

Current FDIC rules do not require that the institution's records indicate the kinship relationship between a revocable trust account owner and the trust beneficiaries. In this regard the rules require only that the beneficiaries be named in the institution's deposit account records. As indicated, when an institution fails the FDIC requests a revocable trust account depositor to provide an affidavit specifying the relationship between the owner and each beneficiary, indicating whether those individuals are qualifying beneficiaries. In order to avoid the delay in paying claims caused by having depositors provide such an affidavit when an institution fails, one option would be for the FDIC to require institutions to obtain *beneficiary*

relationship information when a depositor opens or amends a living trust or POD account. At that time the depositor would sign an affidavit indicating whether each beneficiary is a qualifying beneficiary. This additional information would further expedite payments to living trust and POD depositors when an institution fails, but would impose an additional recordkeeping requirement on depository institutions. The FDIC seeks specific comment on this option.

One consequence of Alternative One is that it likely would result in an increase in deposit insurance coverage. The reason is that, unlike under the current rules, beneficiaries would not have to have an unconditional interest in the trust in order for the account to

be eligible for per-qualifying-beneficiary coverage. For example, assume a trust provided that upon the grantor's death the grantor's spouse would receive \$100,000 and each of the grantor's three children would receive \$100,000, but only if each graduated from college by age twenty-four. Under Alternative One, the amount of coverage would be up to \$400,000. Under the current rules, because of the defeating contingency that each of children graduates from college by age twenty-four, the maximum coverage would be limited to \$100,000. As indicated in the table below, based on a sampling of accounts at recent depository institution failures, FDIC staff found that under Alternative One there would have been an increase in insured living trust deposits.

TABLE 1.—SAMPLING OF ACCOUNTS UNDER ALTERNATIVE ONE

	Institution 1 (millions)	Institution 2 (millions)	Institution 3 (millions)
Total Living Trust Deposits	\$132	\$175	\$30
Total <i>Insured</i> Living Trust Deposits Under Current Rules	128	169	28
Total <i>Insured</i> Living Trust Deposits Under <i>Alternative One</i>	131	173	29

It is uncertain the extent to which Alternative One as a final rule would increase the overall volume of insured deposits in the depository institutions industry. One reason for the uncertainty is that no industry-wide data are maintained on this type of deposit account. Thus, it is unclear what, if any, effect an increase in insured living trust deposits resulting from the issuance of Alternative One as a final rule would have on the Bank Insurance Fund ("BIF") and Savings Association Insurance Fund ("SAIF") reserve ratios. The reserve ratios are determined by dividing the BIF and SAIF fund balances by the estimated insured deposits held by BIF and SAIF members, respectively (12 U.S.C. 1817(l)).

Proposed Rule—Alternative Two

The second alternative to address the confusion surrounding the insurance coverage of living trust accounts is, in essence, to create a separate category of coverage for living trust accounts and to insure such accounts up to \$100,000 per owner of the account ("Alternative Two"). That individual would be insured up to a total of \$100,000 for all living trust accounts he or she has at the same depository institution, regardless of the number of beneficiaries named in the trust, the grantor's relationship to the beneficiaries and whether there are any defeating contingencies in the trust. The deposit insurance coverage for a

living trust account would be separate from the coverage afforded to any single-ownership accounts the owner may have at the same depository institution. In addition, if that individual also has a POD account, that account would be eligible for separate, per-beneficiary POD coverage, regardless of the existence of the living trust account (assuming the requirements for POD coverage are met). Where there are joint owners of a living trust account, the account would be insured up to \$100,000 per grantor. Such insurance would be separate from the available joint and single-ownership coverage of each grantor.

For example, a depositor with \$100,000 in a living trust account, \$100,000 in a POD account (naming a qualifying beneficiary) and \$100,000 in a single-ownership account would be fully insured as to each account (assuming compliance with the applicable procedural requirements). Under Alternative Two the coverage on a living trust account would be separate from a depositor's coverage on other categories of accounts, such as POD and single-ownership accounts.

The FDIC believes Alternative Two would make the deposit insurance rules for living trust accounts simple and easy to understand. With this knowledge, depositors would be able to make informed decisions on how to obtain the maximum insurance coverage on living trust accounts. In addition, depository

institutions would not have to indicate in their deposit account records the names of the trust beneficiaries and their trust interests.

Also, under this proposal the FDIC would be able to pay insured living trust account holders expeditiously when an institution fails. Currently a significant percentage of living trust depositors must each produce their living trust for FDIC review upon a depository institution failure. This process delays the payment process and sometimes results in privacy concerns raised by depositors. Alternative Two would eliminate these issues because the FDIC would no longer need to review the living trust to determine the names of the beneficiaries and their ascertainable interests in the trust.

One consequence of this proposal is that it likely would result in reduced coverage for trust account owners with living trusts naming more than one qualifying beneficiary. For example, currently an account for a living trust with one grantor and three qualifying beneficiaries, with no defeating contingencies, would be eligible for coverage up to \$300,000. Under Alternative Two coverage on the account would be limited to \$100,000. As indicated in the table below, based on a sampling of accounts at recent depository institution failures, FDIC staff found that under Alternative Two there would have been a decrease in insured living trust deposits.