

TABLE 2.—SAMPLING OF ACCOUNTS UNDER ALTERNATIVE TWO

|  | Institution 1<br>(millions) | Institution 2<br>(millions) | Institution 3<br>(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 Alternative One ..... | 131                         | 173                         | 29                          |
| Total <i>Insured</i> Living Trust Deposits Under Alternative Two ..... | 124                         | 168                         | 23                          |

Thus, it seems likely that some depositors would experience a reduction in living trust account coverage under Alternative Two. A grantor with over \$100,000 in living trust assets can have the funds fully insured, however, by placing up to \$100,000 in different FDIC-insured depository institutions using the same trust document.

The FDIC believes that eliminating the widespread confusion surrounding the insurance coverage of living trust accounts would warrant the rule change. We have found that one reason for the current high percentage of uninsured living trust accounts at failed institutions is depositor misunderstanding of the applicable deposit insurance rules. As a result, the FDIC has found at recent depository institution failures that depositors with living trust accounts were unaware and surprised that they were uninsured, especially because they had used an attorney to prepare the living trust. Alternative Two eliminates the current confusion and provides a simple rule for depositors to follow to ensure they are fully insured. As under Alternative One, under Alternative Two the potential exists for far less *unintended* uninsured funds compared to the existing rule. It is predictable that, when informed of the new rules on the insurance coverage of living trust accounts, depositors would take the necessary steps to obtain the maximum available deposit insurance coverage.

To mitigate Alternative Two's potential effect of decreasing coverage for some depositors, the FDIC would propose to provide a six-month grace period after the effective date of the proposed rule. Living trust accounts that exist on the effective date of the rule change would continue to be insured under the former (per-beneficiary) rules for six months. If the accounts are held in the form of time deposits, then the grace period would be either until the maturity date of the time deposits or six months, whichever is longer. Time deposits renewed during the six-month grace period for the same dollar amount and duration as the original deposit would be insured under the former rules until the new maturity date. In some

cases applying the proposed rule might yield more coverage for a depositor than the depositor would be entitled to under the former rules. In that situation the FDIC would apply the rules more favorable for the depositor.

This six-month grace period would be analogous to the grace period provided in the Federal Deposit Insurance Act for depositors who have funds at merging depository institutions (12 U.S.C. 1818(q)). In addition, if Alternative Two is ultimately adopted as a final rule, the FDIC would take steps to inform the industry and the public of the rule changes. In this connection, the FDIC is requesting comments on how best to inform depositors of the revised rules for insuring living trust accounts.

#### *Procedural Requirements for Alternatives One and Two*

As is currently the case for all revocable trust accounts, the regulations would require that the deposit account be designated as a revocable trust account (in this situation a living trust account). As under the current POD rules, under Alternative One the rules would require that the deposit account records of the institution indicate the names of the trust beneficiaries and their ascertainable interests in the trust. This would not be necessary under Alternative Two because under that proposal insurance coverage is not based on trust beneficiaries. Under Alternative One, when a depository institution's deposit account records do not indicate the beneficiaries' names, the living trust account would be insured as the grantor's single-ownership funds to a combined limit of \$100,000. This treatment would be the same as at present for POD accounts that fail to satisfy the disclosure requirements. The FDIC is proposing to retain the discretion to waive these disclosure and recordkeeping requirements in order to ascertain, upon an institution failure, whether a living trust actually exists and/or to ascertain the identities of the trust beneficiaries and their ownership interests in the trust. The purpose for this discretionary waiver authority would be to prevent potential hardships to depositors resulting from an institution's non-

compliance with these procedural requirements.

Under both alternative proposed rules the FDIC would require that, when a depositor opens a living trust account, institutions certify in their deposit account records the existence of the living trust. At institution failures, FDIC staff must confirm the existence of a living trust in order to provide coverage for the corresponding deposit account. Currently, this is done by asking the depositor to present a copy of the trust. The delay in making deposit insurance payments associated with this process could be avoided if the institution's deposit account records confirmed the existence of the trust. The institution would simply ask to see a copy of the trust and note in its deposit account records that such a trust exists. For institutions that conduct business by telephone or via the internet, this requirement could be satisfied, for example, by having the depositor mail or fax a copy of the first and last pages of the trust.

Although it is not an FDIC requirement, many institutions currently retain a copy of the first and last pages of depositors' living trusts. Obtaining a copy of the first and last pages of the trust would satisfy an institution's obligation under both Alternative proposals to certify the existence of a revocable living trust. This documentation, however, would not satisfy the requirements under Alternative One that the institution's records disclose the names of the qualifying beneficiaries and their interests in the trust, unless that information is actually provided on the pages of the trust document kept in the institution's records. Preliminarily, the FDIC believes the certification requirement would pose minimal inconvenience to institutions. Specific comment is requested on this requirement.

#### **III. Request for Comments**

The FDIC requests comments on all aspects of the proposed rulemaking. In particular, please indicate whether you prefer Alternative One (living trust coverage of \$100,000 per qualifying beneficiary irrespective of defeating