

of the period of notice given with respect to its repayment, the renewed deposit may draw interest from the date such notice period expired. The payment of such additional interest will not be regarded as the payment of interest on a demand deposit.

PART 330—DEPOSIT INSURANCE COVERAGE

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

SOURCE: 55 FR 20122, May 15, 1990, 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) *Default* has the same meaning as provided under section 3(x) of the Act (12 U.S.C. 1813(x)).

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

(d) *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.

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

(f) *Insured deposit* has the same meaning as that provided under subsection 3(m)(1) of the Act (12 U.S.C. 1813(m)(1)).

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

(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) *Natural person* means a human being.

(j) *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.

(k) *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.

[55 FR 20122, May 15, 1990, as amended at 58 FR 29963, May 25, 1993]

§ 330.2 Authority and purpose.

Section 311 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102-242, 105 Stat. 2236, amended sections 3, 7 and 11 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1813, 1817 and 1821, which govern the amount of deposit insurance provided by the FDIC. Section 311 of FDICIA deleted the provision in section 3 of the Federal Deposit Insurance Act which authorized the FDIC to clarify and define, by regulation, the extent of deposit insurance coverage resulting from subsections 3(m)(1), 3(p), 7(i) and 11(a) of the FDI Act, 12 U.S.C. 1813(m)(1), 1813(p), 1817(i) and 1821(a) and to define the terms used in those sections. However, FDICIA did not change the FDIC's authority, in section 9 [Tenth] of the FDI Act, to prescribe by its Board of Directors such rules and regulations as it may deem necessary to carry out the provisions of the FDI Act or of any other law which it has the responsibility of administering or enforcing (except to the

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extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency). Moreover, in section 302(d) of FDICIA, Congress added a new subsection to section 10 of the FDI Act which provides that except to the extent that authority under the FDI Act is conferred on any of the Federal banking agencies other than the Corporation, the Corporation may prescribe regulations to carry out the FDI Act and by regulation define terms as necessary to carry out the FDI Act. The purpose of the regulations in this part is to clarify the rules and define the terms employed in affording deposit insurance coverage under the Act and provide rules for the recognition of deposit ownership in various circumstances.

[58 FR 29963, May 25, 1993]

§ 330.3 General principles.

(a) *Ownership rights and capacities.* The insurance coverage provided by the Act and the regulations in this part is based upon the ownership rights and capacities in which deposit accounts are maintained at insured depository institutions. All deposits in an insured depository institution which are maintained in the same right and capacity (by or for the benefit of a particular depositor or depositors) shall be added together and insured in accordance with the regulations in this part. Deposits maintained in different rights and capacities, as recognized under this part, shall be 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. 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 the regulations in 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 the provisions of this part. In addition, deposits denominated in a foreign currency shall be insured in accordance with the provisions of 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 the provisions of 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 solely outside of the United States.* Any obligation of an insured depository institution which is payable solely at an office of such institution located outside the States of

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the United States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, is not a deposit for the purposes of this part.

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

(g) *Continuation of separate deposit insurance after merger of insured depository institutions.* Whenever the liabilities of one or more insured depository institutions for deposits shall have been assumed by another insured depository institution, whether by merger, consolidation, other statutory assumption, or contract:

(1) The insured status of the institutions whose liabilities have been so assumed terminates on the date of receipt by the FDIC of satisfactory evidence of such assumption, and

(2) The separate insurance of deposits so assumed continues for six months from the date such 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 such 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 is applicable 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.

(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 insur-

ance, 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, of recordkeeping requirements, and of other 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.

§ 330.4 Recognition of deposit ownership and recordkeeping requirements.

(a) *Recognition of deposit ownership—*

(1) *Evidence of deposit ownership.* 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 no other records shall be considered, as to the manner in which the funds are owned. If the deposit account records are ambiguous or unclear as to 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. Notwithstanding the foregoing, 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 such a 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) *Recordkeeping requirements—(1) Disclosure of fiduciary relationships.* The deposit account records of an insured

depository institution must expressly disclose, by way of specific references, the existence of any fiduciary relationship including, but not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian, pursuant to which funds in an account are deposited and on which a claim for insurance coverage is based. No claim for insurance coverage based on a fiduciary relationship will be recognized if no fiduciary relationship is evident from the deposit account records of the insured depository institution.

(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, 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 alternative methods of satisfying paragraphs (b)(1) and (b)(2) of this section so as 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 the depositor is acting in a fiduciary capacity on behalf of certain persons or entities who may, in turn, be acting in a fiduciary capacity for others;

(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 to recordkeeping requirements*—(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.

§ 330.5 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 \$100,000 in the aggregate. If more than one natural person has the right to withdraw funds from an individual account (excluding persons who have the right to withdraw by virtue of a Power of Attorney) the account shall be treated as a joint ownership account and shall be insured in accordance with the provisions of § 330.7 of this part, 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*. (1) Funds owned by a business which is a sole proprietorship 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 \$100,000 in the aggregate.

(2) The term *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.

(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 \$100,000 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

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personal representative of his or her estate and deposited into one or more deposit accounts shall be added together and insured up to \$100,000 in the aggregate. Such deposit insurance 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.

§ 330.6 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 § 330.10 of this part.

(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 § 330.7 of this part.

(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 added together and insured in the amount of up to \$100,000 for the interest of each owner (mortgagee, investor or security holder) in such accounts. 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 the amount of up to \$100,000 for the ownership interest of each mortgagor in such accounts.

(e) *Custodial accounts for American Indians.* Paragraph (a) of this section 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 \$100,000, separately from any other accounts maintained by that person in the same insured depository institution.

(f) *Annuity Contract Accounts.* 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 in the amount of up to \$100,000 per annuitant, provided that, pursuant to a state statute:

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

(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.

Such insurance coverage shall be separate from the insurance provided for any other accounts maintained in a different right and capacity by the corporation or the annuitants at the same insured depository institution.

[55 FR 20122, May 15, 1990, as amended at 60 FR 7709, Feb. 9, 1995]

§ 330.7 Joint ownership accounts.

(a) *Separate insurance coverage.* Qualifying joint accounts, whether owned as joint tenants with right of survivorship, as tenants in common or as tenants by the entirety, shall be insured

separately from any individually owned (single ownership) deposit accounts maintained by the co-owners. 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 \$100,000, separately from any funds deposited into accounts bearing their individual names.

(b) *Determination of insurance coverage.* All qualifying joint accounts owned by the same combination of individuals shall first be added together and insured up to \$100,000 in the aggregate. The interests of each co-owner in all qualifying joint accounts, whether owned by the same or different combinations of persons, shall then be added together and the total shall be insured up to \$100,000.

(c) *Qualifying joint accounts.* (1) 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; and

(ii) Each co-owner has personally signed a deposit account signature card; and

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

(2) The 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) 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 § 330.4(a) of this part, 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 es-

tablishing 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 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.

(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, corporation, 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.* (1) The interests of the co-owners of qualifying joint accounts, held as tenants in common, shall be deemed equal, unless otherwise stated in the insured depository institution's deposit account records.

(2) The rule set forth in paragraph (e)(1) of this section shall apply 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.

[55 FR 20122, May 15, 1990, as amended at 60 FR 7710, Feb. 9, 1995]

§ 330.8 Revocable trust accounts.

(a) *General rule.* Funds owned by an individual and deposited into any account commonly referred to as a tentative or "Totten" trust account, "payable-on-death" account, revocable trust account, or similar account evidencing an intention that upon the death of the owner, the funds shall belong to such owner's spouse, or to one or more children or grandchildren of the owner, shall be insured in the

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amount of up to \$100,000 in the aggregate as to each such named beneficiary, separately from any other accounts of the owner or the beneficiaries. Such intention 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, and the beneficiaries of the account must be specifically named in the deposit account records of the insured depository institution. The settlor of a revocable trust account shall be presumed to own the funds deposited into the account.

(b) *Interests of nonqualifying beneficiaries.* If a named beneficiary of such an account is not a spouse, child, or grandchild of one or more owners, the funds corresponding to that beneficiary, who is not within the qualifying degree of kinship, shall be treated as individually owned (single ownership) accounts of such owner(s), aggregated with any other single ownership accounts of such owners, and insured up to \$100,000 per owner.

(c) *Joint revocable trust accounts.* Where an account described in paragraph (a) of this section is established by more than one owner and held for the benefit of others, some or all of whom are within the qualifying degree of kinship, the respective interests of each owner (which shall be deemed equal unless otherwise stated in the insured depository institution's deposit account records) held for the benefit of each qualifying beneficiary shall be separately insured up to \$100,000. However, where a husband and a wife establish a revocable trust account naming themselves as the sole beneficiaries, such account shall not be insured according to the provisions of this section but shall instead be insured in accordance with the provisions of § 330.7 of this part.

(d) *Definition of children and grandchildren.* For the purpose of establishing the qualifying degree of kinship set forth in paragraph (a) of this section, the term *children* includes any natural-born, adopted and step-children of the owner and the term *grandchildren* includes natural-born, adopted, or step-children of any of the owner's children.

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

(a) *Corporate accounts.* (1) The deposit accounts of a corporation engaged in any independent activity shall be added together and insured up to \$100,000 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 § 330.6 of this part.

(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 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.

(b) *Partnership accounts.* The deposit accounts of a partnership engaged in any independent activity shall be added together and insured up to \$100,000 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 \$100,000 in the aggregate, separately from the accounts of the person(s) or

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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) *Definition of independent activity.* A corporation, partnership or unincorporated association shall be deemed to be engaged in an *independent activity*, for purposes of this section, if the entity is operated primarily for some purpose other than to increase deposit insurance. The deposit accounts of an entity which is not engaged in an independent activity 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 \$100,000 in the aggregate.

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

(a) *Separate insurance coverage.* Trust funds 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 \$100,000 of each owner or beneficiary represented. This insurance shall be separate from, and in addition to, the insurance provided for any 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 rules:

(1) *Allocated funds of a trust estate.* If trust funds of a particular trust estate 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 § 330.9(b) of this part.

[55 FR 20122, May 15, 1990, as amended at 58 FR 29963, May 25, 1993; 60 FR 7710, Feb. 9, 1995]

§ 330.11 Irrevocable trust accounts.

(a) *General rule.* Funds representing the non-contingent trust interest(s) 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 \$100,000 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 insured depository institution. Each trust interest 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 \$100,000 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) *Definitions of trust interest and non-contingent trust interest.* For the purposes of this section:

(1) The term *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.

(2) The term *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 expectancy tables which may be adopted by the Internal Revenue Service.

(d) *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 for up to \$100,000, separately from the funds of any other such estate.

[55 FR 20122, May 15, 1990, as amended at 60 FR 7710, Feb. 9, 1995]

§ 330.12 Retirement and other employee benefit plan accounts.

(a) *“Pass-through” insurance.* Except as provided in paragraph (b) of this section, any deposits of an employee benefit plan or of any eligible 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 up to \$100,000 for the non-contingent interest of each plan participant, provided that the FDIC’s recordkeeping requirements, as outlined in § 330.4, are satisfied.

(b) *Exception.* “Pass-through” insurance shall not be provided pursuant to paragraph (a) of this section with respect to any deposit accepted by an insured depository institution which, at

the time the deposit is accepted, may not accept brokered deposits pursuant to section 29 of the Act unless, at the time the deposit is accepted:

(1) The institution meets each applicable capital standard; and

(2) The depositor receives a written statement from the institution indicating that such deposits are eligible for insurance coverage on a “pass-through” basis.

(c) *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, 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.* (i) 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 \$100,000 per participant:

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

(B) Any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986; and

(C) 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.

(ii) The provisions of this paragraph (c) shall not apply with respect to the deposits of any employee benefit plan, or eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986, which is not entitled to “pass-through” insurance pursuant to paragraph (b) of this section. Such deposits shall be aggregated and

insured in the amount of \$100,000 per plan.

(d) *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 (c)(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.

(e) *Treatment of contingent interests.* In the event that employee' interests in an employees benefit plan are not capable of evaluation in accordance with the rules contained in 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 \$100,000 in the aggregate.

(f) *Overfunded pension plan deposits.* Any portion(s) of an employee benefit plan's deposits which are 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 \$100,000, separately from any other deposits.

(g) *Definitions of "depositor", "employee benefit plan", "employee organizations" 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.

(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.

(h) *Disclosure of capital status*—(1) *Disclosure upon request.* An insured depository institution shall, upon request, provide a clear and conspicuous written notice to any depositor of employee benefit plan funds of the institution's leverage ratio, Tier 1 risk-based capital ratio, total risk-based capital ratio and prompt corrective action (PCA) capital category, as defined in the regulations of the institution's primary federal regulator, and whether, in the depository institution's judgment, employee benefit plan deposits made with the institution, at the time the information is requested, would be eligible for "pass-through" insurance coverage under paragraphs (a) and (b) of this section. Such notice shall be provided within five business days after receipt of the request for disclosure.

(2) *Disclosure upon opening of an account.* (i) An insured depository institution shall, upon the opening of any account comprised of employee benefit

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plan funds, provide a clear and conspicuous written notice to the depositor consisting of: an accurate explanation of the requirements for pass-through deposit insurance coverage provided in paragraphs (a) and (b) of this section; the institution's PCA capital category; and a determination of whether or not, in the depository institution's judgment, the funds being deposited are eligible for "pass-through" insurance coverage.

(ii) An insured depository institution shall provide the notice required in paragraph (h)(2)(i) of this section to depositors who have employee benefit plan deposits with the insured depository institution on July 1, 1995 that, at the time such deposits were placed with the insured depository institution, were not eligible for pass-through insurance coverage under paragraphs (a) and (b) of this section. The notice shall be provided to the applicable depositors within ten business days after July 1, 1995.

(3) *Disclosure when "pass-through" coverage is no longer available.* Whenever new, rolled-over or renewed employee benefit plan deposits placed with an insured depository institution would no longer be eligible for "pass-through" insurance coverage, the institution shall provide a clear and conspicuous written notice to all existing depositors of employee benefit plan funds of its new PCA capital category, if applicable, and that new, rolled-over or renewed deposits of employee benefit plan funds made after the applicable date shall not be eligible for "pass-through" insurance coverage under paragraphs (a) and (b) of this section. Such written notice shall be provided within 10 business days after the institution receives notice or is deemed to have notice that it is no longer permitted to accept brokered deposits under section 29 of the Act and the institution no longer meets the requirements in paragraph (b) of this section.

(4) *Definition of "employee benefit plan".* For purposes of this paragraph, the term *employee benefit plan* has the same meaning as provided under paragraph (g)(2) of this section but also includes any eligible deferred compensation plans described in section 457 of

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the Internal Revenue Code of 1986 (26 U.S.C. 457).

[58 FR 29964, May 25, 1993; 58 FR 40688, July 29, 1993; 60 FR 7710, Feb. 9, 1995]

§ 330.13 Bank investment contracts.

(a) *General rule.* Any liability arising under any insured depository institution investment contract between any insured depository institution and any employee benefit plan which expressly permits benefit-responsive withdrawals or transfers shall not be treated as an "insured deposit" and thus shall not be entitled to deposit insurance.

(b) *Definitions.* For purposes of paragraph (a) of this section:

(1) *Benefit-responsive withdrawals or transfers* means any withdrawal or transfer of funds (consisting of any portion of the principal and any interest credited at a rate guaranteed by the insured depository institution investment contract) during the period in which any guaranteed rate is in effect, without substantial penalty or adjustment, to pay benefits provided by the employee benefit plan or to permit a plan participant or beneficiary to redirect the investment of his or her account balance. This term excludes penalty-free withdrawals from employee benefit plan deposits which are based on penalty-free withdrawals of funds from an employee benefit plan that are permitted or required pursuant to the Employee Retirement Income Security Act of 1974 or the Internal Revenue Code.

(2) *Employee benefit plan:* (i) Has the 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

(ii) Includes any plan described in section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. 401(d)); and

(iii) Excludes any deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457).

(3) *Substantial penalty or adjustment* 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

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earned on the amount withdrawn from the date of deposit or three months, whichever is less.

[58 FR 29964, May 25, 1993]

§ 330.14 Public unit accounts.

(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 \$100,000 in the aggregate for all time and savings deposits; and

(ii) Up to \$100,000 in the aggregate for all demand deposits.

(2) *Accounts of a state, county, municipality or political subdivision.* 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:

(i) Up to \$100,000 in the aggregate for all time and savings deposits; and

(ii) Up to \$100,000 in the aggregate for all demand deposits.

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 \$100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

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

(i) Up to \$100,000 in the aggregate for all time and savings deposits; and

(ii) Up to \$100,000 in the aggregate for all demand deposits.

In addition, each such official custodian depositing such funds in an in-

sured depository institution outside of the District of Columbia shall be insured in the amount of up to \$100,000 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.* 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:

(i) Up to \$100,000 in the aggregate for all time and savings deposits; and

(ii) Up to \$100,000 in the aggregate for all demand deposits.

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 \$100,000 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 \$100,000 in the aggregate for all time and savings deposits; and

(ii) Up to \$100,000 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

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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 \$100,000.

(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;

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(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.

§ 330.15 Notice to depositors.

(a) Each insured depository institution shall send, no later than October 10, 1993 (except as provided in paragraph (b) of this section), a notice to each of its depositors or, at the option of the institution, to all depositors having deposit accounts which could potentially be affected by the rules in this part which are effective December 19, 1993, a notice containing the following language:

In December 1993, some of the FDIC's deposit insurance rules will change. The rule changes will primarily affect the total amount of coverage which is provided for IRA, self-directed Keogh plan accounts, self-directed defined contribution plan accounts, "457 Plan" accounts and accounts where an insured institution is acting in a fiduciary capacity. If you do not have these types of accounts, those rule changes will not affect you. For further information contact [insert "your branch office" or some other contact point for the institution].

(b) The language of this notice may not be materially altered in any way. The required notice may be included on account statements, included as a separate enclosure with account statements or it may be sent to all depositors/accontholders in a separate mailing. With respect to any depositor/accontholder who maintains a time deposit and would not otherwise receive a regular monthly or quarterly account statement prior to October 10, 1993, the required notice may be sent to said depositor/accontholder at any time prior to the later of:

(1) 60 days prior to the first maturity date of that time deposit; or

(2) October 10, 1993.

[58 FR 29965, May 25, 1993]

§ 330.16 Effective dates.

(a) *Delayed effective dates.* Sections 330.1(j), 330.10(a), 330.12(c), 330.12(d)(3) and 330.13 shall become effective on December 19, 1993.

(b) *Time deposits.* Except with respect to the provisions in § 330.12 (a) and (b),

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any time deposits made before December 19, 1991 that do not mature until after December 19, 1993, shall be subject to the rules as they existed on the date the deposits were made. Any time deposits made after December 19, 1991 but before December 19, 1993, shall be subject to the rules as they existed on the date the deposits were made. Any rollover or renewal of such time deposits prior to December 19, 1993 shall subject those deposits to the rules in effect on the date of such rollover or renewal. With respect to time deposits which mature only after a prescribed notice period, the provisions of this part shall be effective on the earliest possible maturity date after June 24, 1993 assuming (solely for purposes of this section) that notice had been given on that date.

[58 FR 29965, May 25, 1993]

PARTS 331—332 [RESERVED]

PART 333—EXTENSION OF CORPORATE POWERS

REGULATIONS

Sec.

- 333.1 Classification of general character of business.
- 333.2 Change in general character of business.
- 333.4 Conversions from mutual to stock form.

INTERPRETATIONS

- 333.101 Prior consent not required.

AUTHORITY: 12 U.S.C. 1816, 1818, 1819 (“Seventh”, “Eighth” and “Tenth”), 1828, 1828(m), 1831p-1(c).

REGULATIONS

§ 333.1 Classification of general character of business.

State nonmember insured banks are divided into five categories for the purpose of classifying their general character or type of business,² viz: commercial banks, banks and trust companies, savings banks (including mutual and stock), industrial banks, and cash depositories.

[15 FR 8644, Dec. 6, 1950]

² A bank's business may include two or more of the general classifications.

§ 333.2 Change in general character of business.

No State nonmember insured bank (except a District bank) or branch thereof shall hereafter cause or permit any change to be made in the general character or type of business exercised by it after the effective date of this part without the prior written consent of the Corporation.

[15 FR 8644, Dec. 6, 1950]

§ 333.4 Conversions from mutual to stock form.

(a) *Scope.* This section applies to the conversion of insured mutual state savings banks to the stock form of ownership. It supplements the procedural and other requirements for such conversions in § 303.15 of this chapter. This section also applies, to the extent appropriate, to the reorganization of insured mutual state savings banks to the mutual holding company form of ownership. As determined by the Board of Directors of the FDIC on a case-by-case basis, the requirements of paragraphs (d), (e), and (f) of this section do not apply to mutual-to-stock conversions of insured mutual state savings banks whose capital category under § 325.103 of this chapter is “undercapitalized”, “significantly undercapitalized” or “critically undercapitalized”. The Board of Directors of the FDIC may grant a waiver in writing from any requirement of this section for good cause shown.

(b) *Conflicts with state law.* In the event that an insured mutual state savings bank that proposes to convert to the stock form of ownership finds that compliance with any provision of this section would be inconsistent or in conflict with applicable state law, the bank may file a written request for waiver of compliance with such provision by the FDIC. In making such request, the bank shall demonstrate that the requested waiver, if granted, would not result in any effects that would be detrimental to the safety and soundness of the bank, entail a breach of fiduciary duty on part of the bank's