Subpart D—Delegations of Authority to Other General Officers and Agency Heads

§ 2.29 [Amended]

■ 3. Amend § 2.29 as follows:
■ a. Remove paragraph (a)(11)(vii),
■ b. Redesignate paragraphs (a)(11)(viii) through (a)(11)(ix) as paragraphs (a)(11)(vii) through (a)(11)(xiii).

Dated: September 24, 2008.

Edward T. Schafer,

Secretary of Agriculture.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AD33

Deposit Insurance Regulations; Revocable Trust Accounts

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim rule with request for comments.

SUMMARY: The FDIC is adopting an interim rule to simplify and modernize its deposit insurance rules for revocable trust accounts. The FDIC's main goal in implementing these revisions is to make the rules easier to understand and apply, without decreasing coverage currently available for revocable trust account owners. The FDIC believes that the interim rule will result in faster deposit insurance determinations after depository institution closings and will help improve public confidence in the banking system. The interim rule eliminates the concept of qualifying beneficiaries. Also, for account owners with revocable trust accounts totaling no more than $500,000, coverage will be determined without regard to the beneficial interest of each beneficiary in the trust.

Under the new rules, a trust account owner with up to five different beneficiaries named in all his or her revocable trust accounts at one FDIC-insured institution will be insured up to $100,000 per beneficiary. Revocable trust account owners with more than $500,000 and more than five different beneficiaries named in the trust(s) will be insured for the greater of either: $500,000 or the aggregate amount of all the beneficiaries' interests in the trust(s), limited to $100,000 per beneficiary.

DATES: The effective date of the interim rule is September 26, 2008. Written comments must be received by the FDIC not later than December 1, 2008.

ADDRESSES: You may submit comments by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include ''Revocable Trust Accounts'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Counsel, Legal Division (202) 898–7349; Christopher Hencke, Counsel, Legal Division (202) 898–8839; James V. Deveney, Section Chief, Deposit Insurance Section, Division of Supervision and Compliance (202) 898–6687; or Kathleen G. Nagle, Associate Director, Division of Supervision and Consumer Protection (202) 898–6541, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

One of the FDIC's fundamental goals is to ensure that depositors and insured depository institution employees understand the FDIC's deposit insurance rules. That goal is essential in carrying out the FDIC's combined mission of helping to maintain public confidence and stability in the United States banking system and protecting insured depositors.

Despite the FDIC's efforts to simplify deposit insurance rules in recent years, there is still significant public and industry confusion about the insurance coverage of revocable trust accounts—particularly living trust accounts, one of the two types of revocable trust accounts. This continuing confusion about the insurance coverage of revocable trust accounts is evidenced by the tens of thousands of deposit insurance inquiries the FDIC has received following recent depository institution failures.

Current Rules for Revocable Trust Accounts

There are two types of revocable trust accounts insured under the FDIC's coverage rules: Informal trust accounts and formal trust accounts. Informal trust accounts are comprised simply of a signature card on which the owner designates the beneficiaries to whom the funds in the account will pass upon the owner's death. These are the most common type of revocable trust accounts and generally are referred to as ''payable-on-death'' (''POD'') accounts or in-trust-for (''ITF'') accounts or *Totten Trust* accounts. For purposes of this rulemaking, we will refer to all informal trust accounts as POD accounts.

The other type of revocable trust accounts are accounts established in connection with formal revocable trusts. Formal revocable trusts are trusts created for estate planning purposes. They are often referred to as: living trusts, family trusts, marital trusts, survivor's trusts, by-pass trusts, generation-skipping trusts, AB trusts or special needs trusts. For purposes of this rulemaking, we will refer to all formal revocable trusts as living trusts. Like an informal revocable trust, a living trust is a trust created by an owner (also known as a grantor or settlor) over which the owner retains control during his or her lifetime. Upon the owner's death, the trust generally becomes irrevocable. A living trust is an increasingly popular estate planning tool. Like a POD account, a deposit account held in connection with a living trust account at an FDIC-insured institution is insured under the FDIC's coverage rules for revocable trust accounts.

The FDIC's rules provide that all revocable trust accounts (both POD accounts and living trust accounts) are insured up to $100,000 per ''qualifying beneficiary'' designated by the owner of the account.[1] If there are multiple owners of a revocable trust account, coverage is available separately for each owner, per qualifying beneficiary as to each owner. Qualifying beneficiaries are defined as the owner's spouse, children, grandchildren, parents and siblings.[2]

The per-qualifying beneficiary coverage available on revocable trust accounts is separate from the insurance coverage afforded to depositors in

[1] 12 CFR 330.10.

[2] *Id.* at 330.10(a).

connection with other accounts they own in other ownership capacities at the same insured institution. That means, for example, if an individual has at the same insured depository institution a single-ownership account with a balance of $100,000 and a POD account (naming at least one qualifying beneficiary) with a balance of $100,000, both accounts would be insured separately for a combined coverage amount of $200,000.

Under our current rules, separate, per-beneficiary insurance coverage is available for revocable trust accounts only if the account satisfies certain requirements. First, the title of the account must include a term such as POD or ITF or family trust (or similar expression or acronym), evidencing an intent that the funds shall belong to the designated beneficiaries upon the owner's death. Second, as explained above, each beneficiary must be a qualifying beneficiary. And third, for POD accounts, the beneficiaries must be specifically named in the deposit account records of the depository institution. Under the current rules, the beneficiaries of a living trust need not be indicated in the institution's records.[3]

If a revocable trust account owner names one or more non-qualifying beneficiaries in the account (or trust), the funds corresponding to those non-qualifying beneficiaries are considered the single-ownership funds of the depositor and insured under that category of coverage. For example, assume a depositor owns a POD account (and no other accounts at the same institution) naming his spouse and a friend as beneficiaries. The account has a balance of $200,000. The coverage would be $100,000 under the revocable trust coverage rules because he has named one qualifying beneficiary, and $100,000 would be insured under the single-ownership coverage rules because the funds attributable to the non-qualifying beneficiary (the friend) would be considered the owner's single-ownership funds and thus insured under that category of ownership. If the account owner in this example also has a single-ownership account with a balance of, say, $50,000, then the $100,000 (attributable to the non-qualifying beneficiary) from his POD account would be added to the funds held in the single-ownership account and be insured to a limit of $100,000. Thus, $50,000 would be uninsured.

As explained above, both POD accounts and living trust accounts are types of revocable trust accounts insured under the revocable trust account category in the FDIC's coverage rules. Consequently, all funds that a depositor holds in both living trust accounts and POD accounts naming the same beneficiaries are aggregated for insurance purposes and insured to the applicable coverage limits. For example, assume a depositor has a living trust account for $200,000 in connection with a living trust naming his children, A and B. If the depositor also has a $200,000 POD account naming A and B, the combined coverage on the two accounts would be $200,000—not $200,000 per account.

Prior Guidance on and Revisions to the Revocable Trust Account Coverage Rules

Prior to the late 1980s, when living trusts began to emerge, the coverage rules for revocable trust accounts were easy to understand and apply. Revocable trusts were almost exclusively in the form of POD accounts, and the coverage was determined based on the number of qualifying beneficiaries named on the signature card used to establish the account. In fact, the opening of the POD account (solely through the completion of the signature card) resulted in the formation of the trust.

In 1994, as living trusts became increasingly popular, the FDIC published guidelines on the insurance coverage of living trust accounts.[4] The guidelines addressed how the FDIC would insure living trust accounts amid the complicating factor that many living trusts contained clauses tying a beneficiary's entitlement to the trust assets to the satisfaction of specified conditions, known as defeating contingencies. Despite the issuance of these guidelines, bankers and depositors continued to be confused and uncertain about the insurance coverage of living trust accounts. This confusion and uncertainty was understandable, given the complex legal theory and analysis needed to determine the coverage of living trust accounts involving defeating contingencies. In 2004, the FDIC simplified the rules for living trust accounts by amending the regulations to provide coverage for the owners of living trust accounts, irrespective of defeating contingencies in the trust. The FDIC's objectives behind this rulemaking were to simplify the existing rules and to provide coverage for living trust accounts similar to POD account coverage.[5]

Despite the FDIC's past efforts to simplify and clarify the coverage rules for living trust accounts, confusion and uncertainty continue to exist among bankers and depositors. One reason for this situation is that living trusts are becoming increasingly complex. A typical living trust is a trust with two grantors, husband and wife, who have full access to the trust assets during their lifetimes, with the trust providing for a life estate interest for the surviving spouse upon the death of the first spouse and then providing for a ''family trust'' (in the form of an irrevocable trust) for designated family members upon the death of the second spouse. It is also common for living trusts to provide for lump-sum payments to designated beneficiaries. The FDIC's coverage rules for living trust accounts, as the result of the 2004 revisions, in theory are fairly straightforward, but applying them to complex living trusts has resulted in significant continuing confusion and uncertainty among bankers and depositors. Also, upon an institution failure, because of the complexities of living trusts, FDIC determinations on the coverage available to owners of living trust accounts are often time consuming; thus, depositors are sometimes delayed in receiving their insured funds.

II. The Interim Rule

Overview

The FDIC's goals in this rulemaking are twofold. One is to make the coverage rules for revocable trust accounts easy to understand and easy to apply (in determining the applicable coverage amount), without decreasing coverage currently available for revocable trust account owners. The other is to retain reasonable limitations on coverage levels for revocable trust account owners. Under the new rules, a trust account owner with up to $500,000 in revocable trust accounts at one FDIC-insured institution is insured up to $100,000[6] per beneficiary. (This is the rule that will apply to the vast majority of revocable trust account owners.) Revocable trust account owners with more than $500,000 and more than five different beneficiaries named in the trust(s) are insured for the greater of either: $500,000 or the aggregate amount of all the beneficiaries' interests in the

[3] *Id.* at 330.10(a) & (b).

[4] FDIC Advisory Opinion 94–32 (May 14, 1994).

[5] 69 FR 2825, 2827 (Jan. 21, 2004).

[6] Technically, as reflected in the regulatory text, this limitation is the Standard Maximum Deposit Insurance Amount (''SMDIA''), currently $100,000. Thus, the coverage would automatically reflect any future inflation adjustments to the SMDIA consistent with section 11(a)(1)(F) of the FDI Act, 12 U.S.C. 1821(a)(1)(F). For ease of reference, throughout this notice we will use $100,000 as the basic coverage amount.

trust(s), limited to $100,000 per beneficiary.

Under the interim rule, coverage is based on the existence of any beneficiary named in the revocable trust, as long as the beneficiary is a natural person, or a charity or other non-profit organization.[7] As discussed below, under the interim rule the concept of ''qualifying beneficiaries'' is eliminated. For an account owner with combined revocable trust account balances of $500,000 [8] or less, the maximum available coverage would be determined simply by multiplying the number of beneficiaries by $100,000.

A living trust account with a balance of $400,000, for example, would be insured for up to $400,000 as long as there are at least four beneficiaries named in the trust.[9] Different proportional ownership interests of the beneficiaries in the trust assets would not affect the deposit insurance coverage. So, in this example, the maximum coverage would be $400,000 even if the trust provided that beneficiaries A and B are entitled to twenty percent each of the trust assets and beneficiaries C and D are entitled to thirty percent each of the trust assets. As under the current rules, however, a depositor would receive a combined maximum coverage amount of $100,000 for the same beneficiary named in more than one revocable trust account he or she owns at one insured institution.[10]

Eliminating the Concept of ''Qualifying Beneficiaries''

As explained above, currently revocable trust account coverage is based, in large part, on the number of qualifying beneficiaries named in the trust. Qualifying beneficiaries are defined as the revocable trust account owner's spouse, children, grandchildren, parents and siblings.[11] Prior to 1999, the definition included only the owner's spouse, children and grandchildren. The FDIC's rationale in 1999 for expanding the definition of qualifying beneficiaries to include the account owner's parents and siblings was to recognize other family members likely to be named in a person's revocable trust. The objective was to prevent depositors from losing money in an institution failure because of their misunderstanding of the coverage rules for revocable trust accounts.[12]

Before and since the 1999 expansion of the definition of *qualifying beneficiaries,* depositors, consumer groups and bankers have questioned the fairness of limiting the coverage on revocable trust accounts to the naming of certain beneficiaries. Many have argued that the FDIC should expand the definition of qualifying beneficiaries to include, among others, an account holder's nieces and nephew, in-laws, great-grandchildren, cousins, friends and charities. Historically, the FDIC's response to such complaints has been that there must be a reasonable limitation of the amount of coverage available on revocable trust accounts; otherwise, there would be potentially unlimited coverage under this account category. Hence, the FDIC has been reluctant to amend the rules to provide coverage based on any beneficiary(ies) named in a revocable trust. Under the interim rule, however, the FDIC believes that it can achieve greater fairness under the revocable trust rules by basing coverage on the naming of any beneficiary in a revocable trust, but concurrently imposing coverage qualifications (discussed below) on accounts over $500,000.

In addition to addressing the fairness issue, eliminating the concept of ''qualifying beneficiaries'' makes the coverage rules easier to understand. Depositors and bankers no longer need to know who is a qualifying beneficiary and who is not. Also, this revision will obviate the need for FDIC claims agents, upon an institution's failure, to confirm that a beneficiary named in a revocable trust account is a qualifying beneficiary. Thus, under the interim rule, the FDIC anticipates being able to make quicker deposit insurance determinations on revocable trust accounts at institution failures.

For Accounts With Aggregate Balances of $500,000 or Less, Determining Coverage Without the Necessity of Discerning Each Beneficiary's Interest in the Trust(s)

One of the most confusing and complex aspects of determining revocable trust account coverage under the current rules is having to discern and consider unequal beneficial interests in revocable trusts. This issue typically arises in the context of a living trust that, for example, provides either varying lump-sum payments for designated beneficiaries or different percentage interests in trust assets to certain beneficiaries, or different remainder interests in the assets to the same or other beneficiaries. The method for determining coverage in some situations involving unequal beneficial interests necessitates the formulation and solving of simultaneous equations. Consumers and bankers alike find applying the current revocable trust account rules to complicated living trusts, especially ones involving unequal beneficial interests, far too complex. The FDIC agrees. Therefore, a key component of the interim rule is the ability to determine coverage available to account owners without regard to unequal interests of the beneficiaries named in the revocable trust(s). The FDIC believes this rule change, coupled with the recognition of all beneficiaries, will make the revocable trust account rules simpler and more transparent.

Retaining Current Coverage Levels for Account Owners With More Than $500,000 in Revocable Trust Accounts and More Than Five Beneficiaries Named in the Trusts(s)

Based on our experience at recent institution failures, the FDIC believes that the vast majority of revocable trust account owners have less than $500,000 in revocable trust accounts at one FDIC-insured institution. Thus, under the interim rule coverage for an account owner's revocable trust accounts will be determined simply by multiplying the number of different beneficiaries named in the trust(s) by $100,000.

In order to retain reasonable limits on the maximum coverage available to revocable trust account owners and also to retain the coverage available to revocable trust account owners under the current coverage rules, the interim rule provides special treatment for depositors with revocable trust accounts over $500,000 naming more than five beneficiaries. Under the interim rule, revocable trust account owners with more than $500,000 and more than five beneficiaries named in the trusts are insured for the greater of either: $500,000 or the aggregate amount of all the beneficiaries' interests in the trusts(s), limited to $100,000 per beneficiary. This coverage is no less than the coverage afforded to such account owners under the current rules, particularly because under the interim rule the coverage is based on the number of beneficiaries, not the number of qualifying beneficiaries. Also, as discussed below, under the interim rule life-estate interest holders are deemed to

[7] If in establishing a POD account, the owner names a living trust as the beneficiary, we will consider the beneficiaries of the trust to be the beneficiaries of the POD account.

[8] Technically, this amount is fives times the SMDIA.

[9] This assumes the account owner has no other revocable trust accounts at the same depository institution.

[10] For example, if a depositor has a POD account naming her son as a beneficiary and a living trust account at the same bank naming the same son as a beneficiary, the depositor would be entitled to no more than $100,000 with respect to having named her son a beneficiary of her revocable trust accounts.

[11] 12 CFR 330.10(a).

[12] 64 FR 15657 (Apr. 1, 1999).

have a $100,000 interest in the trust assets.

For example, assume an individual has a living trust account. The living trust provides a life estate interest for that individual's spouse, $15,000 for his college, $5,000 for each of three brothers and the remaining amount to his friend. The balance in the account is $600,000. Here the account balance exceeds $500,000 and the number of beneficiaries is more than five. Hence, under the interim rule, the maximum coverage would be the greater of either: $500,000 or the aggregate beneficial interests of all the beneficiaries (up to a limit of $100,000 per beneficiary). The beneficial interests are: $100,000 for the spouse's life estate interest, $15,000 for the college, $5,000 for each brother (totaling $15,000), and $100,000 for the friend (because of the per-beneficiary limitation of $100,000). The total beneficial interests, thus, would be $230,000. Hence, the maximum coverage afforded to the account owner would be $500,000, the greater of $500,000 or $230,000.

The FDIC believes that basing the coverage of trust accounts over $500,000 (with more than five different beneficiaries in the trust(s)) on the ownership interest of each beneficiary named in the applicable trust(s) would prevent the potential of providing unlimited coverage with respect to revocable trust accounts. Without such a limitation, an account owner could name a limitless number of beneficiaries each with a nominal interest in the trust and obtain coverage up to $100,000 for naming each such beneficiary. For example, a revocable trust account held in connection with a trust entitling one beneficiary to $1 million and entitling each of nine other beneficiaries to $1 would be insured for $1 million, without the limitation imposed under the interim rule.

Treatment of Life-Estate Interests

Another complicating factor in determining the coverage for living trust accounts is determining the value of life estate interests. A life estate interest usually means the life-estate beneficiary is entitled to the income on the trust assets during his or her lifetime. A large percentage of living trusts provide a life estate interest for one or more beneficiaries. The most typical situation is where a married person creates a trust providing a life estate interest for his or her surviving spouse and a remainder interest for their children. The FDIC's current rules provide that, in such situations, each life-estate holder and each remainder-man (also known as residuary beneficiaries) is deemed to have an equal interest in the trust assets for deposit insurance purposes.[13] This rule has proven difficult to apply, especially where the living trust provides for lump-sum gifts for certain beneficiaries, life estate interests for others and different percentage interests for the remainder-men, who may be the same as or different from the other beneficiaries. In order to simplify the coverage rules, the interim rule revises the current valuation method for life estate interests by deeming each such interest to be $100,000, for purposes of determining deposit insurance coverage. The example above (involving a trust providing for a spousal life estate interest and bequests to the owner's college, brothers and friend) demonstrates how the interim rule would apply to a living trust providing for a life-estate interest.

Treatment of Irrevocable Trusts Springing From a Revocable Trust

Another current complexity in determining coverage for living trust accounts is that, when it is created, a living trust is a revocable trust but, when the owner dies, the trust becomes irrevocable.[14] At that stage in the lifecycle of the living trust, the funds corresponding to the irrevocable trust are insured under the FDIC's rules for irrevocable trust accounts.[15] Under those rules, coverage is based on the non-contingent interest of each beneficiary named in the trust. In effect, when a living trust evolves from a revocable trust to an irrevocable trust the insurance coverage available on the account is based on a different set of rules—the irrevocable trust account rules. As such, the coverage on the account often decreases from what it had been when the trust was insured solely under the revocable trust rules.

To eliminate this complexity and the confusion it generates, under the interim rule, the rules for determining the coverage of the living trust account will remain the same when the trust (or part of the trust) converts to an irrevocable trust. For example, a grantor has a living trust account held in connection with a trust naming three beneficiaries, each of whom receives a specified share of the trust assets if he or she graduates from college by age 25. Under the current insurance rules, when the grantor is alive (meaning that the trust is still a revocable trust) the maximum coverage on the account is $300,000—1 grantor times 3 beneficiaries times $100,000. Also under the current rules, upon the grantor's death (allowing for the six-month grace period during which coverage would remain the same), the coverage reduces to $100,000 (if none of the beneficiaries has graduated from college yet) because of the contingent nature of the beneficial interests provided for in the trust. Under the interim rule, contingencies would continue to be irrelevant for coverage purposes after the grantor's death, even though the trust has evolved into an irrevocable trust. In this example, under the interim rule the coverage would still be up to $300,000.

The FDIC believes that the continuity of coverage provided for under this component of the interim rule would greatly simplify the current rules for determining coverage for living trust accounts. It is important to note, however, that under the interim rule the coverage on a living trust account could still change during the lifecycle of the trust. For example, when both grantors in a co-grantor trust are alive, the maximum coverage on the account would be $1,000,000, because the formula for determining coverage would be: 2 (grantors) times 5 beneficiaries times $100,000.[16] If one of the grantors dies, then the maximum coverage would be 1 (grantor) times 5 beneficiaries times $100,000.[17] Coverage would likewise decrease if one or more of the beneficiaries named in the revocable trust died, assuming the death of the beneficiary(ies) would cause the total number of beneficiaries to drop below five.

Impact of Proposed Rules on the Deposit Insurance Fund Reserve Ratio

Eliminating the concept of qualifying beneficiaries and disregarding unequal interests in a trust (for accounts with five or fewer beneficiaries) theoretically will increase coverage immediately. Since no industry-wide data are maintained on trust accounts, a definite determination of the extent of this effect on insurance coverage for existing accounts is difficult. Thus, the precise effect the proposal will immediately have on the Deposit Insurance Fund (''DIF'') reserve ratio can be estimated,

[13] 12 CFR 330.10(f)(3).

[14] For jointly owned living trusts, upon the death of one of the owners, typically part of the trust remains revocable and part becomes irrevocable.

[15] 12 CRR 330.13.

[16] This assumes neither grantor has any other revocable trust accounts at the same insured institution.

[17] Of course, the FDIC rules provide for a six-month grace period after the death of an account owner during which the coverage would be the same as if the owner (grantor) were still alive. 12 CFR 330.3(j).

as discussed below, but cannot be determined with precision.[18]

In fifteen failures from 1999 to 2003 and three failures from the past year for which final insurance determinations have been made, approximately ninety-seven percent of the funds in revocable trust accounts were insured on average and approximately twenty-five percent of domestic deposits were in revocable trust accounts on average. If conclusions from these eighteen failed institutions can be generalized to the banking industry as a whole, then, even if all current revocable trust deposits were to become insured, the effect on total insured deposits and on the DIF reserve ratio would be small. Recognizing that this data does not provide a strong statistical basis for drawing conclusions, we welcome comments on the effect of the interim rule on the level of insured deposits.

In the long-term, eliminating the concept of qualifying beneficiaries could bring more insured deposits into the system. For example, since, under the interim rule, nieces and nephews are eligible beneficiaries, a depositor might add her niece and nephew to a trust account that previously had only a sister as the sole beneficiary. Anticipating future moves by depositors is even more difficult than estimating the immediate effect on deposit insurance coverage. Thus, the long-term effect of the interim rule on insured deposits and on the reserve ratio is even more uncertain, beyond the conclusion that over time the change can be expected to lower the reserve ratio to some (likely limited) degree.

Effective Date of the Interim Rule

The interim rule is effective on September 26, 2008, the date on which the FDIC Board of Directors approved the interim rule. It is also the date this interim rule was filed for public inspection with the Office of the Federal Register. In this regard, the FDIC invokes the good cause exception to the requirements in the Administrative Procedure Act[19] (''APA'') that, before a rulemaking can be finalized, it must first be issued for public comment and, once finalized, must have a delayed effective date of thirty days from the publication date. The FDIC believes good cause exists for making the interim rule effective immediately because, based on recent depository institution failures, it is evident that many depositors and depository institution employees misunderstand the insurance rules for revocable trust accounts. The interim rule simplifies and modernizes the coverage rules for revocable trust accounts and, hence, will provide greater certainty to depositors and depository institution employees about the extent to which revocable trust accounts are insured.

Importantly, under the interim rule, no depositor will be insured for an amount less than he or she would have been entitled to under the current revocable trust account rules. Some depositors will be entitled to greater coverage under the interim rule than under the current rules, especially because under the interim rule a beneficiary need no longer be a qualifying beneficiary for the account owner to be insured on a per-beneficiary basis. Moreover, the FDIC believes that the interim rule will result in faster deposit insurance determinations after depository institution closings and will help improve public confidence in the banking system.

For these reasons, the FDIC has determined that the public notice and participation that ordinarily are required by the APA before a regulation may take effect would, in this case, be contrary to the public interest and that good cause exists for waiving the customary 30-day delayed effective date. Nevertheless, the FDIC desires to have the benefit of public comment before adopting a permanent final rule and thus invites interested parties to submit comments during a 60-day comment period. In adopting the final regulation, the FDIC will revise the interim rule, if appropriate, in light of the comments received on the interim rule.

III. Request for Comments

The FDIC requests comments on all aspects of the proposed rulemaking. We solicit specific comments on: (1) Whether ''over $500,000'' is the proper threshold for determining coverage for revocable trust account owners based on the beneficial interests of the trust beneficiaries; (2) whether the FDIC's irrevocable trust account rules should be revised so that all trusts are covered by substantially the same rules; and (3) what effect the interim rule will have on the level of insured deposits.

IV. Paperwork Reduction Act

The interim rule will revise the FDIC's deposit insurance regulations. It will not involve any new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information collection has been submitted to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). The Regulatory Flexibility Act provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that the interim rule will not have a significant impact on a substantial number of small entities. The interim rule simplifies the deposit insurance rules for revocable trust accounts held at FDIC-insured depository institutions.

VI. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681). The interim should have a positive effect on families by clarifying the coverage rules for revocable trust accounts, a popular type of consumer bank account.

VII. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the interim rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (''SBREFA'') (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the interim rule may be reviewed.

VIII. Plain Language

The FDIC has sought to present the interim rule in a simple and straightforward manner. The FDIC invites comment on whether it could take additional steps to make the rule easier to understand.

[18] The reserve ratio is determined by dividing the DIF fund balance by the estimated insured deposits by the industry (12 U.S.C. 1817(l)).

[19] 5 U.S.C. 553.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends part 330 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

■ 1. The authority citation for part 330 continues to read as follows:

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

■ 2. Section 330.10 is revised to read as follows:

§ 330.10 Revocable trust accounts.

(a) *General rule.* Except as provided in paragraph (e) of this section, the funds owned by an individual and deposited into one or more accounts with respect to which the owner evidences an intention that upon his or her death the funds shall belong to one or more beneficiaries shall be separately insured (from other types of accounts the owner has at the same insured depository institution) in an amount equal to the total number of different beneficiaries named in the account(s) multiplied by the SMDIA. This section applies to all accounts held in connection with informal and formal testamentary revocable trusts. Such informal trusts are commonly referred to as *payable-on-death* accounts, *in-trust-for* accounts or *Totten Trust* accounts, and such formal trusts are commonly referred to as *living trusts or family trusts.* (*Example 1:* An individual has a living trust account with four beneficiaries named in the trust. The account owner has no other revocable trust accounts at the same FDIC-insured institution. The maximum insurance coverage would be $400,000, determined by multiplying 4 (the number of beneficiaries) times $100,000 (the current SMDIA). *Example 2:* An individual has a payable-on-death account naming his niece and cousin as beneficiaries and, at the same FDIC-insured institution, has another payable-on-death account naming the same niece and a friend as beneficiaries. The maximum coverage available to the account owner would be $300,000. This is because the account owner has named three different beneficiaries in the revocable trust accounts. The naming of the same beneficiary in more than one revocable trust account, whether it be a payable-on-death account or living trust account, does not increase the total coverage amount.)

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

(c) *Definition of beneficiary.* For purposes of this section, a *beneficiary* includes natural persons as well as charitable organizations and other non-profit entities recognized as such under the Internal Revenue Code of 1986.

(d) *Interests of beneficiaries outside the definition of beneficiary in this section.* If a beneficiary named in a trust covered by this section does not meet the definition of *beneficiary* in paragraph (c) of this section, the funds corresponding to that beneficiary shall be treated as the individually owned (single ownership) funds of the owner(s). As such, they shall be aggregated with any other single ownership accounts of such owner(s) and insured up to the SMDIA per owner. (Example: If an individual establishes an account payable-on-death to a pet, the account would be insured as a single-ownership account.)

(e) *Revocable trust accounts with aggregate balances exceeding five times the SMDIA and naming more than five different beneficiaries.* Notwithstanding the general coverage provisions in paragraph (a) 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 ownership interests of each different beneficiary named in the trusts, to a limit of the SMDIA per different beneficiary. (*Example:* A has a living trust account with a balance of $600,000. Under the terms of the trust, upon A's death, A's three children are each entitled to $50,000, A's friend is entitled to $5,000 and a designated charity is entitled to $70,000. 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 is over $500,000 (which is five times the current SMDIA of $100,000) and there are more than five different beneficiaries named in the trust, the maximum coverage available to A would be the greater of: $500,000 or the aggregate of each different beneficiary's interest to a limit of $100,000 per beneficiary. The beneficial interests in the trust considered for purposes of determining coverage are: $50,000 for each of the children (totaling $150,000), $5,000 for the friend, $70,000 for the charity, and $100,000 for the spouse ($375,000, subject to the $100,000 limit per beneficiary). The aggregate beneficial interests, thus, are $325,000. Hence, the maximum coverage afforded to the account owner would be $500,000, the greater of $500,000 or $325,000.)

(f) *Joint revocable trust accounts.* (1) Where an account described in paragraph (a) of this section is established by more than one owner, the respective interest of each account owner (which shall be deemed equal) shall be insured separately, per different beneficiary, up to the SMDIA, subject to the limitation imposed in paragraph (e) of this section. (*Example 1:* A & B, two individuals, establish a payable-on-death account naming their three nieces as beneficiaries. Neither A nor B has any other revocable trust accounts at the same FDIC-insured institution. The maximum coverage afforded to A&B would be $600,000, determined by multiplying the number of owners (2) times the SMDIA (currently $100,000) times the number of different beneficiaries (3). In this example, A would be entitled to revocable trust coverage of $300,000 and B would be entitled to revocable trust coverage of $300,000. *Example 2:* A and B, two individuals, establish a payable-on-death account naming their two children, two cousins and a charity as beneficiaries. The balance in the account is $700,000. Neither A nor B has any other revocable trust accounts at the same FDIC-insured institution. The maximum coverage would be determined (under paragraph (a) of this section) by multiplying the number of account owners (2) times the number of different beneficiaries (5) times $100,000, or $1 million. Because the account balance is less than the maximum coverage amount, the account would be fully insured. *Example 3:* A and B, two individuals, establish a living trust account with a balance of $1.5 million. Under the terms of the trust, upon the death of both A & B, each of A & B's three children is entitled to $200,000, B's cousin is entitled to $150,000, A's friend is entitled to

$30,000 and the remaining amount ($720,000) goes to a charity. Under paragraph (e) of this section, the maximum coverage, as to each joint account owner, would be the greater of $500,000 or the aggregate amount (as to each joint owner) of the interest of each different beneficiary named in the trust, to a limit of $100,000 per account owner per beneficiary. The beneficial interests in the trust considered for purposes of determining coverage for account owner A are: $300,000 for the children (three times $100,000), $75,000 for the cousin, $15,000 for the friend and $100,000 for the charity ($360,000 subject to the $100,000 per-beneficiary limitation). As to A, the aggregate amount of the beneficial interests eligible for deposit insurance coverage, thus, is $490,000. Hence, the maximum coverage afforded to joint account owner A would be $500,000, the greater of $500,000 or $490,000 (the aggregate of all the beneficial interests attributable to A, limited to $100,000 per beneficiary). The same analysis and coverage determination also would apply to B.

(2) Notwithstanding paragraph (f)(1) of this section, where the owners of a joint revocable trust account are themselves the sole beneficiaries of the corresponding trust, the account shall be insured as a joint account under section 330.9 and shall not be insured under the provisions of this section. (Example: If A and B establish a payable-on-death account naming themselves as the sole beneficiaries of the account, the account will be insured as a joint account because the account does not satisfy the intent requirement (under paragraph (a) of this section) that the funds in the account belong to the named beneficiaries upon the owners' death. The beneficiaries are in fact the actual owners of the funds during the account owners' lifetimes.)

(g) For deposit accounts held in connection with a living trust that provides for a life-estate interest for designated beneficiaries, the FDIC shall value each such life estate interest as the SMDIA for purposes of determining the insurance coverage available to the account owner.

(h) *Revocable trusts that become irrevocable trusts.* Notwithstanding the provisions in section 330.13 on the insurance coverage of irrevocable trust accounts, a revocable trust account shall continue to be insured under the provisions of this section even if the corresponding revocable trust, upon the death of one or more of the owners thereof, converts, in part or entirely, to an irrevocable trust. (*Example:* Assume A and B have a trust account in connection with a living trust, of which they are joint grantors. If upon the death of either A or B the trust transforms into an irrevocable trust as to the deceased grantor's ownership in the trust, the account will continue to be insured under the provisions of this section.)

(i) This section shall be effective as of September 26, 2008 for all existing and future revocable trust accounts and for existing and future irrevocable trust accounts resulting from formal revocable trust accounts.

Dated at Washington DC, this 26th day of September 2008.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 906

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1206

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1701

RIN 2590–AA00

Assessments

AGENCIES: Federal Housing Finance Board; Office of Federal Housing Enterprise Oversight; Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board, Office of Federal Housing Enterprise Oversight and Federal Housing Finance Agency (FHFA) are establishing policy and procedures for the FHFA to impose assessments on the Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), and Federal Home Loan Banks (Banks) (collectively, Regulated Entities), through a final rule, pursuant to 12 U.S.C. 4516.

DATES: The final rule will become effective on September 30, 2008.

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SUPPLEMENTARY INFORMATION:

I. Background

On July 30, 2008, the President signed the Federal Housing Finance Regulatory Reform Act of 2008 (Act) (Pub. L. 110–289, 122 Stat. 2564). Among other things, the Act transferred the supervisory and oversight responsibilities over the Banks, Fannie Mae, and Freddie Mac to a new independent executive branch agency known as the Federal Housing Finance Agency. To fund the operations of the FHFA, the Act amended section 1316 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), codified at 12 U.S.C. 4516. The Act also removed the provisions of section 38 of the Federal Home Loan Bank Act, which were codified at 12 U.S.C. 1438(b), that had authorized the Federal Housing Finance Board (FHFB) to impose assessments on the Banks in an amount sufficient to provide for the payment of the FHFB's estimated expenses for the period covered by the assessment. This final rule will implement the FHFA's authority to establish and collect assessments from the Regulated Entities and will also remove the regulatory provisions that had implemented the authority of the Office of Federal Housing Enterprise Oversight (OFHEO) to assess Fannie Mae and Freddie Mac (12 CFR part 1701) and the authority of the FHFB to assess the Banks (12 CFR 906.1–2).

II. Analysis of the Final Rule

In accordance with section 1316A of the Act, part 1206 of the final rule authorizes the FHFA to impose assessments on the Regulated Entities to pay its estimated costs and expenses. *See* 12 U.S.C. 4516. The rule recognizes and addresses the differences between the Banks and the Enterprises, where appropriate.

The final rule authorizes the FHFA to establish annual assessments for the Regulated Entities to provide for the payment of the FHFA's costs and expenses and maintain a working capital fund. The final rule provides for the allocation of the annual assessments between the Enterprises and the Banks, with the Enterprises paying proportional shares sufficient to provide for payment of the costs and expenses