New FDIC Rules: Are You Protected?

By Eden Rose Brown

With the recent rash of bank failures, you may wonder whether--and to what extent--the FDIC (Federal Deposit Insurance Corporation) will protect your bank accounts. Fortunately, new rules from the FDIC clarify how you can ensure maximum FDIC insurance coverage.

The FDIC

The FDIC is an independent federal agency that ensures the availability of deposited funds after a bank failure. Created in 1933 after a run on banks left many account owners penniless, the FDIC promotes public confidence and stability in the nation's banking system by insuring your deposits at any FDIC-insured institution. FDIC-insured institutions include most banks and savings associations located in the United States. It does not include brokerage firms.

Until very recently, the FDIC insured up to $100,000 for each account beneficiary. However, on October 3, 2008 the FDIC temporarily increased coverage to $250,000 per beneficiary. There is no need for depositors to apply for FDIC insurance or even to request it; Coverage is automatic.

What Is and Is Not Covered

FDIC insurance covers funds in deposit accounts, including checking and savings accounts, and certificates of deposit (CDs). FDIC insurance does not, however, cover other financial products and services that insured banks may offer, such as stocks, mutual fund shares, life insurance policies, annuities, or municipal securities. The FDIC also does not insure U.S. Treasury bills, bonds, or notes, although the U.S. government backs these investments.

Although FDIC insurance does not typically cover money market mutual funds, the United States Treasury Department recently created a temporary guarantee program for money market mutual funds that is effective for <u>one year</u> beginning September 19, 2008.

In addition, since October 14, 2008, FDIC insurance will temporarily cover all non-interest-bearing deposit accounts for the entire amount of the account. This includes personal and business checking accounts that do not earn interest.

New Rules for Revocable Trusts

A revocable living trust (also known as a living trust or inter vivos trust) is a trust that you create during your lifetime to control your property during incapacity and at death. As a result, revocable living trusts typically name as beneficiaries the maker of the trust, plus a spouse, children and grandchildren, if any. Revocable trusts also often name siblings, parents, and other relatives and friends as beneficiaries, as well as charities.

The FDIC recently issued rules that clarify the insurance limits when the account is in the name of a revocable trust. This clarification confirms that you can protect up to $250,000 for each revocable trust beneficiary under certain circumstances.

One of the most interesting things we learned in writing this article with regard to living trusts is that FDIC insurance coverage is based upon the number of named beneficiaries of the trust and is not limited by the number of trust owners.

Therefore, under the new FDIC rules, a trust account owner with up to five different beneficiaries named in all of his or her revocable trust accounts at one FDIC-insured institution will have FDIC insurance up to $250,000 per beneficiary. In other words, if your revocable trust(s) names five beneficiaries, the FDIC will insure the account up to $1,250,000 at any one FDIC-insured bank.

What Beneficiaries Count for Revocable Trust Coverage?

If you create your own individual revocable trust (other than a joint revocable trust), the FDIC rules tell us that you are not a beneficiary of this trust for FDIC purposes. What if your trust names a primary beneficiary (one who takes before the contingent or alternative trust beneficiaries)? The FDIC rules also tell us that the contingent beneficiaries generally do not have an interest in a revocable trust for FDIC purposes while the primary beneficiary is living.

However, there is an exception to this general rule if the primary beneficiary has the right to receive income, or some or all of the trust principal during the primary beneficiary's lifetime. With this type of trust, the FDIC counts both your primary and contingent beneficiaries for purposes of determining FDIC coverage.

Example:
Husband has a living trust that gives wife a life estate interest in the trust, with the remainder going to their two children equally upon wife's death. In this example, the FDIC's insurance rules recognize wife and the two children as beneficiaries. Since there is one trust owner who has three beneficiaries, husband's revocable trust account at an FDIC-insured bank is protected up to $750,000.

Revocable Trusts with More Than $1.25 million or 5 Beneficiaries

What if your revocable trust account has more than $1,250,000 or more than five different beneficiaries? Under these circumstances, the FDIC will insure the greater of either: $1,250,000 or the aggregate amount of all the beneficiaries' interests in the trust(s), limited to $250,000 per beneficiary. For example, suppose your revocable living trust names eight beneficiaries equally. If your FDIC-insured bank fails when you have $2,500,000 in this trust account, the FDIC will insure $2,000,000. What if instead you had $1,500,000 in your revocable trust account and three named beneficiaries in equal shares, plus one beneficiary with a specific gift of $25,000? In this instance, the FDIC will insure only $775,000 - three beneficiaries insured at $250,000 each, plus one at $25,000.

Joint Revocable Living Trusts

If you have an account for a joint revocable trust, you and your spouse are both eligible for up to $250,000 of FDIC insurance, plus you have an additional $250,000 FDIC insurance per qualifying trust beneficiary. In other words, a joint trust with three named beneficiaries will have $1,500,000 of FDIC coverage (both spouses have $750,000 of FDIC insurance--$250,000 each for three beneficiaries).

Multiple Account Types at One FDIC-Insured Institution

In addition to the FDIC-coverage for revocable trusts, you may be eligible for increased FDIC coverage if the accounts are held in <u>different ownership categories</u>. These include single accounts, certain retirement accounts, and joint accounts. The chart below sets out the primary ownership categories.

Basic FDIC Deposit Insurance Coverage Limits*

Single Accounts (owned by one person)	$250,000 per owner
Joint Accounts (two or more persons)	$250,000 per co-owner
IRAs and certain other retirement accounts	$250,000 per owner
Trust Accounts	$250,000 per owner per beneficiary subject to specific limitations and requirements
Corporation, Partnership and Unincorporated Association Accounts	$250,000 per corporation, partnership or unincorporated association
Employee Benefit Plan Accounts	$250,000 for the non-contingent, ascertainable interest of each participant
Government Accounts	$250,000 per official custodian
Non-interest Bearing Transaction Accounts	Unlimited coverage – only at participating FDIC-insured banks and savings associations **

*On January 1, 2010, the standard coverage limit is set to return to $100,000 for all deposit categories except IRAs and Certain Retirement Accounts, which will continue to be insured up to $250,000 per owner.

**Unlimited deposit insurance coverage is available through December 31, 2009, for non-interest bearing transaction accounts at institutions participating in FDIC's Temporary Liquidity Guarantee Program.

Divide and Insure

With the coverage chart in mind, let's assume you and your spouse need to deposit more than $250,000 into interest bearing accounts and want to use only one bank. Your money will be fully insured provided your accounts meet certain requirements.

Here's how it works:

1. Account A ($250,000) is a checking account opened under the husband's name payable upon death to his trust or other beneficiaries.

2. Account B ($250,000) is a checking account opened under the wife's name payable upon death to her trust or other beneficiaries.

3. Account C ($500,000) is opened as a joint account under both spouse's names, payable upon the first spouse's death to their living trust. Each owner's share is insured up to $250,000.

4. Account D ($250,000) is a revocable trust account opened by the husband.

5. Account E ($250,000) is a revocable trust account opened by the wife.

Since retitling your accounts may negatively impact your current estate plan or cause an asset to be probated, please consult your estate planning attorney prior to closing and/or opening new accounts in order to maintain the integrity of your current plan.

Worst-Case Scenario

Bank failures at a rate similar to the Great Depression are unlikely. However, if there are significant bank failures, the FDIC may not have the liquidity to immediately pay out all FDIC-insured claims. According to the FDIC website (at www.fdic.gov), the FDIC directly supervises about 5,250 banks and thrifts - more than half of the institutions in the U.S. banking system. The FDIC insurance fund totals approximately $49 billion, which insures more than $3 trillion of deposits in insured U.S. banks and thrifts.

Since the FDIC insures deposits with each FDIC-insured bank separately from deposits at a different insured bank, you may wish to consider holding different accounts at separate FDIC-insured institutions to ensure the availability of FDIC insurance for all of your bank accounts. In other words, if you need additional insurance protection, don't put all your eggs in one "bank" basket, but spread the wealth around to different institutions.

Conclusion

Since the FDIC was established nearly 75 years ago, no depositor has ever lost a single penny of FDIC-insured funds. That is not to say it couldn't happen, of course, but with some thoughtful planning, you should be able to plan for the worst case scenario. If you have further questions about FDIC coverage, or how to divide your accounts to gain the greatest coverage, talk to your banker or visit www.myfdicinsurance.gov.

Attorney Eden Rose Brown is dedicated to providing comprehensive, highly personalized, counsel in wealth preservation strategies, family legacy design, and estate, tax and charitable planning. Honored as one of the Top 100 Attorneys in the United States by Worth magazine, Eden holds the highest standards of scholarship and client service. Her innovative planning strategies serve to maximize client control and family harmony, while minimizing taxes and preserving a family's legacy for generations. The Law Office of Eden Rose Brown has offices in Salem, Eugene, Portland and Bend. Phone: (503) 581-1800. Office@EdenRoseBrown.com. www.EdenRoseBrown.com .