would be fully insured. In combination, the two deposit accounts would be insured for \$550,000 and uninsured for \$750,000.

However, when the deposits exceed \$1,250,000 and the number of beneficiaries exceeds five, the FDIC will provide coverage up to at least

\$1,250,000. Thus, in this case, the two deposit accounts would be insured for \$1,250,000 (instead of \$550,000) and uninsured for only \$50,000 (instead of \$750,000).

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## Chapter 10

### Accounts of a Corporation, Partnership or Unincorporated Association

#### Contents

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This chapter contains the following information on Accounts of a Corporation, Partnership or Unincorporated Association:

Topic Title	Page Number
<a href="#">Overview</a>	10-1
<a href="#">Policy Statement</a>	10-1
<a href="#">Legal Reference</a>	10-2
<a href="#">Definitions</a>	10-2
<a href="#">Insurance Determination</a>	10-2
<a href="#">Documentation</a>	10-5
<a href="#">Examples</a>	10-6

#### Overview

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The deposit insurance regulations provide separate deposit insurance coverage for certain accounts of a corporation, partnership or unincorporated association. Such accounts must clearly disclose that the ownership of the funds are those of the corporation, partnership or unincorporated association. These organizations must be engaged in independent activity and must not have been set up primarily for purposes of increasing deposit insurance coverage. Funds owned by a corporation, partnership or unincorporated associations are insured up to the limit of deposit insurance (\$250,000).

Sole proprietorship accounts are insured as single ownership funds of the sole proprietor and are not insured under this ownership category.

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#### Policy Statement

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It is the policy of the FDIC to make deposit insurance determinations in accordance with the Rules and Regulations promulgated pursuant to the Federal Deposit Insurance Act (FDI Act) and applicable statutes.

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## Legal Reference

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Accounts of a corporation, partnership or unincorporated association are insured in accordance with [12 C.F.R. 330.11](#).

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## Definitions

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### Corporation

An organization that is incorporated and maintained as a corporation under the laws of the state in which it resides. Most state laws require a corporation to use such words as “corporation”, “company”, “incorporated”, or “limited” in its name. Professional corporations, such as law firms, accounting firms or doctor’s medical practices commonly incorporate the use of “Limited Liability Corporation” (“L.L.C.”), “Professional Association” (“P.A.”) or “Professional Corporation” (“P.C.”) to designate their corporate status.

### 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. See [12 C.F.R. 330.1\(g\)](#).

### Partnership

A group of two or more individuals or entities formed to carry on, as co-owners, a business for profit. A partnership may not always have formal documents on file. Another type of partnership is the “limited partnership” which is set up under applicable law for limited risk or exposure. See [12 C.F.R. 330.11\(b\)](#).

### Unincorporated Association

A group of two or more persons formed for some religious, educational, charitable, social or non-commercial purpose. See [12 C.F.R. 330.11\(c\)](#). These must be IRS approved non-profit.

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## Insurance Determination

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Deposit accounts owned by a corporation, partnership or unincorporated association are aggregated for each entity and insured up to the limit of

deposit insurance (\$250,000). The corporation, partnership or unincorporated association must be engaged in independent activity. The account records must indicate that an entity is the owner of the funds or that the nominal account holder is an agent or custodian.

Deposit accounts held in the name of a corporation, partnership or unincorporated associations are separately insured from any deposit accounts the owner(s) or officials of a corporation, partnership, or unincorporated association may have.

### **(A) Corporate Accounts**

Corporate accounts of the same entity are aggregated together and insured separately up to the limit of deposit insurance (\$250,000). To be eligible for this coverage the corporation must have been incorporated under state law. A division or business unit of a corporation that is not separately incorporated will not receive separate insurance coverage. Rather, the funds in such accounts are aggregated with other funds held by the corporation. Similarly, deposit accounts identified and titled for different purposes, but owned by the same corporation, do not receive separate insurance coverage. The funds are aggregated with any other funds held by the same corporation. A subsidiary of one corporation will receive separate insurance coverage from its parent and other subsidiaries as long as it is separately incorporated and engaged in independent activity.

### **(B) Partnership Accounts**

Eligibility requirements for deposit accounts of partnerships require they be established in accordance with state law to receive separate coverage under this ownership category. Funds of a partnership are insured separately from its partner's personal funds. The deposit accounts of a partnership engaged in an "independent activity" are aggregated and insured up to the limit of deposit insurance (\$250,000).

### **(C) Unincorporated Association Accounts**

Unincorporated associations are required to disclose the organization name in the account title if separate insurance coverage is to be received in this ownership category. If the account title lists only the names of the officers or principals of the association or organization, the funds would then be considered as the personal funds of those officers or principals. The deposit accounts of an unincorporated association engaged in an "independent activity" are aggregated and insured up to the limit of deposit insurance (\$250,000).

Corporations or partnerships occasionally maintain accounts in “representative” or “fiduciary” capacities. To determine whether a corporation or partnership has funds on deposit in such a capacity and the appropriate deposit insurance coverage in such situations, see [Chapter 6: Accounts Held by an Agent, Nominee, Guardian, Custodian or Conservator](#) and/or [Chapter 12: Irrevocable Trust Accounts](#).

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## Documentation

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Documentation to be reviewed and/or utilized in making the deposit insurance determination may include the following:

1. Signature cards, certificates of deposit, passbooks, electronic records, or other account records of the financial institution.
2. Copy of the corporate resolution, if applicable. This document will indicate who is authorized to make transactions on the account, and this is the person with whom the Claims Agent should meet/talk.
3. Declaration of Independent Activity, Declaration of Independent Activity for Unincorporated Association, Declaration for Custodian Deposit or Affidavit of Agency Account (refer to [Declaration of Independent Activity](#); [Declaration of Independent Activity for Unincorporated Association](#); [Declaration for Custodian Deposit](#); or [Affidavit of Agency Account](#)).

In CAS, the case file is worked online and any supporting documents are scanned into FACTS.

## Examples of Insurance Coverage

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### Example 1:

#### Partially Insured

#### Scenario

Two differently titled deposit accounts belonging to the same corporation.

#### Situation

At the failed institution, there is an account titled “Total Control Corporation – Operations Division” with a balance of \$253,000. There is a second account titled “Total Control Corporation – Business Development Division” with a balance of \$126,500.

#### Analysis/Determination

In reviewing the CAS report for this case, the Claims Agent notes that the taxpayer identification number (TIN) and mailing address are the same for both accounts. Therefore, the Claims Agent determines that the funds in the two accounts are owned by the same corporation even though they are used for different purposes. The Claims Agent aggregates the funds in the two accounts. Total Control Corporation is insured to \$250,000 with a Notice of Insurance Determination issued for the uninsured amount of \$129,500.

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**Example 2:**

**Partially  
Insured**

**Scenario**

Partnership with a single deposit account.

**Situation**

At the failed institution, there is an account titled “Maxell and Maxell”, with a balance of \$350,000.

**Analysis/Determination**

The Claims Agent reviews the case in CAS and the signature card for the account and determines that the account is a partnership account. The account of the partnership is insured for \$250,000 with a Notice of Insurance Determination issued for the uninsured amount of \$100,000.

Note: Despite the fact that there are two partners who have signed the signature card, deposit insurance flows to the partnership, not the individual partners.

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**Example 3:**

**Scenario**

**Fully Insured**

Different unincorporated associations with deposit accounts found to be operating at the same location.

**Situation**

The failed institution has an account titled “Fifth Avenue Non-Denominational Church for \$240,000 and “Fifth Avenue Non-Denominational Private School” for \$90,000.

**Analysis/Determination**

The Claims Agent reviews the case in CAS and notes that the mailing address is the same for the two accounts, but the accounts have different TINs. The Claims Agent contacts the church and school to have a Declaration of Independent Activity for Unincorporated Association (refer to [Declaration of Independent Activity for Unincorporated Association](#)) completed by both organizations. Upon review of the declarations, the Claims Agent determines that there is independent activity and the two organizations are separate, legal entities. Therefore, the deposits of both organizations are separately and fully insured.

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**Example 4:**

**Scenario**

**Fully Insured**

Same corporation found to have a payroll and profit sharing deposit account.

**Situation**

The Shuttle, Inc. has its corporate payroll account at the failed institution in the amount of \$200,000. Shuttle, Inc.'s profit sharing account is also at the failed institution in the amount of \$90,000.

**Analysis/Determination**

The Claims Agent reviews the case in CAS and notes that Shuttle, Inc. has two accounts with the same address, but different TINs, and one account is its employee profit sharing account. The Claims Agent determines that the two accounts are separately insured because Shuttle's corporate account is insured under the "Corporation, partnership and unincorporated association" category and the profit sharing account is insured under the "Retirement and other Employee benefit plan accounts" category. Refer to [Chapter 13: Employee Benefit Plan Accounts](#) for further discussion of the Employee Benefit or Retirement Plans. Therefore, both accounts are deemed fully insured

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**Example 5:**

**Scenario**

**Partially**

Deposit account of a homeowners association.

**Insured**

**Situation**

“The Village on the Lake Homeowners Association” has its reserve fund at the failed institution in the amount of \$300,000.

**Analysis/Determination**

The Claims Agent reviews case in CAS and determines that the account is insured for \$250,000. Upon learning of this, the treasurer for the homeowners association contacts the FDIC and advises the Claims Agent that the funds in the account should be insured as owned by each member of the association and that there are 30 owners. The Claims Agent asks what the funds are used for and the treasurer states they are used to pay general operating expenses of the association, such as routine maintenance and repairs. The Claims Agent advises the treasurer that coverage for the association does not pass through to the owners as the funds are for use by the association as it deems appropriate. Therefore, the account is insured for \$250,000 and a Notice of Insurance Determination for the uninsured amount of \$50,000 issued to the homeowners association.

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## Chapter 11

### **Accounts Held by Depository Institutions as Trustee of an Irrevocable Trust**

#### Contents

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This chapter contains the following information on Accounts Held by Depository Institutions as Trustee of an Irrevocable Trust:

Topic Title	Page Number
<a href="#">Overview</a>	11-1
<a href="#">Policy Statement</a>	11-1
<a href="#">Legal Reference</a>	11-1
<a href="#">Definitions</a>	11-2
<a href="#">Insurance Determination</a>	11-2
<a href="#">Documentation</a>	11-4
<a href="#">Examples</a>	11-5

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#### Overview

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The deposit insurance regulations provide separate deposit insurance coverage for certain accounts 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.

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#### Policy Statement

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It is the policy of the FDIC to make deposit insurance determinations in accordance with the Rules and Regulations promulgated pursuant to the Federal Deposit Insurance Act (FDI Act) and applicable statutes.

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#### Legal Reference

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Accounts held by depository institutions as trustee of an irrevocable trust are insured according to the rules set forth in [12 C.F.R. 330.12](#). [Other related](#)

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[sections are 12 C.F.R. 330.1 and 12 C.F.R. 330.5.](#)

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## Definitions

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### **Fiduciary**

A person or entity holding a position of trust or confidence recognized by law.

### **Irrevocable Trust**

A trust established by a written trust agreement in accordance with state statute in which the settlor (creator of the trust) relinquishes all power to revoke the trust.

### **Trust Estate**

See [12 C.F.R. 330.1\(o\)](#). 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.

### **Trust Funds**

See [12 C.F.R. 330.1\(p\)](#). Funds held by insured depository institution as trustee pursuant to any irrevocable trust established pursuant to any state statute or written trust agreement.

### **Trust Interest**

See [12 C.F.R. 330.1\(q\)](#). The interest of a beneficiary in an irrevocable trust (other than an employee benefit plan) created either by written trust instrument or by state statute, but does not include any interest retained by the settlor.

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## Insurance Determination

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Trust funds which are held by an insured depository institution in its capacity as trustee of an irrevocable trust in any department of the fiduciary institution, or deposited by the fiduciary institution in another insured depository institution, shall be insured up to the limit of deposit insurance (\$250,000) for each owner or beneficiary represented. This insurance shall be separate from, and in addition to, the insurance provided for any other deposits of the owners or the beneficiaries. For "per beneficiary coverage," the beneficiary must have a "trust estate."

- (a) **Determination of interests** - Insurance for funds shall be determined in accordance with the following provisions:

(1) **Allocated funds of a trust estate**

If trust funds from a particular trust estate 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.

- (b) **Limitation on applicability** - These provisions for separate insurance do not apply to deposits of trust funds belonging to a trust classified as a corporation under [330.11 \(a\)\(2\)](#).

The deposit account records of an insured depository institution may disclose the existence of a relationship which might provide a basis for deposit insurance coverage under the provisions of 12 C.F.R. 330.12. 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.

Once a determination has been made that the account qualifies as being held by the institution in its fiduciary capacity as trustee of an irrevocable trust then the insurance determination will be conducted utilizing the rules for an irrevocable trust as outlined in [Chapter 12: Irrevocable Trust Accounts](#).

**Note:** The Claims Specialist may wish to consult with Legal before making a deposit insurance determination because of the potential complexities of trust documents.

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Documentation to be reviewed and/or utilized in making the deposit insurance determination may include the following:

1. Signature cards, electronic records and/or other account records which expressly disclose, by way of specific references, the existence of any fiduciary relationship involving a trustee pursuant to which funds in an account are deposited and on which a claim for insurance coverage is based.
2. A copy of the document that appointed or established the depository institution to act as trustee of the irrevocable trust.
3. A copy of the trust document to determine the value of each beneficiary's interest or other pertinent records of the Trustee that may determine a beneficial interest.
4. A completed Declaration for Irrevocable Trust form (see [Declaration for Irrevocable Trust](#)).

In CAS, the case file is worked online and any supporting documents are scanned into FACTS

The Claims Agent will forward the documentation to Legal for an opinion as to whether the account qualifies as an irrevocable trust.

## Examples of Insurance Coverage

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**Example 1: Scenario**

**Fully** Multiple irrevocable trusts.

**Insured Situation**

Main Street National Bank fails. At the failed bank, there is a CD titled “Main Street NB as trustee for Sam’s Trust”. The CD balance is \$500,000. There is another account, also a CD, at the failed bank titled “Terry as trustee for Sam Smith’s Trust”. It also has a balance of \$500,000.

### Analysis/Determination

Since the titles of both accounts indicate that these may be trust accounts, the Claims Agent does some research. He speaks with the failed bank’s Trust Department and learns that they are the trustee of a trust for Sam. Consequently, the Claims Agent has the Trust Department execute a [Declaration for Irrevocable Trust](#) form for this account. The Trust Department also provides a copy of the document which named The Trust Department as the trustee for the trust. The Trust Department also provides a complete copy of the trust document to the Claims Agent.

The Claims Agent also speaks with Terry, who states that he is the trustee of an irrevocable trust for Sam with Sam’s children, Ann and Bob, as beneficiaries. Terry executes a Trust Certification and provides a complete copy of the trust document to the Claims Agent.

Because of the multiple trusts, the Claims Agent decides to consult with Legal. Legal reviews the various documents and advises the Claims Agent that both trusts are irrevocable trusts with Sam as the settlor, with Main Street National Bank as trustee of one trust and Terry as trustee of the second trust. Sam’s children, Ann and Bob, are the beneficiaries of each of the two trusts. Legal’s review of the trust documents indicates that Ann and Bob are equal beneficiaries of the trusts and that their interests are non-contingent.

Consequently, the CD titled “Main Street NB as trustee for Sam’s Trust” is insured for \$500,000 in accordance with 12 C.F.R. 330.12. The account titled “Terry as Trustee for Sam Smith’s Trust” is also insured for \$500,000, but in accordance with 12 C.F.R. 330.13.

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**Example 2**

**Partially  
Insured**

**Scenario**

Multiple irrevocable trusts.

**Situation**

At the failed financial institution, the Claims Agent notes two accounts. One is titled “Failed Bank as Trustee for Jim’s Trust #1”. It has a balance of \$500,000. The second is titled “Failed Bank as Trustee for Jim’s Trust #2”. It has a balance of \$99,000.

**Analysis/Determination**

The Claims Agent requests the bank’s trust department complete and sign a Trust Certification form for both trusts. The Trust Department does as requested and also provides the Claims Agent with a complete copy of both trust documents and the documents which name the Trust Department as the trustee of both trusts. The Claims Agent also checked the two accounts to determine if either or both were secured by pledged collateral. Neither account was collateralized.

The Claims Agent sends the documents to Legal for review. The opinion prepared by Legal indicates that both trusts are irrevocable trusts with Jim as settlor. The failed bank is trustee of both of the trusts. For Trust #1, June and Jim, Jr. are the beneficiaries. They share equally in the trust and their interests are non-contingent. For Trust #2, June, Jim, Jr. and Sally are the beneficiaries. They share equally in the trust. Their interests are non-contingent.

The accounts are insured in accordance with 12 C.F.R. 330.12. However, the aggregation rules for Irrevocable Trusts outlined in 12 C.F.R. 330.13 apply (the non-contingent interests of each beneficiary in one or more irrevocable trusts established by the same settlor are aggregated). Consequently, the Claims Agent makes the following deposit insurance determination: \$533,000 is insured and a Notice of Insurance Determination is issued for the uninsured amount of \$66,000.

Trust	Balance	Interest		Jim, Jr.	Sally	
		June				
1	\$500,000	\$250,000		\$250,000		
2	\$ <u>99,000</u>	\$ <u>33,000</u>		\$33,000	\$ <u>33,000</u>	
	<b>\$599,000</b>	\$283,000	+	\$283,000	+	\$33,000 = <b>\$599,000</b>
	Insured:	\$250,000	+	\$250,000	+	\$33,000 = \$533,000
	Uninsured:	\$ 33,000	+	\$33,000		= <u>\$ 66,000</u>
						<b>\$599,000</b>

**Example 3**

**Partially Insured**

**Scenario**

Irrevocable trust with commingled funds.

**Situation**

ABC Bank’s Trust Department has \$2,500,000 on deposit at the failed bank.

**Analysis/Determination**

The Claims Agent contacts ABC Bank’s Trust Department and obtains from them a [Declaration for Irrevocable Trust](#) form. ABC Bank also provides copies of five trust documents and documents which name ABC Bank the trustee of those five trusts. Other documentation pertaining to the trusts is also sent by ABC Bank. The Claims Agent sends this documentation to Legal for review.

Legal reviews the documentation and advises the Claims Agent of the following: 1) all of the trusts are irrevocable trusts with ABC Bank as trustee; 2) the settlors of each trust are different people; 3) none of the beneficiaries are common to more than one trust; 4) the interests of the beneficiaries are non-contingent; and 5) each beneficiary has an equal share in his/her respective trust.

In addition, Legal states that the other documentation provided by ABC Bank shows that the funds of the five trusts were invested in a commingled fund managed by ABC Bank. The total of the commingled funds was \$25,000,000, of which \$2,500,000 was on deposit at the failed institution.

1. The interests of the five trusts in the commingled fund and the number of beneficiaries of each trust are as follows:

	<b><u>% of Commingled Fund</u></b>	<b><u># of Beneficiaries</u></b>
Trust A	40%	4
Trust B	30%	2
Trust C	15%	1
Trust D	10%	2
Trust E	5%	1
	<u>100%</u>	<u>10</u>

The Claims Agent makes the following insurance determination relating to the \$2,500,000 on deposit in accordance with 12 C.F.R. 330.12 and 12 C.F.R. 330.13:

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<b>Trust</b>	<b>% of Deposit</b>	<b>\$ of Deposit</b>	<b>Bene.</b>	<b>Bene. Share</b>	<b>Insured</b>	<b>Uninsured</b>
A	40%	\$1,000,000	Alex Ruby Steve Anne	\$250,000 \$250,000 \$250,000 \$250,000	\$250,000 \$250,000 \$250,000 \$250,000	
B	30%	\$750,000	Joe Cliff	\$375,000 \$375,000	\$250,000 \$250,000	\$125,000 \$125,000
C	15%	\$375,000	Ben	\$375,000	\$250,000	\$125,000
D	10%	\$250,000	Alan George	\$125,000 \$125,000	\$125,000 \$125,000	
E	5%	\$125,000	Frank	\$125,000	\$125,000	
<b>Totals</b>	<b>100%</b>	<b>\$2,500,000</b>	<b>10</b>	<b>\$2,500,000</b>	<b>= \$2,125,000</b>	<b>+ \$375,000</b>

Therefore, \$2,125,000 is insured and a Notice of Insurance Determination is issued for the uninsured amount of \$375,000.

## Chapter 12

### ***Irrevocable Trust Accounts***

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#### Contents

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This chapter contains the following information on Irrevocable Trust Accounts. However, for accounts held by depository institutions as trustee of an irrevocable trust, please see Chapter 11: Accounts Held by Depository Institutions as Trustee of an Irrevocable Trust.

Topic Title	Page Number
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<a href="#">Insurance Determination</a>	12-3
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#### Overview

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Separate insurance coverage is provided for certain Irrevocable Trust accounts. Insurance coverage for qualifying irrevocable trusts is based on each beneficiary's non-contingent interest in all irrevocable trusts created by the same settlor(s). Each beneficiary's non-contingent interest in all irrevocable trusts derived from the same settlor is insured up to the limit of deposit insurance (\$250,000).

Accounts previously referred to as Education IRAs are now known as Coverdell Education Savings Accounts (ESA). The deposit insurance analysis for these accounts is the same as for any other irrevocable trust.

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#### Policy Statement

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It is the policy of the FDIC to make deposit insurance determinations in accordance with the Rules and Regulations promulgated pursuant to the Federal Deposit Insurance Act (FDI Act) and applicable statutes.

## Legal Reference

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Irrevocable Trust accounts are insured in accordance with [12 C.F.R. 330.13](#).

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## Definitions

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### Contingent Trust Interest

Trust interests that do not qualify as non-contingent trust interests as defined in 12 C.F.R. 330.1(l). The funds representing contingent interests will be added together and insured up to the limit of deposit insurance (\$250,000) in the aggregate. Such insurance coverage will be in addition to the coverage provided for the funds representing non-contingent trust interests. Two examples of a contingent interest would be the requirement to 1.) graduate from school, or 2.) marry in order to qualify for trust funds.

### Irrevocable Trust

Established by state statute or a written trust agreement in which the settlor contributes funds and/or property and relinquishes all power to revoke the trust.

### Non-Contingent Trust Interest

See [12 C.F.R. 330.1\(l\)](#). 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 the Federal Estate Tax Regulations (26 C.F.R. 20.2031-7) or any similar present worth or life expectancy tables which may be adopted by the Internal Revenue Service. An example of a non-contingent interest would be the attainment of a certain age in order to qualify for trust funds.

### Settlor

The creator of the trust, also known as the grantor.

### Trust Interest

See [12 C.F.R. 330.1\(p\)](#). The interest of a beneficiary in an irrevocable express trust created either by written trust instrument or by state statute. This does not include any interest retained by the settlor(s).

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## Insurance Determination

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To obtain coverage in the irrevocable trust category, the following requirements must be met:

1. The existence of a trust relationship must be disclosed in the records of the institution. (See [12 C.F.R. 330.5 \(b\)](#), Fiduciary Relationships, as quoted in Chapter 3: Deposit Insurance Rules and Regulations and as discussed in Chapter 4: General Insurance Principles.) This is done most easily by showing in the title of the account that a trust relationship exists and by completing the appropriate signature card. For example, the account may be titled "John Doe, Irrevocable Trust DTD 12/23/02" or "The Mary Smith Irrevocable Trust".
2. The trust must be valid and irrevocable.
3. The trust documents must name/identify the beneficiaries.
4. There is no kinship requirement to receive beneficiary coverage for an irrevocable trust.
5. The amounts of the beneficiaries' interests must be capable of determination. This can be done by using present worth tables and life expectancy tables, but a specific dollar interest must be calculable. Unquantifiable contingencies would prevent this requirement from being met.

Whenever the account records of an insured institution disclose that an account is held pursuant to a trust relationship, the Claims Specialist needs to have the trustee execute and sign a Declaration for Trust form. See Declaration for Trust. The trustee also must provide a complete copy of the trust document. When these documents are received, the Claims Specialist may need to forward them to Legal for an opinion as to whether the account qualifies as an Irrevocable Trust.

In reviewing the trust document, the Claims Specialist and Legal will determine if the account qualifies for coverage as an Irrevocable Trust based on the following criteria:

1. *Irrevocability of Trust*

The trust must contain an express provision regarding its revocability. If the trust agreement states that it is irrevocable, then insurance coverage is determined in accordance with [12 C.F.R. 330.13](#). If the trust agreement fails for deposit insurance coverage as an irrevocable trust, it should be reviewed to determine if it qualifies for deposit insurance coverage as a revocable trust, as discussed in Chapter 9: Revocable Trust Accounts.

2. Retention of Interest by Settlor

Since the definition of trust interest excludes any interest retained by a settlor, the trust agreement needs to be reviewed to determine whether the settlor has retained any interest in the trust. If a trust does not meet the requirements for separate coverage in the irrevocable trust category (for example, if the settlor retains an interest in some or all of the trust), the portion of the trust that does not meet the requirements (e.g. the retained interest) defaults to the settlor's single ownership funds and is aggregated with any other single ownership funds the settlor may also hold, and the total insured up to the limit of deposit insurance (\$250,000). Note that the settlor cannot retain an interest unless settlor is still living.

3. Valuation of Interest

The next step is to determine whether any beneficiary has a non-contingent interest in the irrevocable trust. The beneficiary's non-contingent interest will be aggregated with the beneficiary's non-contingent interests in all other accounts at the failed financial institution held on behalf of irrevocable trusts established by the same settlor. If a beneficiary does have a non-contingent interest, then present-worth tables will be used to value that interest unless the trust specifies that other tables should be used.

Any contingent interests in an irrevocable trust are aggregated and insured up to the limit of deposit insurance (\$250,000). Therefore, it is essential to determine whether an interest is contingent. This generally entails legal analysis of the trust.

Note: Contingent interests from separate irrevocable trusts may be separately insured even if the trusts are established by the same settlor.

### **Non-Contingent Interest**

Insurance coverage for qualifying irrevocable trusts is based on each beneficiary's non-contingent interest in all irrevocable trusts created by the same settlor(s). Each beneficiary's non-contingent interest in all irrevocable trusts derived from the same settlor is insured up to the limit of deposit insurance (\$250,000) in the aggregate at each insured institution. When an irrevocable trust is established by two or more settlors, each trust interest is deemed to be derived from each settlor pro rata to his or her contribution to the trust.

Irrevocable trust accounts where the existence of the trust has failed to be disclosed, or which fail to meet legal requirements for a valid trust, do not qualify for deposit insurance under the irrevocable trust category of ownership. Typically, if the trust fails, the trust reverts to the single ownership category of the settlor. Note that the account cannot revert to single ownership of settlor unless settlor is still living.

Trust accounts in which the settlor and beneficiary are the same party also fail

for consideration of deposit insurance under the irrevocable trust category of ownership and are insured under the single ownership category as the settlor's own funds. Further, any trust interest retained by the settlor is also insured as the settlor's single ownership funds.

### Contingent Interest

Whenever any irrevocable trust involves contingent interests (i.e., interests that do not qualify as non-contingent trust interests), the funds representing those interests are insured in the aggregate up to the limit of deposit insurance (\$250,000). This is separate from the insurance coverage provided for any non-contingent interests.

An irrevocable trust may be made up wholly of contingent interests, as is often the case with scholarship trusts where a certain scholarship amount is awarded to whoever qualifies (according to criteria set out by the trust) for the scholarships. The beneficiaries are not predetermined. In this case, the entire trust is insured only up to the limit of deposit insurance (\$250,000) regardless of the number of (potential) beneficiaries.

### Irrevocable Trusts Springing From Revocable Trusts

A special rule applies to “a revocable trust account [that] converts in part or entirely to an irrevocable trust upon the death of one or more of the trust's owners.” [12 C.F.R. 330.10\(h\)](#). After such a conversion (and after the expiration of the FDIC's six-month grace period following the death of a deposit owner), the account is not insured under the rules for irrevocable trust accounts set forth in this Chapter 12. Rather, despite the conversion of the trust from a revocable trust to an irrevocable trust, the account is insured under the rules for revocable trust accounts set forth in Chapter 9. If any assistance is needed in applying this special rule, Legal should be contacted.

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## Documentation

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Documentation to be reviewed and/or utilized in making the deposit insurance determination may include the following:

1. Signature cards, electronic records and/or other account records which expressly disclose, by way of specific references, the existence of any fiduciary relationship involving a trustee pursuant to which funds in an account are deposited and on which a claim for insurance coverage is based.

2. A copy of the document that appointed or established the depository institution to act as trustee of the irrevocable trust.
3. A copy of the trust document to determine the value of each beneficiary's interest or other pertinent records of the Trustee that may determine a beneficial interest.
4. A completed Declaration for Irrevocable Trust form (see [Declaration for Irrevocable Trust](#)).

In CAS, the case file is worked online and any supporting documents are scanned into FACTS.

The Claims Agent should forward the documentation to Legal for a legal opinion as to whether the account qualifies as an Irrevocable Trust.

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## Examples of Insurance Coverage

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### Example 1:

#### Scenario

#### Fully Insured

Irrevocable trust account with a non-contingent interest.

#### Situation

At the failed institution, there is a certificate of deposit titled "Tom Smith Irrevocable Trust DTD 12/1/02". The balance of the certificate is \$500,000.

#### Analysis/Determination

The Claims Agent reviews the signature card and determines that Joe Smith is the trustee for the trust. The Claims Agent requests a [Declaration for Irrevocable Trust form](#) from the trustee, as well as a complete copy of the trust. Upon receipt of the documentation from the trustee, the Claims Agent refers the documentation to Legal for an opinion. After reviewing the documents, Legal determines that the trust is a valid irrevocable trust, and that Ann Smith and Bob Smith are equal beneficiaries with non-contingent interests in the trust. Their non-contingent interests are insured for \$250,000 each. Therefore, the account is fully insured.

---

**Example 2:**

**Partially  
Insured**

**Scenario**

Irrevocable trust account with a non-contingent interest.

**Situation**

At the failed institution, there is a CD titled “Mary Smith Irrevocable Trust DTD 08/1/02”. The balance of the CD is \$400,000.

**Analysis/Determination**

The Claims Agent reviews the signature card and determines that Brenda Smith is the trustee for the trust. The Claims Agent requests a [Declaration for Irrevocable Trust form](#) from the trustee, as well as a complete copy of the trust. Upon receipt of the documentation from the trustee, the Claims Agent refers the documentation to Legal for an opinion. After reviewing the documents, Legal determines that the trust is a valid irrevocable trust, and that Harry Smith is the sole beneficiary. His interest is non-contingent. Therefore, the account is insured for \$250,000 and a Notice of Insurance Determination is issued for the uninsured amount of \$150,000.

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**Example 3:**

**Scenario**

**Fully Insured**

Irrevocable trust account with contingent and non-contingent interests.

**Situation**

The failed institution has an account titled “Sarah Jones Irrevocable Trust dated 01/02/11”. The balance in the account is \$1,000,000.

**Analysis/Determination**

The Claims Agent reviews the signature card and determines that the trustee is Patrick Coleman. The Claims Agent requests a complete copy of the trust and a [Declaration for Irrevocable Trust form](#) from the trustee. Once the documentation is received, the Claims Agent refers the documentation to Legal for an opinion. Legal advises that the trust is a valid irrevocable trust, and that there are three beneficiaries with non-contingent interests of \$250,000 each. The fourth beneficiary must complete college before he has access to his interest and that beneficiary has not yet done so. Therefore, that beneficiary’s interest is contingent. Thus, the account is insured for \$750,000 for the non-contingent interests of three beneficiaries and also is insured for \$250,000 for the contingent interest of the trust.

---

**Example 4:**

**Partially  
Insured**

**Scenario**

Irrevocable trust account with a contingent interest.

**Situation**

The failed institution has an account titled “Peter Smith Education Trust”. The balance in the account is \$300,000.

**Analysis/Determination**

The Claims Agent reviews the signature card and determines that Peter not only is the settlor but also the trustee. The Claims Agent requests a complete copy of the trust and a [Declaration for Irrevocable Trust form](#) from Peter. (Note: The request for the documentation is made to Peter in his capacity as trustee of the trust, not in his capacity as settlor of the trust.) Upon receipt of the documentation, the Claims Agent refers the documentation to Legal for an opinion. Legal advises that the trust document is written so that the principal and income are to be used for the furtherance of legal education, at the discretion of the trustee, and that the beneficiaries under the trust are indeterminable and cannot be ascertained. All of the interests are contingent. Therefore, the total trust interest is insured for \$250,000. A Notice of Insurance Determination is issued for the uninsured amount of \$50,000.

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## Chapter 13

### ***Employee Benefit Plan Accounts***

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#### Contents

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This chapter contains the following information on Employee Benefit Plan Accounts:

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#### Overview

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The deposit insurance regulations provide separate deposit insurance coverage for certain employee benefit plan accounts . Certain employee benefit plans are insured on a “pass-through” basis provided the interests of the participants are ascertainable and non-contingent.

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#### Policy Statement

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It is the policy of the FDIC to make deposit insurance determinations in accordance with the Rules and Regulations promulgated pursuant to the Federal Deposit Insurance Act (FDI Act) and applicable statutes.

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## Legal Reference

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These accounts are insured in accordance with:

- 12 U.S.C. 1821(a)
  - 26 U.S.C. 401(d), 408(d)
  - 29 U.S.C. 1002
  - [12 C.F.R. 330.14](#)
- 

## Definitions

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### Contingent Interest

An interest in an employee benefit plan in which the beneficiaries' identities or the value of their interests cannot be determined.

### Employee Benefit Plan/Employer-Sponsored Benefit Plan

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.

### Keogh Plan

A Keogh plan is a qualified retirement plan for a self-employed individual. It may be either a defined contribution or defined benefit plan. If the word "Keogh" or "HR-10" (House Resolution number) appears in the title of the account or plan document, then the account is a Keogh plan account. In addition, a Keogh plan may be either an employee benefit plan or a self-directed plan ([See Chapter 14](#)). Determination of the correct classification will depend upon the plan documents and who is responsible for directing the plan assets.

### Non-Contingent Interest

An interest that is capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use as set forth in Section 20.2031-7 of the Federal Estate Tax Regulations (26 C.F.R. 20.2031-7) or any similar present worth or life expectancy tables which may be adopted by the Internal Revenue Service. [(Refer to 12 C.F.R. 330.14(f)(4)].

### **Defined Benefit Plan**

A plan under which the employer is obligated to pay a retired employee (the “participant”) a specified benefit amount most often based on the employee’s years of creditable service and salary at time of retirement. The participant’s interest is determined from the plan documents. The interest of the plan participant equals the current value of accrued benefits as of the date of default of the insured financial institution. The participant’s interest is the current value of the participant’s accrued benefit divided by the total plan assets multiplied by the balance of the plan account at the institution.

### **Defined Contribution Plan**

A plan in which each participant has one or more accounts made up of contributions from the participant and/or the employer.

### **Employee Welfare or Welfare Benefit Plan**

A plan established by an employer or union in order to provide employees with medical, health, or hospitalization benefits; or income in the event of sickness, accident, or death.

### **Health Savings Account (“HSA”)**

HSAs were authorized in the Medical Prescription Drug, Improvement, and Modernization Act of 2003. HSA accounts are established to pay “qualified medical expenses” of the individual who established the account or the individual for whom the account is established. HSA accounts established by an employer are considered an employee benefit plan deposit. (HSAs established by an individual are considered single owner or revocable trust accounts depending on the named beneficiaries or lack thereof).

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## **Insurance Determination**

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Employee benefit plan accounts are accounts held by a plan that satisfies the definition of an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”) and includes any plan described in Section 401(d) of the Internal Revenue Code of 1986. Employee benefit plan accounts may consist of funds from pension, profit sharing, certain eligible deferred compensation or other types of employee benefit plans. For deposit insurance purposes, the origin of the funds is not a factor. Plan funds may be derived from:

- Employee contributions made on a before-tax or an after-tax basis.
- Employer contributions
- Rollover contributions from other employee benefit plans

Types of employee benefit plans include:

**Defined benefit plan –**

Plan where the employer is obligated to pay a retired employee a specific benefit amount upon retirement. The benefit amount is usually a factor of high salary and years of service.

**Defined contribution plan –**

Most common is the 401(k) plan where the account balance is comprised of funds contributed by both the employer and employee. Other types of defined contribution plans include money purchase pension plans, thrift plans, employee stock ownership plans (ESOP) and savings plans.

**Employee welfare plan –**

Plan established by an employer or union for the benefit of its employees. These plans generally provide employees with medical or hospitalization benefits or income in the event of sickness.

Employee benefit plan accounts are generally established by an employer for the benefit of one or more employees (the participants). If the interest of the participant is ascertainable and non-contingent, the participant's interest in the account qualifies for pass-through insurance up to the limit of deposit insurance (\$250,000). If the participant's interest is contingent, pass through insurance will not be afforded to the participant and the balance of the account will be insured up to the limit of deposit insurance (\$250,000).

An employee benefit plan account may contain funds which represent both contingent and non-contingent interests of plan participants. Contingent interests of all plan participants are aggregated and insured up to the limit of deposit insurance (\$250,000). The deposit insurance coverage for the contingent interests is separate from any deposit insurance coverage for the non-contingent interests of plan participants.

In addition, an employee benefit plan may be overfunded. Overfunded balances in an employee benefit plan are insured up to the limit of deposit insurance (\$250,000). This deposit insurance is separate from the contingent interests of the plan and the non-contingent interests of the plan participants.

**Qualifying for Pass-Through Insurance**

Generally, deposits of an employee benefit plan shall be insured on a pass-through basis, in the amount up to the limit of deposit insurance (\$250,000) for the non-contingent interest of each plan participant. A non-contingent interest is one in which the identity of the beneficiary and their ownership interest in the account can be determined without evaluation of contingencies except for those covered by the present worth tables (life expectancy).

If there are funds from multiple plans in one or more deposit accounts, each participant's non-contingent interest is aggregated with any other non-

contingent interests of that same participant in other employment benefit plans created by the same employer or sponsor and insured up to the limit of deposit insurance (\$250,000). This means, if a company establishes accounts for two separate plans at the same institution for the same employees, each employee's non-contingent interest in the two plans is aggregated and the total is insured up to the insurance limit (\$250,000).

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## Documentation

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Documentation to be reviewed and/or utilized in making the deposit insurance determination may include the following:

1. Signature cards, certificates of deposit, electronic records, or other account records of the financial institution. These records must indicate that the funds are held by the plan administrator pursuant to a fiduciary relationship.
2. Valid employee benefit plan documents.
3. Verification that the “per-participant” interests are ascertainable and non-contingent. In most cases, this information will have to be obtained from the plan administrator and from the declarations.
4. [Declaration for Plan and Trust](#) – used to verify that the plan documentation submitted by the account holder is valid as of the date of closing.
5. [Declaration for Defined Benefit Plan](#) (if applicable) – used to determine the value of each participant's accrued benefit on a present value basis, and also whether the plan may be overfunded. The overfunded portion is insured to the SMDIA.
6. [Declaration for Defined Contribution Plan](#) (if applicable) – used to determine the largest participant's interest in the plan, which may need to be repeated until the remaining participants' interests are determined to be under the SMDIA.
7. [Declaration for Health and Welfare Plan](#) (if applicable) – used to determine the value of plan assets, death benefits paid, claims not paid, and participants' balances.

In CAS, the case file is worked online and any supporting documents are scanned into FACTS.

## Examples of Insurance Coverage

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### Example 1:

#### Scenario

#### Fully Insured

A corporation with an operating account and a qualified employee benefit plan account.

#### Situation

At the failed institution, there is an account titled “Smith Corporation Pension Trust” for \$260,000 and another account titled “Smith Corporation” with a balance of \$100,000.

#### Analysis/Determination

In a conversation with the trustee of the Smith Corporation Pension Trust, the Claims Agent learns that it is a defined contribution plan. Therefore, the Claims Agent requests that the trustee of the Smith Corporation Pension Trust submit and execute a [Declaration for Plan and Trust](#) form and a [Declaration for Defined Contribution Plan](#) form and provide appropriate supporting documentation. When received, the Claims Agent reviews those forms, which indicate that the “Smith Corporation Pension Trust” is a defined contribution plan with 2 participants. The first participant has a non-contingent interest of \$190,000 and the second participant has a non-contingent interest of \$70,000.

Each participant’s interest is fully insured per 12 C.F.R. 330.14(a).

The \$100,000 in the “Smith Corporation” account is insured separately as a corporation (see [Chapter 10: Accounts of a Corporation, Partnership, or Unincorporated Association](#)).

---

**Example 2:**

**Partially  
Insured**

**Scenario**

An individual with interests in two employee benefit plan accounts and an individual account at the same institution.

**Situation**

Tony Jones participates in a defined benefit plan and a defined contribution plan, both sponsored by his employer, The Incredible Nonsense Company. Both plans have accounts at the failed institution. Tony also has a checking account for \$5,000 at the failed institution.

**Analysis/Determination**

The Claims Agent obtains executed [Declaration for Plan and Trust](#), [Declaration for Defined Benefit Plan](#) and [Declaration for Defined Contribution Plan](#) forms from the trustee of the plans, with appropriate supporting documentation. The documentation indicates that Tony had ascertainable and non-contingent interests in each of the two plans. His interest in the defined benefit plan is \$100,000; his interest in the defined contribution plan is \$160,000.

Tony's interests in the two plans are aggregated (\$260,000) and insured for the insurance limit (\$250,000) leaving him uninsured for \$10,000. A Notice of Insurance Determination is issued for the uninsured amount.

His checking account for \$5,000 is fully insured under the single ownership category (see [Chapter 5: Single Ownership Accounts](#)).

---

**Example 3:**

**Scenario**

**Fully Insured**

A company with a qualified, overfunded defined contribution plan with pass-through coverage and a contingent interest amount.

**Situation**

At the failed institution there is an account titled “Hercules Company Savings Plan.” It has a balance of \$1,500,000.

**Analysis/Determination**

The Claims Agent requests that the plan’s sponsor complete a [Declaration for Plan and Trust](#) as well as a [Declaration for Defined Contribution Plan](#) (with appropriate supporting documentation). A review of these documents indicates that the plan was a defined contribution plan. The plan documents also indicate that four participants had ascertainable and non-contingent interests of \$250,000 each. A balance of \$250,000 was determined to be contingent. In addition, the plan is overfunded in the amount of \$250,000.

The four participants are insured for the insurance limit (\$250,000) each (12 C.F.R. Section 30.14(d)(1). The contingent amount is insured for the insurance limit (\$250,000) (12 C.F.R Section 330.14 (d) and the overfunded balance is insured up to the insurance limit (\$250,000) (12 C.F.R. Section 330.14(e). Therefore, the account is fully insured.

---

**Example 4:**

**Scenario**

**Fully Insured**

An individual with an interest in two qualified employee benefit plan accounts in the same institution sponsored by different companies.

**Situation**

The following accounts are found at the failed institution: 1) XYZ Company Defined Benefit Plan with \$300,000; 2) ABC Company (401)(k) Savings Plan with a balance of \$565,000.

**Analysis/Determination**

The Claims Agent requests and the plan sponsors provide the [Declaration for Plan and Trust](#) for both plans, as well as the [Declaration for Defined Benefit Plan](#) for plan (1) and the [Declaration for Defined Contribution Plan](#) for plan (2), all with appropriate supporting documentation.

In reviewing the plan documentation, the Claims Agent notices that John has an ascertainable and non-contingent interest in both plans. His interest in the first plan is \$65,000. His interest in the second plan is \$90,000. Since these plans are sponsored by different employers, each account qualifies for separate pass through insurance and John is fully insured.

---

**Example 5:**

**Scenario**

**Partially  
Insured**

A corporation with a qualified defined contribution plan with a large account balance where the individual interests must be computed to determine pass-through insurance coverage.

**Situation**

On the grouping report for the failed financial institution, there is a certificate of deposit account for the “Beeline Employees 401(k) Plan” with a balance of \$50,000,000.

**Analysis/Determination**

The Claims Agent reviews CD records and learns that the deposit was placed at the failed institution on September 30, 2005. The Claims Agent contacts the plan sponsor, who submits an executed [Declaration for Plan and Trust](#) and the [Declaration for Defined Benefit Plan](#) along with appropriate supporting documentation. The documentation indicates that 200 employees participate in the plan. No one participant had more than a 5% interest in the plan, except for the following employees:

**Vice-President:** 20% (20% x \$50,000,000 = \$10,000,000 ownership interest)

**Senior Vice-President:** 15% (15% x \$50,000,000 = \$7,500,000 ownership interest)

**President:** 12% (12% x \$50,000,000 = \$6,000,000 ownership interest)

The interests of those three individuals are insured to \$250,000 each, with the amount over that amount being uninsured. Since no other participant has greater than a \$250,000 interest (5% x \$50,000,000), the interests of the other participants are fully insured. In the aggregate, the plan is insured for \$27,250,000 and uninsured for \$22,750,000 (\$9,750,000 + \$7,250,000 + \$5,750,000). A Notice of Insurance Determination for the total uninsured amount is issued to the plan.

---

**Example 6:**

**Scenario**

**Fully Insured**

A small business (dental office) has a qualified employee benefit plan and participants in the plan also have IRAs at the failed institution.

**Situation**

On the grouping report there is an account titled “Dr. Tooth, Employees 401(k) Retirement Plan” in the amount of \$480,000. In addition, there is an account titled “Dr. Pull Your Tooth IRA” for \$100,000” and an account titled “Moan Tooth IRA” for \$100,000.

**Analysis/Determination**

The Claims Agent contacts Dr. Tooth, who is the plan administrator of the 401k account, and has him execute and submit a [Declaration for Plan and Trust](#) form and a [Declaration for Defined Contribution Plan](#) form with appropriate supporting documentation. In reviewing that documentation, the Claims Agent notices that only the plan administrator has the authority to direct the investments of the plan. The plan participants do not have the right to direct investments of the plan. The plan documentation also indicates that there were two participants, Dr. Pull Your Tooth and Moan Tooth, and that their interests were ascertainable and non-contingent. Neither of their individual interests in the plan totaled \$250,000. Therefore, the \$480,000 in the plan is fully insured.

Since the plan participants did not have the authority to self-direct their portion of the plan’s assets, the plan is insured separately from the IRAs of the two individuals. Since the IRAs each contain less than \$250,000, they are also fully insured.

**Note:** If the Plan Documents gave the participants the right to direct their accounts to any investment they desired, then their accounts would be deemed self-directed and aggregated with their IRA accounts for purpose of calculating deposit insurance under this category of ownership.

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## Chapter 14

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### Certain Retirement Accounts

#### Contents

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This chapter contains the following information on Certain Retirement Accounts.

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#### Overview

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The deposit insurance regulations provide separate deposit insurance coverage for certain retirement plan accounts.

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#### Policy Statement

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It is the policy of the FDIC to make deposit insurance determinations in accordance with the Rules and Regulations promulgated pursuant to the Federal Deposit Insurance Act (FDI Act) and applicable statutes.

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#### Legal Reference

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These accounts are insured in accordance with:

- 12 U.S.C. 1821(a), 408(a), 401(d)
- 26 U.S.C. 457
- [12 C.F.R. 330.14](#)

## Definitions

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### **457 Plan**

An eligible deferred compensation plan is described in Section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457). These are generally nonqualified deferred compensation plans for states, counties, cities, agencies and their political subdivisions or agencies and non-profit organizations.

### **Individual Retirement Account (“IRA”)**

Traditional IRA accounts established pursuant to Section 408 of the Internal Revenue Code. Limited annual contributions made to the account and the earnings thereon are not subject to federal income tax until distributions are made from the account. Rollover funds from a qualified retirement plan may also be deposited into an IRA account.

### **Roth IRA Plan**

An IRA account where the annual contributions are not deductible from income for federal income tax purposes. The contributions and earnings thereon are federal income tax-free when withdrawn.

### **Simplified Employee Pension Plan (“SEP”) IRA**

These are also IRA accounts where an employer makes contributions to an IRA by or on behalf of its employees. Employers use SEPs to provide retirement benefits to employees without having to become involved in the complex administrative and reporting requirements of qualified ERISA-governed retirement plans. The employee owns and controls the account, and contributions become property of the employee when deposited.

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## Insurance Determination

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Certain Self-directed retirement accounts are accounts that qualify under the Internal Revenue Code and, generally, such accounts are opened and controlled by the owner of the funds and not by the plan administrator or trustee. Types of plans covered under this category include:

- |                                       |  |
|---------------------------------------|--|
| IRA's                                 | - Individual retirement accounts that qualify under Section 408(a) of the Internal Revenue Code of 1986.   |
| Self-Directed Individual Account Plan | - Such plans include-directed Keogh plan accounts that qualify under Section 401(d) of the Internal Revenue Code of 1986.  |
| Section 457 Plans                     | - These are deferred compensation plans for employees of state, local government and non-profit organizations. A 457 plan account is insured in this category regardless of whether the plan is self-directed. |

Certain retirement accounts are aggregated and insured in the amount up to the limit of deposit insurance (\$250,000) per owner regardless of the number of beneficiaries named on the account. This insurance coverage is separate from an owner's ("participant's") interest in employee benefit plans or any other non-retirement accounts of the owner in the same institution. .

When the individual who established the account (owner) dies, the succeeding beneficiary (ies) becomes the vested beneficial owner of the account and, under the Internal Revenue Code, has various options regarding the funds. If such a situation is encountered, it may be necessary to determine the date of death of the original owner of the account and obtain other information (such as the age of the beneficiary and whether or not the beneficiary has begun to receive payments from the account and/or added funds to the account) before making a deposit insurance determination. In such complicated situations, Legal should be consulted.

**Note:** Coverdell Education Savings accounts, formerly known as "Education IRAs" should be analyzed as irrevocable trust accounts and are covered in Chapter 12: Irrevocable Trust Accounts.

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## Documentation

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Documentation to be reviewed and/or utilized in making the deposit insurance determination may include the following:

1. Signature cards, certificates of deposit, electronic records, or other account records of the financial institution including computer records. These records must indicate that the funds are held by the plan administrator pursuant to a fiduciary relationship.

2. Account records of the institution, including signature cards and copies of CDs issued. The records must indicate that the account is an IRA, or a 457 Plan account, or other employee benefit account.
3. [Declaration for IRA/KEOGH Deposit](#) – may be used if records of the institution are not adequate. This declaration and any supporting documents must show that the account is an actual IRA, or a 457 Plan account or a self-directed defined contribution plan account, or a self – directed Keogh Plan account.

In CAS, the case file is worked online and any supporting documents are scanned into FACTS.

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## Examples of Insurance Coverage

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### Example 1:

#### Scenario

#### Partially Insured

An individual with several types of qualified retirement accounts at the same institution.

#### Situation

At the failed financial institution, the following accounts exist:  
“James Jones IRA” with a balance of \$132,000;  
“James Jones Keogh Plan” with a balance of \$71,000; and  
“James Jones - State of Texas Section 457 Plan” with a balance of \$78,000.

#### Analysis/Determination

In reviewing the case in CAS, the Claims Agent notices the IRA and Keogh Plan accounts for James Jones. The Claims Agent contacts Mr. Jones and has him submit an executed [Declaration for IRA/Keogh Deposit](#). He also notices the Section 457 Plan account. The Claims Agent requests that a [Declaration for Plan and Trust](#) and [Declaration for Defined Contribution Plan](#) (with appropriate supporting documentation) be submitted by the Plan’s trustee. When reviewing those documents, the Claims Agent learns that the Keogh Plan is a self –directed plan with James Jones as sole beneficiary. Also, the Claims Agent learns that James Jones is the sole beneficiary of the 457 Plan account. Therefore, the Claims Agent must aggregate all three accounts.

Since the accounts total \$281,000, \$250,000 is insured and a Notice of Insurance Determination is issued for the uninsured amount of \$31,000.

## Chapter 15

### Public Unit Accounts

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#### Contents

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This chapter contains the following information on Public Unit Accounts:

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#### Overview

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Public unit accounts are insured as a separate category of ownership. Because of the unique deposit insurance regulations concerning demand (generally non-interest bearing) and time and savings (generally interest bearing) accounts of public units, the amount of deposit insurance is often greater than the standard (\$250,000) limit of deposit insurance. In addition, financial institutions frequently pledge some of their assets, generally securities, to secure deposits of public units. State laws govern the pledging of assets which collateralize public unit deposits. Deposits of a public unit are protected first by deposit insurance and then by the proceeds from the liquidation of any properly pledged securities.

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#### Policy Statement

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It is the policy of the FDIC to make deposit insurance determinations in accordance with the Rules and Regulations promulgated pursuant to the Federal Deposit Insurance Act (FDI Act) and applicable statutes.

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## Legal Reference

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Public unit accounts are insured according to the rules set forth in [12 C.F.330.15](#).

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## Definitions

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### Official Custodian

A person elected or appointed to serve in such capacity and have plenary (i.e., full, complete, absolute) authority including control over the funds owned by the public unit. 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. If control over the funds requires action by, or the consent of, two or more officers, employees, or agents of such public unit, they will be treated as one “official custodian.”

### Public 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. Also included are subdivisions or departments expressly authorized by the law of such public unit, to which some functions of government have been delegated by such law and which are empowered to exercise exclusive control over funds for their exclusive use. If the same individual is an official custodian for more than one public unit or political subdivision, he is separately insured for the public unit funds held by him for each unit.

### Public Unit Accounts

Accounts of the United States, the District of Columbia, any state of the United States, or any county, municipality or political subdivision thereof, accounts of the Commonwealth of Puerto Rico, and other government possessions and territories, and accounts of an Indian tribe. Examples of accounts of the United States are those of a federal department or agency, such as the Department of Housing and Urban Development (HUD) or the Federal Bureau of Investigation (FBI), or an account maintained by a military installation.

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## Insurance Determination

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Insurance coverage of a public unit account differs from that of a corporate account in that the coverage extends to the official custodian of the funds belonging to the public unit, rather than the public unit itself. However, the deposit account should be opened in the name of the public unit or political subdivision.

Public entities located in the same state as the failed institution (including a branch in the same state as the public unit, even though the bank is chartered in a different state) can have up to \$500,000 deposit insurance coverage per official custodian. Deposit insurance is allowed up to \$250,000 for demand accounts (generally non-interest bearing) and up to \$250,000 for time and savings deposits (including NOW accounts) (generally interest bearing accounts). “Please note that under Dodd/Frank the \$250,000 limit for demand deposits will be unimportant from December 31, 2010 through December 31, 2012 (assuming the demand account is noninterest-bearing). During this period and as discussed in [Chapter 17, Noninterest-bearing Transaction Accounts](#), the funds in noninterest-bearing demand accounts will be insured in full (i.e., irrespective of the balance).

Note: Hereinafter the phrase “non-interest bearing” will be used in lieu of “demand deposit”. The phrase “interest bearing” will be used in lieu of “time and savings”.

Public unit funds maintained in an out-of-state institution, whether interest bearing or non-interest bearing, are limited to a maximum of \$250,000 per official custodian.

Non-interest bearing accounts maintained by an official custodian of the United States are also insured separately from interest bearing accounts maintained by the same custodian at the same financial institution, regardless of the state in which the institution is located.

### Public Bond Issues

Additional insurance is provided for funds, held by an officer, agent, or employee of a public unit, which are required by law or under a bond indenture to be paid to the holders of bonds issued by the public unit. Such funds are insured as trust funds and the bondholders are treated as pro rata beneficiaries of the trust funds. Each bondholder’s beneficial interest in the funds is insured up to the limit of deposit insurance (\$250,000). Identification of the account as a bond redemption account is sufficient for per bondholder coverage, provided each bondholder’s interest is ascertainable.

Bondholders will be insured up to the limit of deposit insurance (\$250,000) in the aggregate for all bonds issued by the same issuer, regardless of whether there may be different series involved. The basis for this rule is that the issuer is considered to be the grantor of the express irrevocable trust of which

bondholders are pro rata beneficiaries, and bonds in separate series of the same or a different bond issue are considered trust interests established by the same grantor.

### **Funds held by or on behalf of an Indian Tribe**

(For information regarding accounts held by or on behalf of individual Indians, please refer to [Chapter 6: Accounts Held By An Agent, Nominee, Guardian, Custodian, or Conservator](#)).

Indian tribes are considered separate public units for the purposes of FDIC deposit insurance coverage.

Each official custodian of funds for 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 for (1) interest bearing accounts, up to the limit of deposit insurance (\$250,000) in the aggregate and (2) non-interest bearing accounts, up to the limit of deposit insurance (\$250,000) in the aggregate, regardless of the state in which the institution is located.

### **Collateralized Accounts**

Certain liability accounts in a financial institution may be secured by institution owned securities, loans, or other types of assets. When the liability account is a deposit, the institution has pledged its assets (securities, loans, etc.) to secure the deposit(s) for the amount that exceeds the federal deposit insurance limit.

Financial institutions which pledge assets to secure a liability must be in compliance with the appropriate state laws.

Typically, the Claims Specialist will know whether there are assets pledged to collateralize public units because of the pre-closing process. Refer to the Claims Manual Volume I, Section III Chapter C: Preparation of Claims Strategic Resolution Plan for additional information.

When an institution fails, the deposit is first protected by federal deposit insurance and then by the market value of the pledged assets, but only to the extent that the deposit exceeds the insured amount.

At closing, the Claims Specialist will need to prepare a list of liability accounts (including deposits) which are believed to be secured by pledged assets. This list will be provided to the DRR Accounting Operations Closing Team, who, in turn, forward it to the DRR Analysis and Evaluation Section in Washington, D.C. to obtain the market value of any pledged assets. Refer to the Claims Manual Volume I, Section IV Chapter O: Secured Accounts/Preferred Claims for additional information. Note that banks cannot collateralize non-public deposits.

## Legal Review

Because of the potential complexities relating to public unit account issues, the Claims Specialist may wish to consult with the Legal Division prior to finalizing a deposit insurance determination for a public unit.

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## Documentation

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Documentation to be reviewed and/or utilized in making the deposit insurance determination may include the following:

1. Signature cards, certificates of deposit, electronic records or other account records of the financial institution, which expressly disclose that an account is a public unit account.
2. Declaration for Public Government Deposit. ([Declaration for Government Deposit](#)).
3. Documentation (relevant statute, ordinance, or other authority) provided by the official custodian to support his appointment or election to serve as the official custodian.
4. Copy of Trust/Bond Indenture, if one exists, or a copy of the ordinance permitting the issuance of the bonds if there is no trust, such to be provided by the official custodian, if applicable.
5. Institution's security/pledged records.
6. Copy of pledge agreements.
7. List of accounts which are determined to be secured by pledged securities or other assets (prepared by Claims).
8. Securities spreadsheet provided by DRR Analysis and Evaluation Section in DC with market values.
9. Records (provided by the official custodian) which show the owner(s) of the bonds on the date of institution closing, the amount of the bonds which each holder owns and the total amount of bonds outstanding.
10. Copy (provided by the official custodian) of the state statute authorizing the creation of a subdivision or principal department of a public unit.

In CAS, the case file is worked online and any supporting documents are scanned into FACTS.

## Examples of Insurance Coverage

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**Example 1:**

**Partially  
Insured**

**Scenario**

One deposit account.

**Situation**

City of Bucket, Texas has a certificate of deposit in ABC Bank located in Bucket, Texas. The balance of the certificate at the time ABC Bank is closed totals \$250,030.

**Analysis/Determination**

The Claims Agent obtains the phone number for the official custodian of the City of Bucket from the bank's records, contacts the official custodian, and requests a completed [Declaration for Government Deposit](#) form with all the appropriate documentation requested. The Claims Agent also reviews the bank records and finds that no securities were pledged to the City of Bucket or any other public unit with deposits at the failed institution. The Claims Agent reviews the submitted [Declaration for Government Deposit](#) form. In a conversation with the official custodian, the official custodian acknowledges that they are aware that their deposit exceeds the deposit insurance limit. That comment is consistent with what the Claims Agent has found in the bank's records. Therefore, the account is insured to \$250,000 and a Receivership Certificate is issued for the uninsured amount of \$30.00.

---

**Example 2:**

**Scenario**

**Insured/  
Secured**

One deposit account with pledged collateral.

**Situation**

City of Daily, Texas has an interest bearing certificate of deposit in ABC Bank, Bucket, Texas. The balance of the certificate at the time ABC Bank is closed totals \$320,000.

**Analysis/Determination**

From reviewing the Information Package (IP) provided by the Institution Sales Section of DRR prior to the closing, the Claims Agent has reason to believe that there were securities pledged to secure the City of Daily account. However, the IP did not disclose the market value of the collateral. The Claims Agent contacts the official custodian of the City of Daily and asks that the official custodian fill out and execute the [Declaration for Government Deposit](#) form and provide the documents as requested on the form. The official custodian complies with that request. The Claims Agent obtains copies of the pledge agreements from the bank's records. The Claims Agents reviews the records of the bank and prepares the list of accounts secured by pledged securities. This list contains the account of the City of Daily. The Claims Agent forwards the list to the DRR Accounting Operations Closing team. From this information, DRR Accounting Operations prepares a securities spreadsheet and forwards it to the DRR Analysis and Evaluation Section in Washington, D.C. so that they can provide the market value of the pledged assets as of the date of institution closing. When the securities spreadsheet is returned by the DRR Analysis and Evaluation Section, the market value of the collateral for the City of Daily account is shown to be \$100,000.

The first \$250,000 of the deposit is insured. Since the market value (\$100,000) of the collateral is greater than the amount of uninsured deposit (\$70,000), \$70,000 is paid to the City of Daily by the receiver once the proceeds from the sale of the collateral have been received. (See the Claims Manual Volume I, [Section IV, Chapter O: Secured Accounts/Preferred Claims](#) for information concerning the liquidation of pledged assets.) Therefore, the City of Daily has received 100% of their funds.

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**Example 3:**

**Scenario**

**Fully Insured**

Interest and non-interest bearing deposits/multiple custodians/out-of-state financial institution.

**Situation**

City of Putty, Texas has the following accounts in the First Bank of Arkansas, Little Rock, Arkansas at the time of failure:

- CD #123 (interest bearing) totaling \$250,000.
- DDA #456 (non-interest bearing) totaling \$250,000.
- CD #987 (interest bearing) totaling \$250,000.
- DDA #246 (non-interest bearing) totaling \$250,000.

**Analysis/Determination**

The Claims Agent contacts the City of Putty and discovers that there are two official custodians for the accounts. Brian Denver is the official custodian for Certificate of deposit #123 and DDA #456. Pete Patter is the official custodian for certificate of deposit #987 and DDA #246. The Claims Agent requests that they each fill out and execute the [Declaration for Government Deposit](#) form and provide the appropriate supporting documents. They comply with that request. In reviewing the situation, the Claims Agent realizes that the official custodians have placed public unit funds outside of the state in which the public unit resides.

In order for the City to receive separate insurance coverage for time and savings deposit and demand deposit accounts, the funds must be deposited in an institution (or branch) located in the same state as the public unit. Since the accounts were deposited into an institution outside of the public unit's location, they are not entitled to separate insurance for time and savings and demand deposit accounts. However under the Noninterest-bearing Transaction Accounts ownership category governed by Dodd / Frank, the demand deposit accounts are fully insured. Therefore all funds are fully insured. ([Claims Manual Vol. II Chapter 17](#)).

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**Example 4:**

**Partially  
Insured/**

**Partially  
Secured**

**Scenario**

Pledged collateral/multiple official custodians.

**Situation**

City of Salvation has 5 interest bearing certificates of deposit in ABC Bank at the time of failure. Each account has a balance of \$350,000.

**Analysis/Determination**

The Claims Agent reviews the certificates on each account and determines that each account has a different official custodian. The Claims Agent requests each official custodian complete the [Declaration for Government Deposit](#) form and provide supporting documentation. From the bank's records, the Claims Agent finds a copy of the pledge agreement. The Claims Agent notes that the collateral was not pledged to specific accounts of the City of Salvation, but rather just to the City. The Claims Agent prepares the list of accounts secured by pledged securities and forwards it to the DRR Accounting Operations Closing team. DRR Accounting Operations prepares the securities spreadsheet and forwards it to the DRR Analysis and Evaluation Section, which provides the market value of the securities on the date of the bank's failure. The market value of the pledged assets totals \$250,000.

The Claims Agent insures \$250,000 to each official custodian and calls the official custodians for a meeting. Since the pledged assets are not specifically pledged to specific accounts of the City of Salvation, the Claims Agent (after consulting with the Legal Division) tells the official custodians they have a deadline to determine how they want the collateral split between the 5 accounts. The Claims Agent further tells them that if the official custodians cannot agree on how to split the securities within the allotted time frame, he will divide the pledged assets evenly - splitting the securities \$50,000 to each official custodian and then issue a Notice of Insurance Determination for \$50,000 for each account that has uninsured funds. The Claims Agent does not hear back from the official custodians and therefore he proceeds with the process as indicated in the meeting with the official custodians. Therefore, \$1,250,000 is insured, \$250,000 is paid to the official custodians (\$50,000 each) once the proceeds from the sale of the collateral has been received, and five separate Notice of Insurance Determination, each for \$50,000 made payable to each official custodian, are issued.

**Example 5:**

**Scenario**

**Fully Insured**

In-state branch of an out-of-state headquartered financial institution.

**Situation**

The Bank of New York has a branch in Kentucky. The City of Silva, Kentucky deposits \$250,000 into CD #989 (interest bearing) and \$250,000 into their checking account #767 (non-interest bearing) at the Kentucky branch. The Bank of New York is closed.

**Analysis/Determination**

The Claims Agent contacts the official custodian of the City of Silva and requests that a [Declaration for Government Deposit](#) form be executed and to provide supporting documentation. The official custodian does so. The Claims Agent reviews that information and from the bank's records determines that there is no collateral pledged to secure any of the City of Silva deposits. Public entities located in the same state as the failed institution (including a branch in the same state as the public unit, even though the bank is chartered in a different state) can have up to \$500,000 deposit insurance coverage per official custodian. Deposit insurance allows \$250,000 for demand deposit accounts and \$250,000 for time and savings accounts. Therefore, the City of Silva is fully insured for \$500,000. Note: Under the Noninterest-bearing Transaction Accounts ownership category, the demand deposit accounts are fully insured. ([Claims Manual Vol. II Chapter 17](#))

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**Example 6:**

**Scenario**

**Partially**

Bond sale proceeds.

**Insured**

**Situation**

The City of Dallas, Texas issued \$1,000,000 in bonds. The City has not yet spent all of the funds for the designated project. Therefore, \$600,000 of the bond proceeds are on deposit in a checking account at the Lonely Star Bank of Dallas, Texas, when that bank fails.

**Analysis/Determination**

The Claims Agent contacts the official custodian of the City of Dallas who fills out and executes the [Declaration for Government Deposit](#) form and provides supporting documentation. The official custodian also provides a list of investors who purchased the bonds. The Claims Agent reviews the records of the failed bank. There is no collateral pledged to secure the City of Dallas funds. In a conversation with the official custodian, it is mentioned that the funds in the account are not funds earmarked for bond redemption purposes. The Claims Agent then decides to discuss this situation with the Legal Division. It is agreed that the account is insured for \$250,000 and a Notice of Insurance Determination is issued for the remaining \$350,000.

**Note:** Had the funds in the account been for bond redemption purposes, those funds would have been insured in accordance with 12 C.F.R. 330.15(c), the investors would have been insured on a pro rata basis. In that scenario, the investor list provided by the City of Dallas would have been reviewed. Suppose that one of those investors, John Smith, had purchased \$100,000 of the \$1,000,000 bond. Therefore, he would have a 10% interest, or \$60,000 interest, in the \$600,000 deposit. John Smith's interest - \$60,000 – would have been fully insured.

---

**Example 7:**

**Scenario**

**Fully Insured**

Federal government deposits.

**Situation**

At the time of the failure of Cornhusker State Bank, Lincoln, Nebraska there are two accounts of the U. S. Department of Agriculture – a checking account with \$249,000 and a certificate of deposit with \$75,000.

**Analysis/Determination**

The Claims Agent finds the name of the contact for the two accounts from the records of the failed bank. He calls the contact who advises that he is the official custodian of the accounts. The Claims Agent has him fill out and execute the [Declaration for Government Deposit](#) form. After reviewing that form, the Claims Agent advises the official custodian that the accounts are fully insured since the checking account was a demand deposit account and the certificate was a time deposit. Note: Under the Noninterest-bearing Transaction Accounts ownership category under Dodd / Frank, the demand deposit accounts are fully insured. ([Claims Manual Vol. II Chapter 17](#)).

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## Chapter 16

### Department of Energy Accounts

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#### Contents

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This chapter contains the following information on Department of Energy (“DOE”) Accounts:

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<a href="#">Legal Reference</a>	16-1
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<a href="#">Insurance Determination</a>	16-3
<a href="#">Documentation</a>	16-3
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#### Overview

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The law provides for separate insurance coverage for certain DOE accounts deposited by an insured depository institution pursuant to the Bank Deposit Financial Assistance Program (“BDFAP”) into another insured depository institution.

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#### Policy Statement

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It is the policy of the FDIC to make deposit insurance determinations in accordance with the Rules and Regulations promulgated pursuant to the Federal Deposit Insurance Act (FDI Act) and applicable statutes.

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#### Legal Reference

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Funds deposited pursuant to the Bank Deposit Financial Assistance Program are insured in accordance with the FDI Act at 12 U.S.C. 1817 (i)(3).

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## Definitions

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### **Bank Deposit Financial Assistance Program for the Department of Energy (“BDFAP”)**

A program in which the DOE provides funds to a select group of “trustee” banks for deposit in minority-owned banks. Those funds, in turn, are lent to minority and women-owned businesses.

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## Insurance Determination

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DOE funds shall be insured as a separate category of insurance in the amount up to the limit of deposit insurance (\$250,000) per insured depository institution depositing such funds, provided that the account records of the failed financial institution indicate that the funds are held by the depositing financial institution in a custodial or special capacity for the DOE pursuant to the BDFAP.

Normally, an account is established at an insured financial institution by another financial institution for DOE. The account could be titled “John Brown Bank as Agent for DOE” or “Big Mountain Bank as Custodian for DOE.” Such designations are sufficient to provide insurance coverage under this category of ownership up to the limit of deposit insurance because such designations disclose the existence of a custodial or special capacity, i.e., the relationship upon which the payment of deposit insurance is based.

DOE funds not deposited pursuant to BDFAP are insured as a public unit (for a discussions of deposit insurance coverage relating to public unit, see [Chapter 15: Public Unit Accounts.](#))

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## Documentation

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Documentation to be reviewed and/or utilized in making the deposit insurance determination may include the following:

1. Signature card(s), certificates of deposit or electronic records of the failed institution.

In CAS, the case file is worked online and any supporting documents are scanned into FACTS.

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## Examples of Insurance Coverage

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### Example 1:

#### Scenario

#### Fully Insured

A mix of Bank Deposit Financial Assistance Program (BDFAP) and direct Department of Energy (DOE) deposits at failed financial institution.

#### Situation

Big Mountain Bank set up an account at the failed financial institution titled “Big Mountain Bank Custodian for Department of Energy” for \$240,000. DOE also has a demand deposit account with a balance of \$50,000.

#### Analysis/Determination

The Claims Agent notices the title of the account - “Big Mountain Bank Custodian for Department of Energy” and realizes that the funds of \$240,000 in this account are insured under the provisions of this chapter as a BDFAP account. The amount is fully insured since it is less than the limit of deposit insurance (\$250,000). In addition, the DOE demand deposit account of \$50,000 is insured separately as a public unit account (see [Chapter 14: Public Unit Accounts](#)). It also is fully insured since it is less than the limit of deposit insurance under the public unit category of ownership.

---

**Example 2:**

**Scenario**

**Fully Insured**

Multiple banks with deposits made pursuant to the BDFAP at the failed financial institution.

**Situation**

South Ocean Bank set up an account at the failed financial institution titled “South Ocean Bank as Agent for the Department of Energy” for \$220,000. Bear Bank also set up an account at the failed financial institution entitled “Bear Bank Custodian Department of Energy” for \$240,000.

**Analysis/Determination**

In reviewing the account titles, the Claims Agent realizes that the “South Ocean Bank as Agent for Department of Energy” account for \$220,000 and the “Bear Bank Custodian Department of Energy” account for \$240,000 are insured under the provisions of this chapter as BDFAP accounts. Each account was found to be in compliance with 12 U.S.C. 1817 (i)(3). The two accounts were set up by separate financial institutions acting as custodian for DOE. Therefore, both accounts are fully insured.

---

**Example 3:**

**Scenario**

**Fully Insured**

A mix of BDFAP and DOE accounts at the failed financial institution.

**Situation**

Hope Bank set up an account at the failed financial institution titled “Hope Bank Agent for the Department of Energy” for \$86,000. DOE also has a demand deposit account with a balance of \$300,000.

**Analysis/Determination**

The “Hope Bank Agent for Department of Energy” account for \$86,000 is insured under the provisions of this chapter as a BDFAP account and is fully insured. The DOE demand deposit account of \$300,000 is reviewed as a public unit account (see [Chapter 14: Public Unit Accounts](#)) and is insured for \$250,000. However, under the Noninterest-bearing Transaction Accounts ownership category, the demand deposit accounts are fully insured. ([Claims Manual Vol. II Chapter 17](#)).

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## Chapter 17

### Noninterest-bearing Transaction Accounts

#### Contents

This chapter contains the following information on Noninterest-bearing Transaction Accounts:

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<a href="#">Special Rule for Revocable Trust Accounts</a>	17-3
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#### Overview

[Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act \(Dodd-Frank Act\)](#) amended the FDI Act to provide temporary unlimited insurance coverage for the funds in noninterest-bearing transaction accounts. This unlimited insurance coverage (i.e., coverage beyond the ordinary \$250,000 limit) applies to all insured depository institutions from December 31, 2010 through December 21, 2012. During this period, a noninterest-bearing transaction account will be insured separately from the owner's interest-bearing accounts (if any) at the same insured depository institution.

#### Policy Statement

It is the policy of the FDIC to make deposit insurance determinations in accordance with the Rules and Regulations promulgated pursuant to the Federal Deposit Insurance Act (FDI Act) and applicable statutes.

## Legal Reference

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Funds in noninterest-bearing transaction accounts are insured pursuant to Section 343 of the Dodd-Frank Act and the implementing regulation at 12 C.F.R. § 330.16.

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## Definition

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For purposes of the Dodd-Frank Act, a “noninterest-bearing transaction account” is a deposit account (I) with respect to which interest is neither accrued nor paid; (II) on which the depositor is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and (III) on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal. This definition encompasses traditional demand deposit accounts such as checking accounts (assuming the account is noninterest-bearing). Also, this definition encompasses official checks issued by an insured depository institution. As the result of an amendment passed by Congress in December of 2010, the definition of a “noninterest-bearing transaction account” also includes Interest on Lawyers Trust Accounts (IOLTAs) even though such accounts earn interest. An IOLTA is a trust account established by an attorney or law firm for clients; pursuant to State rules, the interest produced by the account is used for legal services or other prescribed purposes.

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## Insurance Determination

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From December 31, 2010 through December 31, 2012, noninterest-bearing transaction accounts at all insured depository institutions are insured in full (i.e., beyond the ordinary \$250,000 insurance limit). This insurance coverage is separate from the \$250,000 coverage provided for interest-bearing accounts.

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## Differences Between the Dodd-Frank Act and the TAGP

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The unlimited coverage provided by the Dodd-Frank Act is similar but not identical to the unlimited coverage that was provided to “noninterest-bearing transaction accounts” under the FDIC’s Transaction Account Guarantee Program (TAGP). The differences can be summarized as follows:

- Coverage under the Dodd-Frank Act applies to all insured depository institutions. In contrast, coverage under the TAGP applied only to participating insured depository institutions.
- Coverage under the Dodd-Frank Act extends from December 31, 2010 through December 31, 2012. In contrast, coverage under the TAGP expired on December 31, 2010.
- Coverage under the Dodd-Frank Act applies to “noninterest-bearing transaction accounts” as defined above. In contrast, for purposes of the TAGP, the term “noninterest-bearing transaction account” was defined to include NOW accounts with interest rates no higher than .25%. Such NOW accounts are not covered by the Dodd-Frank Act.

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### Special Rule for Revocable Trust Accounts

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When a depositor owns one or more interest-bearing revocable trust accounts at an insured depository institution, and also owns one or more noninterest-bearing revocable trust accounts at the same insured depository institution, the interest-bearing accounts are insured separately from the noninterest-bearing accounts. As discussed in Chapter 9, the interest-bearing accounts are insured up to the \$250,000 limit on a “per beneficiary” basis. As discussed in this chapter, the noninterest-bearing accounts are insured in full irrespective of the balances and irrespective of the number of beneficiaries.

Notwithstanding this separate coverage for the two types of accounts, the FDIC will count all beneficiaries (those on the interest-bearing accounts as well as those on the noninterest-bearing accounts) in calculating the coverage of the interest-bearing accounts.

Example: Mary Jones owns an interest-bearing payable-on-death account with two friends as beneficiaries. The balance is \$600,000. At the same insured depository institution, Mary Jones owns a noninterest-bearing payable-on-death account with a niece as beneficiary. The balance is \$1,000,000. In this example, with a total of three different POD beneficiaries (the two friends and the niece), the maximum coverage for the interest-bearing account is \$750,000 (3 X \$250,000 = \$750,000). Therefore, the interest-bearing account with a balance of only \$600,000 is fully insured. Separately, the noninterest-bearing account is fully insured regardless of the \$1,000,000 balance or the number of beneficiaries.

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## Examples of Insurance Coverage

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### Example 1:

#### Scenario

#### Fully Insured

An account and an official item.

#### Situation

At the failed institution, there is an account titled “Dan Jones” in an amount of \$220,000. There is also a cashier’s check outstanding titled “Dan Jones” for \$60,000.

#### Analysis/Determination

In his interview with Dan Jones, the Claims Specialist is able to confirm that both of the accounts belong to the same Dan Jones. Mr. Jones had obtained the cashier’s check in order to open an account at a nearby credit union, but had not done so by the time the institution failed. The \$220,000 is fully insured in the single ownership category. The cashier’s check is fully insured in the Non-interest bearing Transaction Accounts category. (See [Claims Manual Volume II Chapter 17.](#))

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**Example 2:**

**Scenario**

**Fully Insured**

Interest and non-interest bearing deposits/multiple custodians/out-of-state financial institution.

**Situation**

City of Putty, Texas has the following accounts in the First Bank of Arkansas, Little Rock, Arkansas at the time of failure:

- CD #123 (time and savings deposit) totaling \$250,000.
- DDA #456 (demand deposit) totaling \$250,000.
- CD #987 (time and savings deposit) totaling \$250,000.
- DDA #246 (demand deposit) totaling \$250,000.

**Analysis/Determination**

The Claims Specialist contacts the City of Putty and discovers that there are two official custodians for the accounts. Brian Denver is the official custodian for CD #123 and DDA #456. Pete Patter is the official custodian for CD #987 and DDA #246. The Claims Specialist requests that they each fill out and execute the [Declaration for Government Deposit](#) form and provide the appropriate supporting documents. They comply with that request. In reviewing the situation, the Claims Specialist realizes that the official custodians have placed public unit funds outside of the state in which the public unit resides.

In order for the City to receive separate insurance coverage for interest bearing and non-interest bearing accounts, the funds must be deposited in an institution (or branch) located in the same state as the public unit. Since the accounts were deposited into an institution outside of the public unit's location, they are not entitled to separate insurance for time and savings and demand deposit accounts. However under the Noninterest-bearing Transaction Accounts ownership category, the demand deposit accounts are fully insured. Therefore all funds are fully insured. ([Claims Manual Vol. II Chapter 17](#)).

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**Example 3:**

**Scenario**

**Fully Insured**

In-state branch of an out-of-state headquartered financial institution.

**Situation**

The Bank of New York has a branch in Kentucky. The City of Silva, Kentucky deposits \$250,000 into CD #989 (interest bearing) and \$250,000 into their checking account #767 (non-interest bearing) at the Kentucky branch. The Bank of New York is closed.

**Analysis/Determination**

The Claims Specialist contacts the official custodian of the City of Silva and requests that he fill out and execute the [Declaration for Government Deposit](#) form and provide supporting documentation. The official custodian does so. The Claims Specialist reviews that information and from the bank's records determines that there is no collateral pledged to secure any of the City of Silva deposits. Public entities located in the same state as the failed institution (including a branch in the same state as the public unit, even though the bank is chartered in a different state) can have up to \$500,000 deposit insurance coverage per official custodian. Deposit insurance allows \$250,000 for demand deposit accounts and \$250,000 for time and savings accounts. Therefore, the City of Silva is fully insured for \$500,000. Note: Under the Noninterest-bearing Transaction Accounts ownership category, the demand deposit accounts are fully insured. ([Claims Manual Vol. II Chapter 17](#))

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