

qualifying beneficiaries (with equal ownership interests in the trust) would be insured up to \$300,000, as long as the account is designated as a living trust account and the beneficiaries and their respective interests in the trust are indicated in the institution's deposit account records. This coverage would be the same as that afforded to a POD account with three qualifying beneficiaries.

Under Alternative One, as currently the case, the insurance coverage provided for living trust accounts would be under the same category of coverage as POD accounts. Thus, all funds that a depositor holds in both living trust accounts and POD accounts naming the same beneficiaries would be aggregated for insurance purposes. 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.

As with POD accounts, under Alternative One insurance coverage would be provided up to \$100,000 per qualifying beneficiary limited to each beneficiary's ascertainable interest in the trust. Thus, if a living trust provided that upon the grantor's death one qualifying beneficiary received \$125,000 and another qualifying beneficiary received \$75,000, the coverage on a corresponding living trust account with a balance of \$200,000 would be \$175,000. The process would be to identify the number of qualifying beneficiaries, determine each beneficiary's ascertainable interest in the trust, and insure the account up to \$100,000 per such interest. Here the first qualifying beneficiary has an ascertainable interest of \$125,000. Based on that beneficiary's interest in the trust, \$100,000 of the balance in the account would be insured and \$25,000 would be uninsured. The second qualifying beneficiary has an ascertainable interest of \$75,000, all of which would be eligible for coverage.

This methodology for determining living trust account coverage would be consistent with existing rules. The FDIC's insurance regulations now base the coverage for revocable trust accounts on the beneficiaries' interests. Typically with POD accounts the beneficiaries have an equal ownership interest in the account; thus, the rules indicate that such ownership interests are deemed equal unless otherwise specified in the institution's deposit account records. With living trusts, beneficiaries commonly have different ownership interests. For example, the trust might

provide that beneficiary A receives \$50,000 and beneficiary B receives \$100,000. In order for the FDIC to determine the insurance coverage for living trust accounts, it is important that the institution's deposit account records indicate each beneficiary's ownership interest in the trust. Thus, the proposed rule expressly requires that the deposit account records of the institution indicate the ownership interest of each beneficiary in the living trust. The information could be in the form of the dollar amount of each beneficiary's interest or on a percentage basis relative to the total amount of the trust assets. If such information is not provided in the institution's records, the FDIC would have the discretion to review the living trusts upon a depository institution's failure to obtain the necessary information, but this review process would substantially slow the payment of insured deposits to living trust account holders.

Because a living trust sometimes provides for different levels of beneficiaries whose interests in the trust depend on certain conditions, in some situations it might be infeasible to identify and indicate in a depository institution's records the ownership interest of each beneficiary. For example, a living trust might provide that, upon the grantor's death, the grantor's spouse receives all of the trust assets; but, if the spouse predeceases the grantor, then the grantor's two children each receives fifty percent of the trust assets. The FDIC requests specific comment on how this situation should be treated under Alternative One. One option would be for the FDIC to deem each beneficiary to have an equal share in a trust that provides for multi-tiered beneficiaries.

Under Alternative One, as now with POD accounts, insurance coverage would be affected by the existence of non-qualifying beneficiaries in the living trust. The current rule is that the trust interest attributable to a non-qualifying beneficiary is considered the grantor's single-ownership funds and, along with any other single-ownership funds held by the owner at the institution, insured to a combined limit of \$100,000. For example, a deposit account with a balance of \$300,000 held in connection with a living trust naming the grantor's two children and nephew as beneficiaries would be insured up to \$200,000 as to the living trust account. The \$100,000 attributed to the non-qualifying beneficiary (the nephew) would be considered the grantor's single-ownership funds. If the grantor has no other single-ownership funds at the institution, the \$100,000 attributed

to the non-qualifying beneficiary in the living trust account would be fully insured under the single-ownership account category. If in this example, however, the grantor also has a single-ownership account with a balance of \$50,000, then that amount would be added to the \$100,000 from the living trust account (attributable to the non-qualifying beneficiary) and insured to a combined limit of \$100,000. Thus, overall the depositor's funds would be insured for \$300,000 and uninsured for \$50,000. Both examples would yield the same result as a similar POD account with non-qualifying beneficiaries. As currently required for all revocable trust accounts, the depository institution's deposit account records would have to indicate the names of all the trust beneficiaries.¹

The FDIC believes Alternative One would be an easily understood rule on the insurance coverage of living trust accounts. Coverage would no longer depend on defeating contingencies in the trust; thus, depositors would have a clear understanding of their account coverage. Also, assuming depository institutions' records contain the living trust information required under Alternative One, the FDIC would be able to make expeditious payments to insured depositors when an institution fails.

Under Alternative One, in making deposit insurance determinations upon an institution failure, the FDIC would rely primarily on a depository institution's deposit account records to identify living trust beneficiaries and their interests in the trust. As under current procedures, the FDIC would request living trust account holders to sign an affidavit on whether the identified beneficiaries are *qualifying beneficiaries* (i.e., the grantor's spouse, child, grandchild, parent or sibling) for purposes of determining the amount of deposit insurance. In order to identify possible errors in institution documentation and to avoid potential fraud, the FDIC also would review a percentage of the living trusts underlying the respective living trust accounts.

¹ The treatment also would be the same for PODs and living trust accounts where there are no non-qualifying beneficiaries named in the trust, but the balance in the account exceeds the maximum available coverage. For example, if a grantor has a \$200,000 living trust account and there is only one qualifying beneficiary named in the trust (and no non-qualifying beneficiaries), the coverage would be limited to \$100,000. As under current rules, the excess \$100,000 would be uninsured. The result would be the same for a POD account where the account balance exceeds the maximum insured amount determined by the number of qualifying beneficiaries.