

FIDUCIARY ACCOUNTS ([12 C.F.R § 330.5](#); [12 C.F.R. § 330.7](#))

I. Definition

Fiduciary accounts are deposit accounts established by a person or entity for the benefit of one or more other parties, also known as principals. The deposit account can be established for the benefit of a single owner or a commingled account may be established for the benefit of multiple owners. The individual or entity opening the account does not have an ownership interest in the deposit.

Fiduciary relationships include, but are not limited to, arrangements involving:

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

II. Types of Fiduciary Accounts

Fiduciary accounts include but are not limited to the following:

- Uniform Transfers to Minors Act (“UTMA”) accounts or Uniform Gifts to Minors Act (“UGMA”) accounts
- Accounts with a power of attorney
- Decedent estate accounts
- Real estate and other escrow accounts
- Brokered deposits

Fiduciary accounts **are not** insured as a separate ownership category. The deposit insurance coverage for such accounts depends on the *actual ownership capacity* in which the principal or owner holds the funds. For example, ABC Brokerage Firm established a single account for Lisa Johnson at AnyTown Bank.

In this scenario, Lisa Johnson is the owner of the funds and her account would be added with any other single accounts she has at AnyTown Bank and insured as her single account for up to \$250,000.

In other words, assuming Lisa has other single ownership accounts at AnyTown Bank, she does not receive separate coverage simply because the brokerage firm opened one of the accounts. For a fiduciary account, assuming the requirements discussed below are met, coverage is provided as though the actual owner opened the account at the IDI.

III. Requirements for Fiduciary Accounts

Deposits held by a fiduciary on behalf of one or more principals are insured on a pass-through basis as the deposits of the principal (the actual owner) to the same extent as if the deposits were deposited directly by the principal, provided *all* of the following three requirements are met:

1. Funds must be in fact owned by the principal and not by the third party who set up the account (i.e., the fiduciary or custodian who is placing the funds). To confirm the actual ownership of the deposit funds, the FDIC may review:
 - a. The agreement between the third party establishing the account and the principal
 - b. The applicable state law
2. The IDI's account records must indicate the agency nature of the account (e.g., *XYZ Company as Custodian, XYZ For the benefit of (FBO), Jane Doe UTMA John Smith, Jr.*)
3. The records of the IDI, the fiduciary or a third party must indicate both the identities of the principals as well as the ownership interest in the deposit.

The first requirement above will not be satisfied if the purported agent or the custodian has entered into a debtor/creditor relationship with the purported owner as opposed to an agent/principal relationship. The creation of a debtor/creditor relationship may occur if the purported agent has changed the terms of the IDI's deposit contract, such as the terms relating to maturity dates or interest rates. For example, if a customer of a deposit broker is promised by the "agent" that he or she will earn 3% on his or her deposit when the IDI is paying only 2%, the "agent" would not be an agent but a debtor with an independent obligation to pay 3%.

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In such a scenario, the deposits at the IDI would not be eligible for “pass-through” coverage to the customers. Rather, the deposits would be treated as corporate deposits belonging to the so-called “agent.”

The scenario above (in which the “agent” pays interest in excess of the interest paid by the IDI) should be contrasted with scenarios in which an agent retains part of the interest paid by the IDI as the agent’s fee. In the latter scenario, “pass-through” coverage is possible because the agent does not assume independent debt obligations. Of course, the agent should disclose the existence of all such fees to its customers.

IV. Requirements for Multi-Tier Fiduciary Accounts

Fiduciary accounts may involve multiple levels of relationships. For example, one agent may hold deposits as nominee for another agent who in turn holds the deposits as an agent for a third party, who in turn is an agent for a fourth party. For deposit accounts that involve multiple levels of fiduciary relationships, there are two ways to satisfy the FDIC’s disclosure rules:

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.

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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.

V. Aggregation of Deposits

Agency accounts are not a separate ownership category. As detailed in this section, accounts held by a fiduciary, provided all the requirements are met, are insured based on the actual ownership of the funds. Therefore, fiduciary accounts are added to a depositor's other accounts in the same ownership category at the same IDI. The manner in which the funds are deposited, whether directly by the actual owner or through a custodian, agent or broker, does not impact aggregation. In other words, since fiduciary accounts are not a separate ownership category, deposit insurance coverage is determined based on the ownership capacity in which the funds are held. For example, if a fiduciary, such as a broker, has opened a single account on behalf of Barry Richards in XYZ Bank and Barry Richards directly opens another single account directly with XYZ Bank, both of these deposits are combined and insured for up to \$250,000.

VI. Failure to Meet Requirements

If the disclosure and the recordkeeping requirements discussed in this section are not met, the accounts will be insured as the deposits of the fiduciary in either the single account or corporate account category. These deposits will then be added to any other deposits the fiduciary may hold in the same ownership category at the same IDI, and the total will be insured up to \$250,000.

For more information on fiduciary accounts, including accounts opened by IDIs when acting in a fiduciary capacity, please review FDIC Financial Institution Letter FIL-29-2010, Guidance on Deposit Placement and Collection Activities. For more information on how the FDIC processes brokered deposits when an IDI fails, please refer to the [Broker Deposit Processing Guide](#).