ungraded wage schedule, or are in different pay method categories.

Reassignment means a change of an employee, while serving continuously within the same agency, from one position to another consistent with the provisions of part 335 of this chapter.

Reemployed annuitant means an employee whose annuity under subchapter III of chapter 83, or subchapter II or V of chapter 84 of title 5, United States Code, continued on reemployment in an appointive position on or after October 1, 1956.

Register means a list of qualified applicants in order of relative standing for certification. A register is sometimes referred to as an inventory.

Reinstatement means the noncompetitive reemployment of a former career or career-conditional employee into the competitive service.

Senior Executive Service has the same meaning as 5 U.S.C. 2101a.

Status quo employee means an employee who failed to acquire a competitive status when the position in which the employee was serving was placed in the competitive service by a statute, Executive order, or Civil Service rule that permitted the employee's retention without the acquisition of status.

Tenure means the period of time an employee may reasonably expect to serve. It is determined by the type of appointment under which the employee is serving without regard to whether the employee has competitive status or whether the employee's appointment is in a competitive position or in an excepted position.

Transfer means a change of an employee, without a break in service of 1 full workday, from a position in one agency to a position in another agency.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AC54

Deposit Insurance Regulations; Living Trust Accounts

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is publishing for notice and comment alternative proposed rules to amend its deposit insurance regulations. The purpose of the rulemaking is to clarify and simplify the regulations on the insurance coverage of living trust accounts.

DATES: Written comments must be received by the FDIC not later than August 29, 2003.

ADDRESSES: All comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station located at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (fax number: (202) 898–3838; or send by email to *comments@FDIC.gov*). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days, and the FDIC may post the comments on its Internet site at *http://www.fdic.gov/regulations/laws/federal/propose.html.*

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Counsel, Legal Division (202) 898–7349; Martin W. Becker, Senior Receivership Management Specialist, Division of Resolutions and Receiverships (202) 898–6644; or Kathleen G. Nagle, Supervisory Consumer Affairs Specialist, Division of Supervision and Consumer Protection (202) 898–6541, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

One of the FDIC's paramount goals in the area of deposit insurance is to ensure that depositors and insured depository institution employees understand the FDIC's deposit insurance rules. To that end, in July 1998, after an extensive review of the existing rules for deposit insurance coverage, the FDIC simplified its entire deposit insurance regulations. Also, in April 1999, the FDIC amended the rules for the insurance coverage of joint accounts and payable-on-death accounts to make them more easily understood.

Despite the FDIC's efforts to simplify and clarify the deposit insurance regulations, there is still significant public and industry confusion about the insurance coverage of living trust accounts. At recent depository institution failures there has been a disproportionately high percentage of uninsured living trust deposits, when compared to the percentage of uninsured deposits in other categories of coverage. The FDIC receives numerous calls daily from bankers, members of the public and industry representatives indicating their misunderstanding of the coverage for living trust accounts. As discussed below, the confusion among bankers and the public about the insurance coverage of living trust accounts is understandable.

A living trust is a formal revocable trust created by an owner (also known as a grantor) and over which the owner retains control during his or her lifetime. Upon the owner's death, the trust generally becomes irrevocable. A living trust is an increasingly popular probate instrument designed to achieve specific estate and tax planning goals. A living trust account is subject to the FDIC's insurance rules on revocable trust accounts. Section 330.10 of the FDIC's regulations (12 CFR 330.10) provides that revocable trust accounts are insured up to $100,000 per ''qualifying'' beneficiary designated by the owner of the account. If there are multiple owners of a living trust account, coverage is available separately for each owner. Qualifying beneficiaries are defined as the owner's spouse, children, grandchildren, parents and siblings (12 CFR 330.10(a)).

The most common type of revocable trust account is the ''payable-on-death'' (''POD'') account, sometimes referred to as a *Totten Trust* account, comprised simply of a signature card on which the owner designates the beneficiaries to whom the funds in the account will pass upon the owner's death. The per-beneficiary coverage available on revocable trust accounts is separate from the insurance coverage afforded to any single-ownership accounts held by the owner or beneficiary at the same insured institution. That means, for example, if an individual has at the same insured bank or thrift a single-ownership account with a balance of $100,000 and a POD account (naming at least one qualifying beneficiary) with a balance of $100,000, both accounts would be insured separately for a combined amount of $200,000. If the POD account names more than one qualifying beneficiary, then that account would be separately insured for up to $100,000 per qualifying beneficiary (12 CFR 330.10(a)).

Separate, per-beneficiary insurance coverage is available for revocable trust accounts only if the account satisfies certain requirements. First, the title of the account must include a term such as ''in trust for'' or ''payable-on-death to'' (or corresponding acronym). Second, each beneficiary must be either the owner's spouse, child, grandchild, parent or sibling. Third, the beneficiaries must be specifically named

in the deposit account records of the depository institution. And fourth, the account must evidence an intent that the funds shall belong unconditionally to the designated beneficiaries upon the owner's death (12 CFR 330.10(a) and (b)).

As noted, the most common form of revocable trust account is the POD account, consisting simply of a signature card. With POD accounts, the fourth requirement for per-beneficiary coverage does not present a problem because the signature card normally will not include any conditions upon the interests of the designated beneficiaries. In other words, the signature card provides that the funds shall belong to the beneficiaries upon the owner's death. In contrast, many living trust agreements provide, in effect, that the funds *might* belong to the beneficiaries depending on various conditions.

The FDIC refers to such conditions as ''defeating contingencies'' if they create the possibility that the beneficiaries may never receive the funds following the owner's death. In the presence of a defeating contingency, the revocable trust account is not entitled to separate insurance coverage. Rather, the funds are aggregated with the funds in any single-ownership accounts held by the owner at the same insured depository institution and insured to a combined limit of $100,000 (12 CFR 330.10(c) and (f)).

Living trust accounts started to emerge in the late 1980s and early 1990s. At that time, the FDIC responded to a significant number of questions about the insurance coverage of such accounts, often times reviewing the actual trust agreements to determine whether the requirements for per-beneficiary insurance were satisfied. In the FDIC's review of numerous such trusts, it determined that many of the trusts included conditions that needed to be satisfied before the named beneficiaries would become the owners of the trust assets. For example, some trusts required that the trust assets first be used to satisfy legacies in the grantor's will; the remaining assets, if any, would then be distributed to the trust beneficiaries. Other trusts provided that, in order to receive any benefit under the trust, the beneficiary must graduate from college. Because of the prevalence of defeating contingencies among living trust agreements and the increasing number of requests to render opinions on the insurance coverage of specific living trust accounts, in 1994 the FDIC issued ''Guidelines for Insurance Coverage of Revocable Trust Accounts (Including 'Living Trust' Accounts)'' (FDIC Advisory Opinion 94–32, May 18, 1994). The Guidelines, which were revised in April 1999 to reflect changes to the regulations (adding parents and siblings as qualifying beneficiaries), provide a general explanation of the insurance coverage for revocable trust accounts and a detailed explanation of how those rules apply to living trust accounts. The subject of defeating contingencies is explained at length in the Guidelines. The Guidelines are available at the FDIC's Web site, *www.FDIC.gov,* and are available upon request from the FDIC.

As part of its overall simplification of the deposit insurance regulations, in 1998 the FDIC revised § 330.10 to include a provision explaining the insurance coverage rules for living trust accounts (12 CFR 330.10(f)). That provision includes a definition of defeating contingencies.

Despite the FDIC's issuance of guidelines on the insurance coverage of living trust accounts and its inclusion of a special provision in the insurance regulations explaining the coverage of these accounts, there still is significant public and industry confusion about the insurance of living trusts accounts.

Time has shown that the basic rules on the coverage of POD accounts are not adaptable to living trust accounts. The POD rules were written to apply to signature-card accounts, not lengthy, detailed trust documents. Because living trust accounts and PODs are subject to the same insurance rules and analysis, depositors often mistakenly believe that living trust accounts are automatically insured up to $100,000 per qualifying beneficiary without regard to any terms in the trust that might prevent the beneficiary from ever receiving the funds. Our experience indicates that in a significant number of cases that is not so. Because of the existence of defeating contingencies in the trust agreement, a living trust account often fails to satisfy the requirements for per-beneficiary coverage. Thus, the funds in the account are treated as the owner's single-ownership funds and, after being added to any other single-ownership funds the owner has at the same institution, insured to a limit of $100,000. The funds in a non-qualifying living trust account with more than one owner are deemed the single-ownership funds of each owner, with the corresponding attribution of the funds to each owner's single-ownership accounts.

The FDIC believes the rules governing the insurance of living trust accounts are too complex and confusing. Under the current rules, the amount of insurance coverage for a living trust account can only be determined after the trust document has been reviewed to determine whether there are any defeating contingencies. Consequently, in response to questions about coverage of living trust accounts, the FDIC can only advise depositors and bankers that they should assume that such accounts will be insured for no more than $100,000 per grantor. Otherwise, the FDIC suggests that the owners of living trust accounts seek advice from the attorney who prepared the trust document. Depositors who contact the FDIC about their living trust insurance coverage are often troubled to learn that they cannot definitively determine the amount of their coverage without a legal analysis of their trust document. Also, when a depository institution fails the FDIC must review each living trust to determine whether the beneficiaries' interests are subject to defeating contingencies. This often is a time-consuming process, sometimes resulting in a significant delay in making deposit insurance payments to living trust account owners.

II. Alternative Proposed Rules

To address this situation, the FDIC is proposing to simplify the insurance coverage rules for living trust accounts. The FDIC has identified what it believes to be two viable alternatives to address the confusion surrounding the insurance coverage of living trust accounts.

Proposed Rule—Alternative One

The first alternative for simplifying and clarifying the insurance rules for living trust accounts would be to provide coverage up to $100,000 per qualifying beneficiary named in the living trust irrespective of defeating contingencies (''Alternative One''). As explained above, currently both POD and living trust accounts are insured as revocable trust accounts and thus are subject to the same rules. Alternative One would retain this parallel treatment of POD accounts and living trust accounts by continuing to provide per-qualifying-beneficiary coverage, but no longer requiring that a beneficiary's interest in a living trust be free from defeating contingencies.

Any conditions in the trust document affecting whether a beneficiary would ultimately receive his or her share of the trust assets would be irrelevant. The FDIC would identify the beneficiaries and their ascertainable interests in the trust from the depository institution's account records and provide coverage on the account up to $100,000 per qualifying beneficiary, subject to the same rules that now apply to POD accounts. For example, a deposit account for a living trust naming three

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

Under Alternative One, as currently the case, the insurance coverage provided for living trust accounts would be under the same category of coverage as POD accounts. Thus, all funds that a depositor holds in both living trust accounts and POD accounts naming the same beneficiaries would be aggregated for insurance purposes. For example, assume a depositor has a living trust account for $200,000 in connection with a living trust naming his children, A and B. If the depositor also has a $200,000 POD account naming A and B, the combined coverage on the two accounts would be $200,000.

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

This methodology for determining living trust account coverage would be consistent with existing rules. The FDIC's insurance regulations now base the coverage for revocable trust accounts on the beneficiaries' interests. Typically with POD accounts the beneficiaries have an equal ownership interest in the account; thus, the rules indicate that such ownership interests are deemed equal unless otherwise specified in the institution's deposit account records. With living trusts, beneficiaries commonly have different ownership interests. For example, the trust might provide that beneficiary A receives $50,000 and beneficiary B receives $100,000. In order for the FDIC to determine the insurance coverage for living trust accounts, it is important that the institution's deposit account records indicate each beneficiary's ownership interest in the trust. Thus, the proposed rule expressly requires that the deposit account records of the institution indicate the ownership interest of each beneficiary in the living trust. The information could be in the form of the dollar amount of each beneficiary's interest or on a percentage basis relative to the total amount of the trust assets. If such information is not provided in the institution's records, the FDIC would have the discretion to review the living trusts upon a depository institution's failure to obtain the necessary information, but this review process would substantially slow the payment of insured deposits to living trust account holders.

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

Under Alternative One, as now with POD accounts, insurance coverage would be affected by the existence of non-qualifying beneficiaries in the living trust. The current rule is that the trust interest attributable to a non-qualifying beneficiary is considered the grantor's single-ownership funds and, along with any other single-ownership funds held by the owner at the institution, insured to a combined limit of $100,000. For example, a deposit account with a balance of $300,000 held in connection with a living trust naming the grantor's two children and nephew as beneficiaries would be insured up to $200,000 as to the living trust account. The $100,000 attributed to the non-qualifying beneficiary (the nephew) would be considered the grantor's single-ownership funds. If the grantor has no other single-ownership funds at the institution, the $100,000 attributed to the non-qualifying beneficiary in the living trust account would be fully insured under the single-ownership account category. If in this example, however, the grantor also has a single-ownership account with a balance of $50,000, then that amount would be added to the $100,000 from the living trust account (attributable to the non-qualifying beneficiary) and insured to a combined limit of $100,000. Thus, overall the depositor's funds would be insured for $300,000 and uninsured for $50,000. Both examples would yield the same result as a similar POD account with non-qualifying beneficiaries. As currently required for all revocable trust accounts, the depository institution's deposit account records would have to indicate the names of all the trust beneficiaries.[1]

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

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

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

Current FDIC rules do not require that the institution's records indicate the kinship relationship between a revocable trust account owner and the trust beneficiaries. In this regard the rules require only that the beneficiaries be named in the institution's deposit account records. As indicated, when an institution fails the FDIC requests a revocable trust account depositor to provide an affidavit specifying the relationship between the owner and each beneficiary, indicating whether those individuals are qualifying beneficiaries. In order to avoid the delay in paying claims caused by having depositors provide such an affidavit when an institution fails, one option would be for the FDIC to require institutions to obtain *beneficiary relationship* information when a depositor opens or amends a living trust or POD account. At that time the depositor would sign an affidavit indicating whether each beneficiary is a qualifying beneficiary. This additional information would further expedite payments to living trust and POD depositors when an institution fails, but would impose an additional recordkeeping requirement on depository institutions. The FDIC seeks specific comment on this option.

One consequence of Alternative One is that it likely would result in an increase in deposit insurance coverage. The reason is that, unlike under the current rules, beneficiaries would not have to have an unconditional interest in the trust in order for the account to be eligible for per-qualifying-beneficiary coverage. For example, assume a trust provided that upon the grantor's death the grantor's spouse would receive $100,000 and each of the grantor's three children would receive $100,000, but only if each graduated from college by age twenty-four. Under Alternative One, the amount of coverage would be up to $400,000. Under the current rules, because of the defeating contingency that each of children graduates from college by age twenty-four, the maximum coverage would be limited to $100,000. As indicated in the table below, based on a sampling of accounts at recent depository institution failures, FDIC staff found that under Alternative One there would have been an increase in insured living trust deposits.

TABLE 1.—SAMPLING OF ACCOUNTS UNDER ALTERNATIVE ONE

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

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

Proposed Rule—Alternative Two

The second alternative to address the confusion surrounding the insurance coverage of living trust accounts is, in essence, to create a separate category of coverage for living trust accounts and to insure such accounts up to $100,000 per owner of the account (''Alternative Two''). That individual would be insured up to a total of $100,000 for all living trust accounts he or she has at the same depository institution, regardless of the number of beneficiaries named in the trust, the grantor's relationship to the beneficiaries and whether there are any defeating contingencies in the trust. The deposit insurance coverage for a living trust account would be separate from the coverage afforded to any single-ownership accounts the owner may have at the same depository institution. In addition, if that individual also has a POD account, that account would be eligible for separate, per-beneficiary POD coverage, regardless of the existence of the living trust account (assuming the requirements for POD coverage are met). Where there are joint owners of a living trust account, the account would be insured up to $100,000 per grantor. Such insurance would be separate from the available joint and single-ownership coverage of each grantor.

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

The FDIC believes Alternative Two would make the deposit insurance rules for living trust accounts simple and easy to understand. With this knowledge, depositors would be able to make informed decisions on how to obtain the maximum insurance coverage on living trust accounts. In addition, depository institutions would not have to indicate in their deposit account records the names of the trust beneficiaries and their trust interests.

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

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

TABLE 2.—SAMPLING OF ACCOUNTS UNDER ALTERNATIVE TWO

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

contingencies) or Alternative Two (coverage of $100,000 per grantor of a living trust) If you suggest another alternative, please provide the details of that suggestion.

Alternative One would expressly require that depository institutions' deposit account records indicate the ownership interests of living trust beneficiaries. Although this is currently a requirement for all revocable trust accounts where beneficiaries have unequal interests, the FDIC does not normally rely on the institution's records for this information because the FDIC must review the living trusts themselves for defeating contingencies. Under Alternative One defeating contingencies would be irrelevant for deposit insurance determinations; thus, the FDIC would rely primarily on an institution's records to ascertain the beneficiaries' trust interests. The FDIC requests comment on this aspect of Alternative One. For example, should the FDIC specify a particular form for this purpose? Also, a living trust sometimes provides for different levels of beneficiaries whose interests in the trust depend on certain conditions. Thus, in some situations it might be infeasible to identify and indicate in a depository institution's records the ownership interest of each beneficiary named in the trust. The FDIC requests specific comment on how this situation should be treated under Alternative One.

Current FDIC rules do not require that the institution's records indicate the kinship relationship between a revocable trust account owner and the trust beneficiaries. In this regard the rules require only that the beneficiaries be named in the institution's deposit account records. Adding this requirement would further expedite the insurance-payment process when an institution fails, but would result in an additional recordkeeping requirement for depository institutions. The FDIC seeks specific comment on this option.

As noted above, if finalized, Alternative One might result in an overall increase in deposit insurance coverage and Alternative Two might result in reduced living trust account coverage for some depositors. Please comment on these aspects of the rulemaking. Also, if Alternative Two is adopted as a final rule, how should existing depositors be informed of this possible reduction in coverage?

For both proposals the FDIC would require that depository institutions certify the existence of a living trust when a depositor opens a living trust account. Please comment on this aspect of the proposed rulemaking. In particular, how should this requirement be applied to telephone and internet customers?

IV. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) are contained in the proposed rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

The FDIC certifies that this proposed rule would not have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605(b)). The requirement under the proposed rule that insured depository institutions certify the existence of a living trust when a depositor establishes a living trust account would take an institution employee no more than a few minutes. Even for a depository institution with a high volume of living trust accounts, this requirement would have no significant impact. Accordingly, the Act's requirements relating to an initial regulatory flexibility analysis is not applicable.

VI. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 330 of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

1. The authority citation for part 330 continues to read as follows:

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

Proposed Rule—Alternative One

2. Section 330.10(f) is revised to read as follows:

§ 330.10 Revocable trust accounts.

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(f) *Living trusts accounts.* (1) This section also applies to revocable trust accounts held in connection with a ''living trust'' (or ''family trust''), a formal revocable trust created by an owner/grantor and over which the owner/grantor retains control during his or her lifetime. If a named beneficiary in a living trust is a qualifying beneficiary under this section, then the account held in connection with the living trust is eligible for the per-qualifying-beneficiary coverage described in paragraph (a) of this section. Notwithstanding any other provisions of the section, such coverage shall be provided irrespective of any conditions in the trust that might prevent a beneficiary from ultimately acquiring a vested and ascertainable interest in the deposit account upon the account owner's death. (Example: Depositor A has a living trust account with a balance of $300,000. The trust provides that, upon the grantor's death, the grantor's husband shall receive $100,000 and each of her two children shall receive $100,000, but only if they graduate from college by age twenty-four. Assuming A has no other revocable trust accounts at the same depository institution, the coverage on her living trust account would be $300,000. The trust names three qualifying beneficiaries. Coverage would be provided up to $100,000 per qualifying beneficiary regardless of contingencies.)

(2) The rules in paragraph (c) of this section on the interest of non-qualifying beneficiaries apply to living trust accounts.

(3) In order for a depositor to qualify for the living trust account coverage provided under this paragraph (f), the title of the account must reflect that the funds in the account are held pursuant to a formal revocable trust. Also, the deposit accounts records of the depository institution must indicate the names of the beneficiaries of the living trust and their ownership interests in the trust. Upon the closing of a depository institution, in its discretion the FDIC may waive these disclosure and recordkeeping requirements in order to ascertain whether a living trust actually exists and/or to ascertain the identities of the trust beneficiaries and their ownership interests in the trust.

(4) Insured depository institutions must certify in their deposit accounts records the existence of a living trust

when a depositor opens a living trust account.

Proposed Rule'Alternative Two

2. Section 330.10(f) is revised to read as follows:

§ 330.10 Revocable trust accounts.

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(f) *Living trusts accounts.* (1) Funds held in one or more accounts established in connection with a ''living trust'' (or ''family trust'') shall be separately insured up to $100,000 as to each owner/grantor of the living trust, irrespective of the number of qualifying and non-qualifying beneficiaries named in the living trust. A living trust is defined generally as a formal revocable trust created by an owner/grantor and over which the owner/grantor retains control during his or her lifetime. (Example: Depositor A has $200,000 in a living trust account. The living trust names A's two children as beneficiaries. Assuming A has no other living trust accounts at the same depository institution, A's insurance coverage would be $100,000 for the living trust account. Because living trust coverage is limited to $100,000 per owner, $100,000 of A's funds would be uninsured. If the living trust had two owners/grantors, then the living trust account would be insured to $200,000.)

(2) The insurance coverage for living trust accounts is separate from the coverage provided under other provisions of this part, including coverage for other types of revocable trust accounts. (Example: Depositor A has $100,000 in a living trust account; $100,000 in a payable-on-death account (naming a qualifying beneficiary) and $25,000 in a single-ownership account. Assuming A has no other accounts at the same depository institution, A's insurance coverage would be $100,000 for the living trust account, $100,000 for the POD account, and $25,000 for the single-ownership account. Living trust coverage is separate from a depositor's coverage on POD and single-ownership accounts.)

(3) In order for a depositor to qualify for the living trust account coverage provided under this paragraph (f), the title of the account must reflect that the funds in the account are held pursuant to a formal revocable trust.

(4) Insured depository institutions must certify in their deposit accounts records the existence of a living trust when a depositor opens a living trust account. (The current industry practice of maintaining copies of the first and last pages of a depositor's living trust would be one way to satisfy this requirement.)

(5) Living trust accounts that exist on [the effective date of this amendment] shall continue to be insured under the FDIC's former rules for the insurance coverage of living trust accounts for six months from [the effective date of this amendment]. If the accounts are held in the form of time deposits, then the grace period expires either upon the maturity date of the time deposits or six months after [the effective date of this amendment], whichever is later. Time deposits renewed during the six-month grace period for the same dollar amount and duration as the original deposit are insured under the former rules until the new maturity date. If, however, during this grace period it would be more beneficial for a depositor to be insured under the amended rules than under the former rules, the FDIC shall apply the rules more favorable for the depositor.

Dated: May 7, 2003.

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–16400 Filed 6–27–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15409; Airspace Docket No. 03–ASO–8]

Proposed Amendment of Class D, E2, and E5 Airspace; Montgomery, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class D, E2, and E5 airspace at Montgomery, AL. As a result of an evaluation, it has been determined a modification should be made to the Montgomery, AL, Class D, E2, and E5 airspace area to contain the VHF Omnidirectional Range (VOR)–A, Standard Instrument Approach Procedure (SIAP) to Montgomery Regional Airport—Dannelly Field. Additional surface area airspace and controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before July 30, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15409/ Airspace Docket No. 03–ASO–8, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15409/Airspace Docket No. 03–ASO–8.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.