Federal Deposit Insurance Corporation

§ 330.3

(iii) On which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal; and

(2) A trust account established by an attorney or law firm on behalf of a client, commonly known as an Interest on Lawyers Trust Account, or a functionally equivalent account, as determined by the Corporation.


§ 330.2 Purpose.

The purpose of this part is to clarify the rules and define the terms necessary to afford deposit insurance coverage under the Act and provide rules for the recognition of deposit ownership in various circumstances.

§ 330.3 General principles.

(a) Ownership rights and capacities. The insurance coverage provided by the Act and this part is based upon the ownership rights and capacities in which deposit accounts are maintained at insured depository institutions. All deposits in an insured depository institution which are maintained in the same right and capacity (by or for the benefit of a particular depositor or depositors) shall be added together and insured in accordance with this part. Deposits maintained in different rights and capacities, as recognized under this part, shall be insured separately from each other. (Example: Single ownership accounts and joint ownership accounts are insured separately from each other.)

(b) Deposits maintained in separate insured depository institutions or in separate branches of the same insured depository institution. Any deposit accounts maintained by a depositor at one insured depository institution are insured separately from, and without regard to, any deposit accounts that the same depositor maintains at any other separately chartered and insured depository institution, even if two or more separately chartered and insured depository institutions are affiliated through common ownership. (Example: Deposits held by the same individual at two different banks owned by the same bank holding company would be insured separately, per bank.)

The deposit accounts of a depositor maintained in the same right and capacity at different branches or offices of the same insured depository institution are not separately insured; rather they shall be added together and insured in accordance with this part.

(c) Deposits maintained by foreigners and deposits denominated in foreign currency. The availability of deposit insurance is not limited to citizens and residents of the United States. Any person or entity that maintains deposits in an insured depository institution is entitled to the deposit insurance provided by the Act and this part. In addition, deposits denominated in a foreign currency shall be insured in accordance with this part. Deposit insurance for such deposits shall be determined and paid in the amount of United States dollars that is equivalent in value to the amount of the deposit denominated in the foreign currency as of close of business on the date of default of the insured depository institution. The exchange rates to be used for such conversions are the 12 PM rates (the “noon buying rates for cable transfers”) quoted for major currencies by the Federal Reserve Bank of New York on the date of default of the insured depository institution, unless the deposit agreement specifies that some other widely recognized exchange rates are to be used for all purposes under that agreement, in which case, the rates so specified shall be used for such conversions.

(d) Deposits in insured branches of foreign banks. Deposits in an insured branch of a foreign bank which are payable by contract in the United States shall be insured in accordance with this part, except that any deposits to the credit of the foreign bank, or any office, branch, agency or any wholly owned subsidiary of the foreign bank, shall not be insured. All deposits held by a depositor in the same right and capacity in more than one insured branch of the same foreign bank shall be added together for the purpose of determining the amount of deposit insurance.
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e  Deposits payable solely outside of the United States and certain other locations. Any obligation of an insured depository institution which is payable solely at an office of such institution located outside the States of the United States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, is not a deposit for the purposes of this part.

(f) International banking facility deposits. An “international banking facility time deposit,” as defined by the Board of Governors of the Federal Reserve System in Regulation D (12 CFR 204.8(a)(2)), or in any successor regulation, is not a deposit for the purposes of this part.

(g) Bank investment contracts. As required by section 11(a)(8) of the Act (12 U.S.C. 1821(a)(8)), any liability arising under any investment contract between any insured depository institution and any employee benefit plan which expressly permits “benefit responsive withdrawals or transfers” (as defined in section 11(a)(8) of the Act) are not insured deposits for purposes of this part. The term “substantial penalty or adjustment” used in section 11(a)(8) of the Act means, in the case of a deposit having an original term which exceeds one year, all interest earned on the amount withdrawn from the date of deposit or for six months, whichever is less; or, in the case of a deposit having an original term of one year or less, all interest earned on the amount withdrawn from the date of deposit or three months, whichever is less.

(h) Application of state or local law to deposit insurance determinations. In general, deposit insurance is for the benefit of the owner or owners of funds on deposit. However, while ownership under state law of deposited funds is a necessary condition for deposit insurance, ownership under state law is not sufficient for, or decisive in, determining deposit insurance coverage. Deposit insurance coverage is also a function of the deposit account records of the insured depository institution and of the provisions of this part, which, in the interest of uniform national rules for deposit insurance coverage, are controlling for purposes of determining deposit insurance coverage.

(i) Determination of the amount of a deposit—(1) General rule. The amount of a deposit is the balance of principal and interest unconditionally credited to the deposit account as of the date of default of the insured depository institution, plus the ascertainable amount of interest to that date, accrued at the contract rate (or the anticipated or announced interest or dividend rate), which the insured depository institution in default would have paid if the deposit had matured on that date and the insured depository institution had not failed. In the absence of any such announced or anticipated interest or dividend rate, the rate for this purpose shall be whatever rate was paid in the immediately preceding payment period.

(2) Discounted certificates of deposit. The amount of a certificate of deposit sold by an insured depository institution at a discount from its face value is its original purchase price plus the amount of accrued earnings calculated by compounding interest annually at the rate necessary to increase the original purchase price to the maturity value over the life of the certificate.

(3) Waiver of minimum requirements. In the case of a deposit with a fixed payment date, fixed or minimum term, or a qualifying or notice period that has not expired as of such date, interest thereon to the date of closing shall be computed according to the terms of the deposit contract as if interest had been credited and as if the deposit could have been withdrawn on such date without any penalty or reduction in the rate of earnings.

(j) Continuation of insurance coverage following the death of a deposit owner. The death of a deposit owner shall not affect the insurance coverage of the deposit for a period of six months following the owner’s death unless the deposit account is restructured. The operation of this grace period, however, shall not result in a reduction of coverage. If an account is not restructured within six months after the owner’s death, the insurance shall be provided.
§ 330.5 Recognition of deposit ownership and fiduciary relationships.

(a) Recognition of deposit ownership—
(1) Evidence of deposit ownership. Except as indicated in this paragraph (a)(1) or as provided in §330.3(j), in determining the amount of insurance available to each depositor, the FDIC shall presume that deposited funds are actually owned in the manner indicated on the deposit account records of the insured depository institution. If the FDIC, in its sole discretion, determines that the deposit account records of the insured depository institution are clear and unambiguous, those records shall be considered binding on the depositor, and the FDIC shall consider no other records on the manner in which the funds are owned. If the deposit account records are ambiguous or unclear on the manner in which the funds are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. Despite the general requirements of this paragraph (a)(1), if the FDIC has reason to believe that the insured depository institution’s deposit account records misrepresent the actual ownership of deposited funds and such misrepresentation would increase deposit insurance coverage, the FDIC may consider all available evidence and pay claims for insured deposits on the basis of the actual rather than the misrepresented ownership.

(2) Recognition of deposit ownership in custodial accounts. In the case of custodial deposits, the interest of each beneficial owner may be determined on a fractional or percentage basis. This may be accomplished in any manner which indicates that where the funds of an owner are commingled with other funds held in a custodial capacity and a portion thereof is placed on deposit in one or more insured depository institutions without allocation, the owner’s insured interest in the deposit in any one insured depository institution would represent, at any given time, the same fractional share as his or her share of the total commingled funds.

(b) Fiduciary relationships—(1) Recognition. The FDIC will recognize a claim for insurance coverage based on a fiduciary relationship only if the relationship is expressly disclosed, by way of specific references, in the “deposit account records” (as defined in §330.1(e)) of the insured depository institution. Such relationships include, but are not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian pursuant to which funds are deposited. The express indication that the account is held in a fiduciary capacity will not be necessary, however, in instances where