

Federal Deposit Insurance Corporation

§ 330.1

(c) *Initial application.* (1) An FDIC-supervised institution that initially becomes subject to the minimum liquidity standard and other requirements of this part under § 329.1(b)(1)(i) must comply with the requirements of this part beginning on the first day of the third calendar quarter after which the FDIC-supervised institution becomes subject to this part, except that an FDIC-supervised institution must:

(i) For the first two calendar quarters after the FDIC-supervised institution begins complying with the minimum liquidity standard and other requirements of this part, calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month; and

(ii) Beginning the first day of the fifth calendar quarter after the FDIC-supervised institution becomes subject to the minimum liquidity standard and other requirements of this part and continuing thereafter, calculate and maintain a liquidity coverage ratio on each calculation date.

(2) An FDIC-supervised institution that becomes subject to the minimum liquidity standard and other requirements of this part under § 329.1(b)(1)(ii), must comply with the requirements of this part subject to a transition period specified by the FDIC.

(d) *Transition into a different outflow adjustment percentage.* (1) An FDIC-supervised institution whose outflow adjustment percentage changes is subject to transition periods as set forth in § 329.30(d).

(2) An FDIC-supervised institution that is no longer subject to the minimum liquidity standard and other requirements of this part pursuant to § 329.1(b)(1)(i) based on the size of total consolidated assets, cross-jurisdictional activity, total nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure calculated in accordance with the Call Report, the instructions to the FR Y-9LP or the FR Y-15 or equivalent reporting form, as applicable, for each of the four most recent calendar quarters may cease compliance with this part as of the first day of the first quarter after it is no longer subject to § 329.1(b)(1).

(e) *Reservation of authority.* The FDIC may extend or accelerate any compliance date of this part if the FDIC determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the FDIC will consider the effect of the modification on financial stability, the period of time for which the modification would be necessary to facilitate compliance with this part, and the actions the FDIC-supervised institution is taking to come into compliance with this part.

[84 FR 59283, Nov. 1, 2019]

PART 330—DEPOSIT INSURANCE COVERAGE

Sec.

330.1 Definitions.

330.2 Purpose.

330.3 General principles.

330.4 Continuation of separate deposit insurance after merger of insured depository institutions.

330.5 Recognition of deposit ownership and fiduciary relationships.

330.6 Single ownership accounts.

330.7 Accounts held by an agent, nominee, guardian, custodian or conservator.

330.8 Annuity contract accounts.

330.9 Joint ownership accounts.

330.10 Revocable trust accounts.

330.11 Accounts of a corporation, partnership or unincorporated association.

330.12 Accounts held by a depository institution as the trustee of an irrevocable trust.

330.13 Irrevocable trust accounts.

330.14 Retirement and other employee benefit plan accounts.

330.15 Accounts held by government depositors.

330.16 [Reserved]

330.101 Premiums.

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

SOURCE: 63 FR 25756, May 11, 1998, unless otherwise noted.

§ 330.1 Definitions.

For the purposes of this part:

(a) *Act* means the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(b) *Corporation* means the Federal Deposit Insurance Corporation.

(c) *Default* has the same meaning as provided under section 3(x) of the Act (12 U.S.C. 1813(x)).

§ 330.2

(d) *Deposit* has the same meaning as provided under section 3(l) of the Act (12 U.S.C. 1813(l)).

(e) *Deposit account records* means account ledgers, signature cards, certificates of deposit, passbooks, corporate resolutions authorizing accounts in the possession of the insured depository institution and other books and records of the insured depository institution, including records maintained by computer, which relate to the insured depository institution's deposit taking function, but does not mean account statements, deposit slips, items deposited or cancelled checks.

(f) *FDIC* means the Federal Deposit Insurance Corporation.

(g) *Independent activity*. A corporation, partnership or unincorporated association shall be deemed to be engaged in an "independent activity" if the entity is operated primarily for some purpose other than to increase deposit insurance.

(h) *Insured branch* means a branch of a foreign bank any deposits in which are insured in accordance with the provisions of the Act.

(i) *Insured deposit* has the same meaning as that provided under section 3(m)(1) of the Act (12 U.S.C. 1813(m)(1)) and this part.

(j) *Insured depository institution* is any depository institution whose deposits are insured pursuant to the Act, including a foreign bank having an insured branch.

(k) *Interest*, with respect to a deposit, means any payment to or for the account of any depositor as compensation for the use of funds constituting a deposit. A bank's absorption of expenses incident to providing a normal banking function or its forbearance from charging a fee in connection with such a service is not considered a payment of interest.

(l) *Natural person* means a human being.

(m) *Non-contingent trust interest* means a trust interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031-7 of the Federal Estate Tax Regulations (26 CFR 20.2031-7) or any similar present worth or life expect-

12 CFR Ch. III (1-1-21 Edition)

ancy tables which may be adopted by the Internal Revenue Service.

(n) *Sole proprietorship* means a form of business in which one person owns all the assets of the business, in contrast to a partnership or corporation.

(o) *Standard maximum deposit insurance amount*, referred to as the "SMDIA" hereafter, means \$250,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the FDI Act (12 U.S.C. 1821(a)(1)(F)).

(p) *Trust estate* means the determinable and beneficial interest of a beneficiary or principal in trust funds but does not include the beneficial interest of an heir or devisee in a decedent's estate.

(q) *Trust funds* means funds held by an insured depository institution as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement.

(r) *Trust interest* means the interest of a beneficiary in an irrevocable express trust (other than an employee benefit plan) created either by written trust instrument or by statute, but does not include any interest retained by the settlor.

(s) [Reserved]

[63 FR 25756, May 11, 1998, as amended at 71 FR 14631, Mar. 23, 2006; 73 FR 61660, Oct. 17, 2008; 74 FR 47716, Sept. 17, 2009; 75 FR 49365, Aug. 13, 2010; 75 FR 69583, Nov. 15, 2010; 76 FR 4816, Jan. 27, 2011; 76 FR 41395, July 14, 2011; 78 FR 56588, Sept. 13, 2013; 80 FR 65921, Oct. 28, 2015]

§ 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

Federal Deposit Insurance Corporation

§ 330.3

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.

(e) *Deposits payable outside of the United States and certain other locations.*

(1) Any obligation of an insured depository institution which is payable solely at an office of that institution located outside any State, as the term “State” is defined in section 3(a)(3) of the Act (12 U.S.C. 1813(a)(3)), is not a deposit for the purposes of this part.

(2) Except as provided in paragraph (e)(3) of this section, any obligation of an insured depository institution which is carried on the books and records of an office of that institution located outside any State, as referred to in paragraph (e)(1) of this section, shall not be an insured deposit for purposes of this part, or any other provision of this part, notwithstanding that the obligation may also be payable at an office of that institution located within any State.

(3) *Rule of construction.* For purposes of this paragraph (e), Overseas Military Banking Facilities operated under Department of Defense regulations, 32 CFR Parts 230 and 231, are not considered to be offices located outside any State, as referred to in paragraph (e)(1) of this section.

(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

§ 330.4

12 CFR Ch. III (1–1–21 Edition)

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 on the basis of actual ownership in accordance with the provisions of § 330.5(a)(1).

[63 FR 25756, May 11, 1998, as amended at 64 FR 15656, Apr. 1, 1999; 78 FR 56589, Sept. 13, 2013]

§ 330.4 Continuation of separate deposit insurance after merger of insured depository institutions.

Whenever the liabilities of one or more insured depository institutions for deposits are assumed by another insured depository institution, whether by merger, consolidation, other statutory assumption or contract:

(a) The insured status of the institutions whose liabilities have been assumed terminates on the date of receipt by the FDIC of satisfactory evidence of the assumption; and

(b) The separate insurance of deposits assumed continues for six months from the date the assumption takes effect or, in the case of a time deposit, the earliest maturity date after the six-month period. In the case of time deposits which mature within six months of the date the deposits are assumed and which are renewed at the same dollar amount (either with or without accrued interest having been added to the principal amount) and for the same term as the original deposit, the separate insurance applies to the renewed deposits until the first maturity date after the six-month period. Time deposits that mature within six months of the deposit assumption and that are renewed on any other basis, or that are not renewed and thereby become demand deposits, are separately insured only until the end of the six-month period.

§ 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 the FDIC determines, in its sole discretion, that the titling of the deposit account and the underlying deposit account records sufficiently indicate the existence of a fiduciary relationship. This exception may apply, for example, where the deposit account title or records indicate that the account is held by an escrow agent, title company or a company whose business is to hold deposits and securities for others.

(2) *Details of fiduciary relationships.* If the deposit account records of an insured depository institution disclose the existence of a relationship which

might provide a basis for additional insurance (including the exception provided for in paragraph (b)(1) of this section), the details of the relationship and the interests of other parties in the account must be ascertainable either from the deposit account records of the insured depository institution or from records maintained, in good faith and in the regular course of business, by the depositor or by some person or entity that has undertaken to maintain such records for the depositor.

(3) *Multi-tiered fiduciary relationships.* In deposit accounts where there are multiple levels of fiduciary relationships, there are two methods of satisfying paragraphs (b)(1) and (b)(2) of this section to obtain insurance coverage for the interests of the true beneficial owners of a deposit account.

(i) One method is to:

(A) Expressly indicate, on the deposit account records of the insured depository institution, the existence of each and every level of fiduciary relationships; and

(B) Disclose, at each level, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting.

(ii) An alternative method is to:

(A) Expressly indicate, on the deposit account records of the insured depository institution, that there are multiple levels of fiduciary relationships;

(B) Disclose the existence of additional levels of fiduciary relationships in records, maintained in good faith and in the regular course of business, by parties at subsequent levels; and

(C) Disclose, at each of the levels, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting. No person or entity in the chain of parties will be permitted to claim that they are acting in a fiduciary capacity for others unless the possible existence of such a relationship is revealed at some previous level in the chain.

(4) *Exceptions—(i) Deposits evidenced by negotiable instruments.* If any deposit obligation of an insured depository institution is evidenced by a negotiable certificate of deposit, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, negotiable traveler's check, letter of credit or

other negotiable instrument, the FDIC will recognize the owner of such deposit obligation for all purposes of claim for insured deposits to the same extent as if his or her name and interest were disclosed on the records of the insured depository institution; provided, that the instrument was in fact negotiated to such owner prior to the date of default of the insured depository institution. The owner must provide affirmative proof of such negotiation, in a form satisfactory to the FDIC, to substantiate his or her claim. Receipt of a negotiable instrument directly from the insured depository institution in default shall, in no event, be considered a negotiation of said instrument for purposes of this provision.

(ii) *Deposit obligations for payment of items forwarded for collection by depository institution acting as agent.* Where an insured depository institution in default has become obligated for the payment of items forwarded for collection by a depository institution acting solely as agent, the FDIC will recognize the holders of such items for all purposes of claim for insured deposits to the same extent as if their name(s) and interest(s) were disclosed as depositors on the deposit account records of the insured depository institution, when such claim for insured deposits, if otherwise payable, has been established by the execution and delivery of prescribed forms. The FDIC will recognize such depository institution forwarding such items for the holders thereof as agent for such holders for the purpose of making an assignment to the FDIC of their rights against the insured depository institution in default and for the purpose of receiving payment on their behalf.

[63 FR 25756, May 11, 1998, as amended at 64 FR 15656, Apr. 1, 1999]

§ 330.6 Single ownership accounts.

(a) *Individual accounts.* Funds owned by a natural person and deposited in one or more deposit accounts in his or her own name shall be added together and insured up to the SMDIA in the aggregate. Exception: Despite the general requirement in this paragraph (a), if more than one natural person has the right to withdraw funds from an individual account (excluding persons who

Federal Deposit Insurance Corporation

§ 330.7

have the right to withdraw by virtue of a Power of Attorney), the account shall be treated as a joint ownership account (although not necessarily a qualifying joint account) and shall be insured in accordance with the provisions of §330.9, unless the deposit account records clearly indicate, to the satisfaction of the FDIC, that the funds are owned by one individual and that other signatories on the account are merely authorized to withdraw funds on behalf of the owner.

(b) *Sole proprietorship accounts.* Funds owned by a business which is a “sole proprietorship” (as defined in §330.1(n)) and deposited in one or more deposit accounts in the name of the business shall be treated as the individual account(s) of the person who is the sole proprietor, added to any other individual accounts of that person, and insured up to the SMDIA in the aggregate.

(c) *Single-name accounts containing community property funds.* Community property funds deposited into one or more deposit accounts in the name of one member of a husband-wife community shall be treated as the individual account(s) of the named member, added to any other individual accounts of that person, and insured up to the SMDIA in the aggregate.

(d) *Accounts of a decedent and accounts held by executors or administrators of a decedent’s estate.* Funds held in the name of a decedent or in the name of the executor, administrator, or other personal representative of his or her estate and deposited into one or more deposit accounts shall be added together and insured up to the SMDIA in the aggregate; provided, however, that nothing in this paragraph (d) shall affect the operation of §330.3(j). The deposit insurance provided by this paragraph (d) shall be separate from any insurance coverage provided for the individual deposit accounts of the executor, administrator, other personal representative or the beneficiaries of the estate.

[63 FR 25756, May 11, 1998, as amended at 71 FR 14631, Mar. 23, 2006; 76 FR 41395, July 14, 2011]

§330.7 Accounts held by an agent, nominee, guardian, custodian or conservator.

(a) *Agency or nominee accounts.* Funds owned by a principal or principals and deposited into one or more deposit accounts in the name of an agent, custodian or nominee, shall be insured to the same extent as if deposited in the name of the principal(s). When such funds are deposited by an insured depository institution acting as a trustee of an irrevocable trust, the insurance coverage shall be governed by the provisions of §330.13.

(b) *Guardian, custodian or conservator accounts.* Funds held by a guardian, custodian, or conservator for the benefit of his or her ward, or for the benefit of a minor under the Uniform Gifts to Minors Act, and deposited into one or more accounts in the name of the guardian, custodian or conservator shall, for purposes of this part, be deemed to be agency or nominee accounts and shall be insured in accordance with paragraph (a) of this section.

(c) *Accounts held by fiduciaries on behalf of two or more persons.* Funds held by an agent, nominee, guardian, custodian, conservator or loan servicer, on behalf of two or more persons jointly, shall be treated as a joint ownership account and shall be insured in accordance with the provisions of §330.9.

(d) *Mortgage servicing accounts.* Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal and interest, shall be insured for the cumulative balance paid into the account by the mortgagors, up to the limit of the SMDIA per mortgagor. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a) of this section for the ownership interest of each mortgagor in such accounts. This provision is effective as of October 10, 2008, for all existing and future mortgage servicing accounts.

(e) *Custodian accounts for American Indians.* Paragraph (a) of this section

§ 330.8

12 CFR Ch. III (1–1–21 Edition)

shall not apply to any interest an individual American Indian may have in funds deposited by the Bureau of Indian Affairs of the United States Department of the Interior (the “BIA”) on behalf of that person pursuant to 25 U.S.C. 162(a), or by any other disbursing agent of the United States on behalf of that person pursuant to similar authority, in an insured depository institution. The interest of each American Indian in all such accounts maintained at the same insured depository institution shall be added together and insured, up to the SMDIA, separately from any other accounts maintained by that person in the same insured depository institution.

[63 FR 25756, May 11, 1998, as amended at 71 FR 14631, Mar. 23, 2006; 73 FR 61660, Oct. 17, 2008; 74 FR 47716, Sept. 17, 2009]

§ 330.8 Annuity contract accounts.

(a) Funds held by an insurance company or other corporation in a deposit account for the sole purpose of funding life insurance or annuity contracts and any benefits incidental to such contracts, shall be insured separately in the amount of up to the SMDIA per annuitant, provided that, pursuant to a state statute:

(1) The corporation establishes a separate account for such funds;

(2) The account cannot be charged with the liabilities arising out of any other business of the corporation; and

(3) The account cannot be invaded by other creditors of the corporation in the event that the corporation becomes insolvent and its assets are liquidated.

(b) Such insurance coverage shall be separate from the insurance provided for any other accounts maintained by the corporation or the annuitants at the same insured depository institution.

[63 FR 25756, May 11, 1998, as amended at 71 FR 14631, Mar. 23, 2006]

§ 330.9 Joint ownership accounts.

(a) *Separate insurance coverage.* Qualifying joint accounts, whether owned as joint tenants with the right of survivorship, as tenants in common or as tenants by the entirety, shall be insured separately from any individually owned (single ownership) deposit ac-

counts maintained by the co-owners. (Example: If A has a single ownership account and also is a joint owner of a qualifying joint account, A’s interest in the joint account would be insured separately from his or her interest in the individual account.) Qualifying joint accounts in the names of both husband and wife which are comprised of community property funds shall be added together and insured up to twice the SMDIA, separately from any funds deposited into accounts bearing their individual names.

(b) *Determination of insurance coverage.* The interests of each co-owner in all qualifying joint accounts shall be added together and the total shall be insured up to the SMDIA. (Example: “A&B” have a qualifying joint account with a balance of \$150,000; “A&C” have a qualifying joint account with a balance of \$200,000; and “A&B&C” have a qualifying joint account with a balance of \$375,000. A’s combined ownership interest in all qualifying joint accounts would be \$300,000 (\$75,000 plus \$100,000 plus \$125,000); therefore, A’s interest would be insured in the amount of \$250,000 and uninsured in the amount of \$50,000. B’s combined ownership interest in all qualifying joint accounts would be \$200,000 (\$75,000 plus \$125,000); therefore, B’s interest would be fully insured. C’s combined ownership interest in all qualifying joint accounts would be \$225,000 (\$100,000 plus \$125,000); therefore, C’s interest would be fully insured.

(c) *Qualifying joint accounts—(1) Qualification requirements.* A joint deposit account shall be deemed to be a qualifying joint account, for purposes of this section, only if:

(i) All co-owners of the funds in the account are “natural persons” (as defined in § 330.1(1));

(ii) Each co-owner has personally signed, which may include signing electronically, a deposit account signature card, or the alternative method provided in paragraph (c)(4) of this section is satisfied; and

(iii) Each co-owner possesses withdrawal rights on the same basis.

(2) *Limited exceptions.* The signature-card requirement of paragraph (c)(1)(ii)

of this section shall not apply to certificates of deposit, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained by an agent, nominee, guardian, custodian or conservator on behalf of two or more persons.

(3) *Evidence of deposit ownership.* All deposit accounts that satisfy the criteria in paragraph (c)(1) of this section, and those accounts that come within the exception provided for in paragraph (c)(2) of this section, shall be deemed to be jointly owned provided that, in accordance with the provisions of §330.5(a), the FDIC determines that the deposit account records of the insured depository institution are clear and unambiguous as to the ownership of the accounts. If the deposit account records are ambiguous or unclear as to the manner in which the deposit accounts 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. The signatures of two or more persons on the deposit account signature card or the names of two or more persons on a certificate of deposit or other deposit instrument shall be conclusive evidence that the account is a joint account (although not necessarily a qualifying joint account) unless the deposit records as a whole are ambiguous and some other evidence indicates, to the satisfaction of the FDIC, that there is a contrary ownership capacity.

(4) *Alternative method to satisfy signature-card requirement.* The signature-card requirement of paragraph (c)(1)(ii) of this section also may be satisfied by information contained in the deposit account records of the insured depository institution establishing co-ownership of the deposit account, such as evidence that the institution has issued a mechanism for accessing the account to each co-owner or evidence of usage of the deposit account by each co-owner.

(d) *Nonqualifying joint accounts.* A deposit account held in two or more names which is not a qualifying joint account, for purposes of this section, shall be treated as being owned by each named owner, as an individual, cor-

poration, partnership, or unincorporated association, as the case may be, and the actual ownership interest of each individual or entity in such account shall be added to any other single ownership accounts of such individual or other accounts of such entity, and shall be insured in accordance with the provisions of this part governing the insurance of such accounts.

(e) *Determination of interests.* The interests of the co-owners of qualifying joint accounts, held as tenants in common, shall be deemed equal, unless otherwise stated in the depository institution's deposit account records. This section applies regardless of whether the conjunction "and" or "or" is used in the title of a joint deposit account, even when both terms are used, such as in the case of a joint deposit account with three or more co-owners.

[63 FR 25756, May 11, 1998, as amended at 64 FR 15656, Apr. 1, 1999; 64 FR 62102, Nov. 16, 1999; 71 FR 14631, Mar. 23, 2006; 74 FR 47716, Sept. 17, 2009; 76 FR 41395, July 14, 2011; 84 FR 35027, July 22, 2019]

§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:* Account Owner "A" has a living trust account with four different beneficiaries named in the trust. A has no other revocable trust accounts at the same FDIC-insured institution. The maximum insurance coverage would be \$1,000,000, determined by multiplying 4 times \$250,000

(the number of beneficiaries times the SMDIA). (*Example 2:* Account Owner “A” has a payable-on-death account naming his niece and cousin as beneficiaries, and A also has, at the same FDIC-insured institution, another payable-on-death account naming the same niece and a friend as beneficiaries. The maximum coverage available to the account owner would be \$750,000. This is because the account owner has named only three *different* beneficiaries in the revocable trust accounts—his niece and cousin in the first, and the same niece and a friend in the second. 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.) (*Example 3:* Account Owner “A” establishes a living trust account, with a balance of \$300,000, naming his two children “B” and “C” as beneficiaries. A also establishes, at the same FDIC-insured institution, a payable-on-death account, with a balance of \$300,000, also naming his children B and C as beneficiaries. The maximum coverage available to A is \$500,000, determined by multiplying 2 times \$250,000 (the number of different beneficiaries times the SMDIA). A is uninsured in the amount of \$100,000. This is because all funds that a depositor holds in both living trust accounts and payable-on-death accounts, at the same FDIC-insured institution and naming the same beneficiaries, are aggregated for insurance purposes and insured to the applicable coverage limits.)

(b) *Required intention and naming of beneficiaries.* (1) 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 therefor. For purposes of this requirement, “title” includes the electronic deposit account records of the institution. (For example, the FDIC would recognize an account as a revocable trust account even if the title of the account signature card does not designate the ac-

count as a revocable trust account as long as the institution’s electronic deposit account records identify (through a code or otherwise) the account as a revocable trust account.) The settlor of a revocable trust shall be presumed to own the funds deposited into the account.

(2) For informal revocable trust accounts, the beneficiaries must be specifically named in the deposit account records of the insured depository institution.

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

(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:* Account Owner “A” establishes a payable-on-death account naming a pet as beneficiary with a balance of \$100,000. A also has an individual account at the same FDIC-insured institution with a balance of \$175,000. Because the pet is not a “beneficiary,” the two accounts are aggregated and treated as a single ownership account. As a result, A is insured in the amount of \$250,000, but is uninsured for the remaining \$25,000.)

(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 interests of

each different beneficiary named in the trusts, to a limit of the SMDIA per different beneficiary. (*Example 1:* Account Owner “A” has a living trust with a balance of \$1 million and names two friends, “B” and “C” as beneficiaries. At the same FDIC-insured institution, A establishes a payable-on-death account, with a balance of \$1 million naming his two cousins, “D” and “E” as beneficiaries. Coverage is determined under the general coverage provisions in paragraph (a) of this section, and not this paragraph (e). This is because all funds that A holds in both living trust accounts and payable-on-death accounts, at the same FDIC-insured institution, are aggregated for insurance purposes. Although A’s aggregated balance of \$2 million is more than five times the SMDIA, A names only four different beneficiaries, and coverage under this paragraph (e) applies only if there are more than five different beneficiaries. A is insured in the amount of \$1 million (4 beneficiaries times the SMDIA), and uninsured for the remaining \$1 million.) (*Example 2:* Account Owner “A” has a living trust account with a balance of \$1,500,000. Under the terms of the trust, upon A’s death, A’s three children are each entitled to \$125,000, A’s friend is entitled to \$15,000, and a designated charity is entitled to \$175,000. 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 exceeds \$1,250,000 (5 times the SMDIA) and there are more than five different beneficiaries named in the trust, the maximum coverage available to A would be the greater of: \$1,250,000 or the aggregate of each different beneficiary’s interest to a limit of \$250,000 per beneficiary. The beneficial interests in the trust for purposes of determining coverage are: \$125,000 for each of the children (totaling \$375,000), \$15,000 for the friend, \$175,000 for the charity, and \$250,000 for the spouse (because the spouse’s \$935,000 is subject to the \$250,000 per-beneficiary limitation). The aggregate beneficial interests total \$815,000. Thus, the maximum coverage afforded to the account owner would be \$1,250,000, the greater of \$1,250,000 or \$815,000.)

(f) *Co-owned 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 and 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 and B would be \$1,500,000, determined by multiplying the number of owners (2) times the SMDIA (\$250,000) times the number of different beneficiaries (3). In this example, A would be entitled to revocable trust coverage of \$750,000 and B would be entitled to revocable trust coverage of \$750,000.) (*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 \$1,750,000. 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 \$250,000, totaling \$2,500,000. Because the account balance (\$1,750,000) is less than the maximum coverage amount (\$2,500,000), the account would be fully insured.) (*Example 3:* A and B, two individuals, establish a living trust account with a balance of \$3.75 million. Under the terms of the trust, upon the death of both A and B, each of their three children is entitled to \$600,000, B’s cousin is entitled to \$380,000, A’s friend is entitled to \$70,000, and the remaining amount (\$1,500,000) goes to a charity. Under paragraph (e) of this section, the maximum coverage, as to each co-owned account owner, would be the greater of \$1,250,000 or the aggregate amount (as to each co-owner) of the interest of each different beneficiary named in the trust, to a limit of \$250,000 per account owner per beneficiary. The beneficial interests in the

trust considered for purposes of determining coverage for account owner A are: \$750,000 for the children (each child's interest attributable to A, \$300,000, is subject to the \$250,000-per-beneficiary limitation), \$190,000 for the cousin, \$35,000 for the friend, and \$250,000 for the charity (the charity's interest attributable to A, \$750,000, is subject to the \$250,000 per-beneficiary limitation). As to A, the aggregate amount of the beneficial interests eligible for deposit insurance coverage totals \$1,225,000. Thus, the maximum coverage afforded to account co-owner A would be \$1,250,000, which is the greater of \$1,250,000 or the aggregate of all the beneficial interests attributable to A (limited to \$250,000 per beneficiary), which totaled slightly less at \$1,225,000. Because B has equal ownership interest in the trust, the same analysis and coverage determination also would apply to B. Thus, of the total account balance of \$3.75 million, \$2.5 million would be insured and \$1.25 million would be uninsured.)

(2) Notwithstanding paragraph (f)(1) of this section, where the owners of a co-owned revocable trust account are themselves the sole beneficiaries of the corresponding trust, the account shall be insured as a joint account under § 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 under paragraph (e) of this section. (*Example:* Account Owner "A" has a living trust account with a balance of \$1,500,000. Under the terms of the trust, A provides a life estate in-

terest for his spouse. Moreover, A's three children are each entitled to \$275,000, A's friend is entitled to \$15,000, and a designated charity is entitled to \$175,000. The trust also provides that the remainder of the trust assets shall belong to A's granddaughter. In this case, because the balance of the account exceeds \$1,250,000 (5) five times the SMDIA) and there are more than five different beneficiaries named in the trust, the maximum coverage available to A would be the greater of: \$1,250,000 or the aggregate of each different beneficiary's interest to a limit of \$250,000 per beneficiary. The beneficial interests in the trust considered for purposes of determining coverage are: \$250,000 for the spouse's life estate, \$750,000 for the children (because each child's \$275,000 is subject to the \$250,000 per-beneficiary limitation), \$15,000 for the friend, \$175,000 for the charity, and \$250,000 for the granddaughter (because the granddaughter's \$310,000 remainder is limited by the \$250,000 per-beneficiary limitation). The aggregate beneficial interests total \$1,440,000. Thus, the maximum coverage afforded to the account owner would be \$1,440,000, the greater of \$1,250,000 or \$1,440,000.)

(h) *Revocable trusts that become irrevocable trusts.* Notwithstanding the provisions in section 330.13 on the insurance coverage of irrevocable trust accounts, if a revocable trust account converts in part or entirely to an irrevocable trust upon the death of one or more of the trust's owners, the trust account shall continue to be insured under the provisions of this section. (*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 apply to all existing and future revocable trust accounts and all existing and future irrevocable trust accounts resulting from formal revocable trust accounts.

[74 FR 47716, Sept. 17, 2009]

Federal Deposit Insurance Corporation

§ 330.12

§ 330.11 Accounts of a corporation, partnership or unincorporated association.

(a) *Corporate accounts.* (1) The deposit accounts of a corporation engaged in any “independent activity” (as defined in § 330.1(g)) shall be added together and insured up to the SMDIA in the aggregate. If a corporation has divisions or units which are not separately incorporated, the deposit accounts of those divisions or units shall be added to any other deposit accounts of the corporation. If a corporation maintains deposit accounts in a representative or fiduciary capacity, such accounts shall not be treated as the deposit accounts of the corporation but shall be treated as fiduciary accounts and insured in accordance with the provisions of § 330.7.

(2) Notwithstanding any other provision of this part, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8) or that would be required so to register but for the fact it is not created under the laws of the United States or a state or but for sections 2(b), 3(c)(1), or 6(a)(1) of that act shall be deemed to be a corporation for purposes of determining deposit insurance coverage. An exception to this paragraph (a)(2) shall exist for any trust or other business arrangement established by a state or that is a state agency or state public instrumentality as part of a qualified tuition savings program under section 529 of the Internal Revenue Code (26 U.S.C. 529). A deposit account of such a trust or business arrangement shall not be deemed to be the deposit of a corporation provided that: The funds in the account may be traced to one or more particular investors or participants; and the existence of the trust relationships is disclosed in accordance with the requirements of § 330.5. If these conditions are satisfied, each participant’s funds shall be insured as a deposit account of the participant.

(b) *Partnership accounts.* The deposit accounts of a partnership engaged in any “independent activity” (as defined in § 330.1(g)) shall be added together and insured up to the SMDIA in the aggregate.

Such insurance coverage shall be separate from any insurance provided for individually owned (single ownership) accounts maintained by the individual partners. A partnership shall be deemed to exist, for purposes of this paragraph, any time there is an association of two or more persons or entities formed to carry on, as co-owners, an unincorporated business for profit.

(c) *Unincorporated association accounts.* The deposit accounts of an unincorporated association engaged in any independent activity shall be added together and insured up to the SMDIA in the aggregate, separately from the accounts of the person(s) or entity(ies) comprising the unincorporated association. An unincorporated association shall be deemed to exist, for purposes of this paragraph, whenever there is an association of two or more persons formed for some religious, educational, charitable, social or other noncommercial purpose.

(d) *Non-qualifying entities.* The deposit accounts of an entity which is not engaged in an “independent activity” (as defined in § 330.1(g)) shall be deemed to be owned by the person or persons owning the corporation or comprising the partnership or unincorporated association, and, for deposit insurance purposes, the interest of each person in such a deposit account shall be added to any other deposit accounts individually owned by that person and insured up to the SMDIA in the aggregate.

[63 FR 25756, May 11, 1998, as amended at 70 FR 33692, June 9, 2005; 70 FR 62059, Oct. 28, 2005; 71 FR 14631, Mar. 23, 2006]

§ 330.12 Accounts held by a depository institution as the trustee of an irrevocable trust.

(a) *Separate insurance coverage.* “Trust funds” (as defined in § 330.1(q)) held by an insured depository institution in its capacity as trustee of an irrevocable trust, whether held in its trust department, held or deposited in any other department of the fiduciary institution, or deposited by the fiduciary institution in another insured depository institution, shall be insured up to the SMDIA for each owner or beneficiary represented. This insurance shall be separate from, and in addition to, the insurance provided for any

§ 330.13

other deposits of the owners or the beneficiaries.

(b) *Determination of interests.* The insurance for funds held by an insured depository institution in its capacity as trustee of an irrevocable trust shall be determined in accordance with the following provisions:

(1) *Allocated funds of a trust estate.* If trust funds of a particular “trust estate” (as defined in § 330.1(p)) are allocated by the fiduciary and deposited, the insurance with respect to such trust estate shall be determined by ascertaining the amount of its funds allocated, deposited and remaining to the credit of the claimant as fiduciary at the insured depository institution in default.

(2) *Interest of a trust estate in unallocated trust funds.* If funds of a particular trust estate are commingled with funds of other trust estates and deposited by the fiduciary institution in one or more insured depository institutions to the credit of the depository institution as fiduciary, without allocation of specific amounts from a particular trust estate to an account in such institution(s), the percentage interest of that trust estate in the unallocated deposits in any institution in default is the same as that trust estate’s percentage interest in the entire commingled investment pool.

(c) *Limitation on applicability.* This section shall not apply to deposits of trust funds belonging to a trust which is classified as a corporation under § 330.11(a)(2).

[63 FR 25756, May 11, 1998, as amended at 71 FR 14631, Mar. 23, 2006; 76 FR 41395, July 14, 2011]

§ 330.13 Irrevocable trust accounts.

(a) *General rule.* Funds representing the “non-contingent trust interest(s)” (as defined in § 330.1(m)) of a beneficiary deposited into one or more deposit accounts established pursuant to one or more irrevocable trust agreements created by the same settlor(s) (grantor(s)) shall be added together and insured up to the SMDIA in the aggregate. Such insurance coverage shall be separate from the coverage provided for other accounts maintained by the settlor(s), trustee(s) or beneficiary(ies) of the irrevocable trust(s) at the same

12 CFR Ch. III (1–1–21 Edition)

insured depository institution. Each “trust interest” (as defined in § 330.1(r)) in any irrevocable trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his or her contribution to the trust.

(b) *Treatment of contingent trust interests.* In the case of any trust in which certain trust interests do not qualify as non-contingent trust interests, the funds representing those interests shall be added together and insured up to the SMDIA in the aggregate. Such insurance coverage shall be in addition to the coverage provided for the funds representing non-contingent trust interests which are insured pursuant to paragraph (a) of this section.

(c) *Commingled accounts of bankruptcy trustees.* Whenever a bankruptcy trustee appointed under title 11 of the United States Code commingles the funds of various bankruptcy estates in the same account at an insured depository institution, the funds of each title 11 bankruptcy estate will be added together and insured up to the SMDIA, separately from the funds of any other such estate.

[63 FR 25756, May 11, 1998, as amended at 71 FR 14631, Mar. 23, 2006; 76 FR 41395, July 14, 2011]

§ 330.14 Retirement and other employee benefit plan accounts.

(a) “Pass-through” insurance. Any deposits of an employee benefit plan in an insured depository institution shall be insured on a “pass-through” basis, in the amount of up to the SMDIA for the non-contingent interest of each plan participant, provided the rules in § 330.5 are satisfied. Deposits eligible for coverage under paragraph (b)(2) of this section that also are deposits of an employee benefit plan or deposits of an deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457) in an insured depository institution shall be insured on a “pass-through” basis in the amount of \$250,000 for the non-contingent interest of each plan participant, provided the rules in § 330.5 are satisfied.

(b) *Aggregation*—(1) *Multiple plans.* Funds representing the non-contingent interests of a beneficiary in an employee benefit plan, or eligible deferred

compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457), which are deposited in one or more deposit accounts shall be aggregated with any other deposited funds representing such interests of the same beneficiary in other employee benefit plans, or eligible deferred compensation plans described in section 457 of the Internal Revenue Code of 1986, established by the same employer or employee organization.

(2) Certain retirement accounts. Deposits in an insured depository institution made in connection with the following types of retirement plans shall be aggregated and insured in the amount of up to \$250,000 per participant:

(i) Any individual retirement account described in section 408(a) of the Internal Revenue Code of 1986 (26 U.S.C. 408(a));

(ii) Any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457); and

(iii) Any individual account plan defined in section 3(34) of the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1002) and any plan described in section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. 401(d)), to the extent that participants and beneficiaries under such plans have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plans.

(c) *Determination of interests*—(1) *Defined contribution plans*. The value of an employee's non-contingent interest in a defined contribution plan shall be deemed to be the employee's account balance as of the date of default of the insured depository institution, regardless of whether said amount was derived, in whole or in part, from contributions of the employee and/or the employer to the account.

(2) *Defined benefit plans*. The value of an employee's non-contingent interest in a defined benefit plan shall be deemed to be the present value of the employee's interest in the plan, evaluated in accordance with the method of calculation ordinarily used under such plan, as of the date of default of the insured depository institution.

(3) *Amounts taken into account*. For the purposes of applying the rule under paragraph (b)(2) of this section, only the present vested and ascertainable interests of each participant in an employee benefit plan or "457 Plan," excluding any remainder interest created by, or as a result of, the plan, shall be taken into account in determining the amount of deposit insurance accorded to the deposits of the plan.

(d) *Treatment of contingent interests*. In the event that employees' interests in an employee benefit plan are not capable of evaluation in accordance with the provisions of this section, or an account established for any such plan includes amounts for future participants in the plan, payment by the FDIC with respect to all such interests shall not exceed the SMDIA in the aggregate.

(e) *Overfunded pension plan deposits*. Any portion of an employee benefit plan's deposits which is not attributable to the interests of the beneficiaries under the plan shall be deemed attributable to the overfunded portion of the plan's assets and shall be aggregated and insured up to the SMDIA, separately from any other deposits.

(f) *Definitions of "depositor", "employee benefit plan", "employee organization" and "non-contingent interest"*. Except as otherwise indicated in this section, for purposes of this section:

(1) The term *depositor* means the person(s) administering or managing an employee benefit plan.

(2) The term *employee benefit plan* has the same meaning given to such term in section 3(3) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1002) and includes any plan described in section 401(d) of the Internal Revenue Code of 1986.

(3) The term *employee organization* means any labor union, organization, employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

§ 330.15

(4) The term *non-contingent interest* means an interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031–7 of the Federal Estate Tax Regulations (26 CFR 20.2031–7) or any similar present worth or life expectancy tables as may be published by the Internal Revenue Service.

[63 FR 25756, May 11, 1998, as amended at 64 FR 15657, Apr. 1, 1999; 71 FR 14631, Mar. 23, 2006; 71 FR 53550, Sept. 12, 2006]

§ 330.15 Accounts held by government depositors.

(a) *Extent of insurance coverage*—(1) *Accounts of the United States.* Each official custodian of funds of the United States lawfully depositing such funds in an insured depository institution shall be separately insured in the amount of:

(i) Up to the SMDIA in the aggregate for all time and savings deposits; and

(ii) Up to the SMDIA in the aggregate for all demand deposits.

(2) *Accounts of a state, county, municipality or political subdivision.* (i) Each official custodian of funds of any state of the United States, or any county, municipality, or political subdivision thereof, lawfully depositing such funds in an insured depository institution in the state comprising the public unit or wherein the public unit is located (including any insured depository institution having a branch in said state) shall be separately insured in the amount of:

(A) Up to the SMDIA in the aggregate for all time and savings deposits; and

(B) Up to the SMDIA in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the state comprising the public unit or wherein the public unit is located, shall be insured in the amount of up to the SMDIA in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(3) *Accounts of the District of Columbia.* (i) Each official custodian of funds of the District of Columbia lawfully depositing such funds in an insured de-

pository institution in the District of Columbia (including an insured depository institution having a branch in the District of Columbia) shall be separately insured in the amount of:

(A) Up to the SMDIA in the aggregate for all time and savings deposits; and

(B) Up to the SMDIA in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the District of Columbia shall be insured in the amount of up to the SMDIA in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(4) *Accounts of the Commonwealth of Puerto Rico and other government possessions and territories.* (i) Each official custodian of funds of the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or The Commonwealth of the Northern Mariana Islands, or of any county, municipality, or political subdivision thereof lawfully depositing such funds in an insured depository institution in Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or The Commonwealth of the Northern Mariana Islands, respectively, shall be separately insured in the amount of:

(A) Up to the SMDIA in the aggregate for all time and savings deposits; and

(B) Up to the SMDIA in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the commonwealth, possession or territory comprising the public unit or wherein the public unit is located, shall be insured in the amount of up to the SMDIA in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(5) *Accounts of an Indian tribe.* Each official custodian of funds of an Indian tribe (as defined in 25 U.S.C. 1452(c)), including an agency thereof having official custody of tribal funds, lawfully depositing the same in an insured depository institution shall be separately insured in the amount of:

(i) Up to the SMDIA in the aggregate for all time and savings deposits; and

(ii) Up to the SMDIA in the aggregate for all demand deposits.

(b) *Rules relating to the “official custodian”*—(1) *Qualifications for an “official custodian”*. In order to qualify as an “official custodian” for the purposes of paragraph (a) of this section, such custodian must have plenary authority, including control, over funds owned by the public unit which the custodian is appointed or elected to serve. Control of public funds includes possession, as well as the authority to establish accounts for such funds in insured depository institutions and to make deposits, withdrawals, and disbursements of such funds.

(2) *Official custodian of the funds of more than one public unit*. For the purposes of paragraph (a) of this section, if the same person is an official custodian of the funds of more than one public unit, he or she shall be separately insured with respect to the funds held by him or her for each such public unit, but shall not be separately insured by virtue of holding different offices in such public unit or, except as provided in paragraph (c) of this section, holding such funds for different purposes.

(3) *Split of authority or control over public unit funds*. If the exercise of authority or control over the funds of a public unit requires action by, or the consent of, two or more officers, employees, or agents of such public unit, then they will be treated as one “official custodian” for the purposes of this section.

(c) *Public bond issues*. Where an officer, agent or employee of a public unit has custody of certain funds which by law or under a bond indenture are required to be set aside to discharge a debt owed to the holders of notes or bonds issued by the public unit, any deposit of such funds in an insured depository institution shall be deemed to be a deposit by a trustee of trust funds of which the noteholders or bondholders are pro rata beneficiaries, and the beneficial interest of each noteholder or bondholder in the deposit shall be separately insured up to the SMDIA.

(d) *Definition of “political subdivision”*. The term “political subdivision” includes drainage, irrigation, navigation,

improvement, levee, sanitary, school or power districts, and bridge or port authorities and other special districts created by state statute or compacts between the states. It also includes any subdivision of a public unit mentioned in paragraphs (a)(2), (a)(3) and (a)(4) of this section or any principal department of such public unit:

(1) The creation of which subdivision or department has been expressly authorized by the law of such public unit;

(2) To which some functions of government have been delegated by such law; and

(3) Which is empowered to exercise exclusive control over funds for its exclusive use.

[63 FR 25756, May 11, 1998, as amended at 71 FR 14631, Mar. 23, 2006]

§ 330.16 [Reserved]

§ 330.101 Premiums.

This interpretive rule describes certain payments that are not deemed to be “interest” as defined in § 330.1(k).

(a) Premiums, whether in the form of merchandise, credit, or cash, given by a bank to the holder of a deposit will not be regarded as “interest” as defined in § 330.1(k) if:

(1) The premium is given to the depositor only at the time of the opening of a new account or an addition to an existing account;

(2) No more than two premiums per deposit are given in any twelve-month interval; and

(3) The value of the premium (in the case of merchandise, the total cost to the bank, including shipping, warehousing, packaging, and handling costs) does not exceed \$10 for a deposit of less than \$5,000 or \$20 for a deposit of \$5,000 or more.

(b) The costs of premiums may not be averaged.

(c) A bank may not solicit funds for deposit on the basis that the bank will divide the funds into several accounts for the purpose of enabling the bank to pay the depositor more than two premiums within a twelve-month interval on the solicited funds.

(d) The bank must retain sufficient information for examiners to determine that the requirements of this section have been satisfied.

(e) Notwithstanding paragraph (a) of this section, any premium that is not, directly or indirectly, related to or dependent on the balance in a demand deposit account and the duration of the account balance shall not be considered the payment of interest on a demand deposit account and shall not be subject to the limitations in paragraph (a) of this section.

[76 FR 41395, July 14, 2011]

PART 331—FEDERAL INTEREST RATE AUTHORITY

Sec.

- 331.1 Authority, purpose, and scope.
- 331.2 Definitions.
- 331.3 Application of host State law.
- 331.4 Interest rate authority.

AUTHORITY: 12 U.S.C. 1819(a)(Tenth), 1820(g), 1831d.

SOURCE: 85 FR 44157, July 22, 2020, unless otherwise noted.

§ 331.1 Authority, purpose, and scope.

(a) *Authority.* The regulations in this part are issued by the Federal Deposit Insurance Corporation (FDIC) under sections 9(a)(Tenth) and 10(g) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1819(a)(Tenth), 1820(g), to implement sections 24(j) and 27 of the FDI Act, 12 U.S.C. 1831a(j), 1831d, and related provisions of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96–221, 94 Stat. 132 (1980).

(b) *Purpose.* Section 24(j) of the FDI Act, as amended by the Riegle-Neal Amendments Act of 1997, Public Law 105–24, 111 Stat. 238 (1997), was enacted to maintain parity between State banks and national banks regarding the application of a host State’s laws to branches of out-of-State banks. Section 27 of the FDI Act was enacted to provide State banks with interest rate authority similar to that provided to national banks under the National Bank Act, 12 U.S.C. 85. The regulations in this part clarify that State-chartered banks and insured branches of foreign banks have regulatory authority in these areas parallel to the authority of national banks under regulations issued by the Office of the Comptroller of the Currency, and address

other issues the FDIC considers appropriate to implement these statutes.

(c) *Scope.* The regulations in this part apply to State-chartered banks and insured branches of foreign banks.

§ 331.2 Definitions.

For purposes of this part—

Home State means, with respect to a State bank, the State by which the bank is chartered.

Host State means a State, other than the home State of a State bank, in which the State bank maintains a branch.

Insured branch has the same meaning as that term in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

Interest means any payment compensating a creditor or prospective creditor for an extension of credit, making available a line of credit, or any default or breach by a borrower of a condition upon which credit was extended. Interest includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates; late fees; creditor-imposed not sufficient funds (NSF) fees charged when a borrower tenders payment on a debt with a check drawn on insufficient funds; overlimit fees; annual fees; cash advance fees; and membership fees. It does not ordinarily include appraisal fees, premiums and commissions attributable to insurance guaranteeing repayment of any extension of credit, finders’ fees, fees for document preparation or notarization, or fees incurred to obtain credit reports.

Out-of-State State bank means, with respect to any State, a State bank whose home State is another State.

Rate on 90-day commercial paper means the rate quoted by the Federal Reserve Board of Governors for 90-day A2/P2 nonfinancial commercial paper.

State bank has the same meaning as that term in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

§ 331.3 Application of host State law.

The laws of a host State shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank. To the extent