

**TRANSACTION TEAM ALERT**

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**Deposit Insurance/New Changes**  
**An Overview For You And Your Business**

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As a part of the federal government's efforts to avoid or mitigate serious adverse effects on economic conditions and financial stability, the FDIC has made several changes and introduced new programs which increased the maximum amount of deposits insured or guaranteed by FDIC. Initially, the FDIC limit on insured deposits was increased from \$100,000 to \$250,000. Subsequently, there have been other FDIC actions relating to deposit insurance. This bulletin will identify these important changes for you and will also review important differences in bank accounts for business entities. For ease, when we refer to "banks" in this bulletin, we are referring to all FDIC insured financial institutions except as otherwise noted.

In the first action the FDIC increased the maximum amount of deposit insurance in all banks to \$250,000 per qualified depositor. Next, the FDIC did away with some of the limitations on jointly held accounts that limited the amount of insurance on jointly held accounts to certain categories and in some cases to persons with a specific familial connection to the primary depositor. Third the FDIC established the Temporary Liquidity Guarantee Program (TLGP) which insures all amounts in a demand deposit accounts with no limitations. Finally, the FDIC has established will be the Debt Guarantee Program which guarantees the newly issued subordinated debt of participating FDIC insured institutions. These four components and certain important restrictions on business accounts are briefly reviewed and explained below.

**Increase of Deposit Insurance to \$250,000.** The first action which was made pursuant to the Emergency Economic Stabilization Act of 2008 as announced in FDIC Financial Institution Letter, FIL-102-2008 took effect on October 3, 2008. This important change increased the maximum coverage for FDIC deposit insurance

from \$100,000 to \$250,000 or in some instances as discussed below, more than \$250,000. This increased coverage will continue until January 1, 2010, at which time, unless extended by further action, the standard coverage limit will 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.

The FDIC deposit insurance now provides separate coverage for deposits held in different account ownership categories. The coverage limits shown in the chart below refer to the total of all deposits that an account holder has in the same ownership categories at each FDIC-insured bank. Certain categories are discussed in more detail below. Thus if the primary depositor(s) have more than one account, the limits set out in the chart are for the total of all of those accounts at one bank. The chart below shows only the most common ownership categories that apply to individual and family deposits, and assumes that all other FDIC requirements are met.

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 ** (see discussion on TLGP below)

## **Joint Accounts and Payable on Death Accounts.**

The second action FDIC took was to simplify the manner of determining the status of certain jointly owned or trust type accounts, remove limitations on their use and to increase the amount of maximum insurance available. The discussion in the following paragraphs describes in general the changes to two widely used personal type accounts.

Joint Accounts. A joint account is a deposit owned by two or more natural persons. To qualify for insurance under this ownership category, all co-owners must be natural persons and each must sign the deposit account signature card unless the account is a CD and each must have equal rights to withdraw deposits from the account. Legal entities such as corporations, trusts, estates, or partnerships are not eligible for joint account coverage. If all of these requirements are met, each co-owner's share of every account that is jointly held at the same insured bank are added together and the total amount of accounts owned by each person at that bank is insured up to \$250,000. For example, a husband and wife could have up to \$500,000 in one or more joint accounts at the same insured bank and the deposits would be fully insured. The husband's ownership share is insured up to \$250,000 and the wife's ownership share is insured up to \$250,000. Insurance coverage of joint accounts is not increased by rearranging the owners' names or by changing the styling of their names. Alternating the use of "or," "and" or "and/or" to separate the names of co-owners in a joint account title also does not affect the amount of insurance coverage provided.

Revocable Trusts or Payable on Death Accounts. [The following description is not intended to cover all of the various nuances of trust agreements or estate planning, but only to provide an overview of the types of accounts and circumstances that are available to assist you and your tax professional in making use of such accounts in your overall tax and estate planning.]

A revocable trust account (one that can be closed at any time by the owner) is an account owned by one or more people that indicates an intention that the deposits will belong to one or more named beneficiaries upon the death of the owner(s). There are both informal and formal revocable trusts. Informal revocable trusts, often called "payable-on-death" (POD), "Totten trust," or "in trust for" (ITF) accounts, are created when the account owner signs an agreement—usually part of the bank's signature card—stating that the deposits are payable to one or more beneficiaries upon the owner's death. The term

"owner" includes the grantor, settlor, or trustor of a formal trust established by a written trust document. All deposits that an owner has in both informal and formal revocable trusts are added together for deposit insurance purposes, and the insurance limit is applied to the combined total, subject to the allocation rules among qualifying beneficiaries discussed below.

Up until the most recent changes by FDIC to its deposit insurance program, the amount of insurance in a payable on death account or a revocable trust account was based, in large part, on the number of qualifying beneficiaries named in the trust or in the case of a POD account, on the deposit contract. However, until the most recent changes, qualifying beneficiaries were limited to the revocable trust account owner's spouse, children, grandchildren, parents and siblings. So friends, significant others, nieces and nephews were not qualified beneficiaries. These limiting distinctions have now been removed. Under the new rules now in place, coverage is based on the existence of any beneficiary named in the revocable trust, as long as the beneficiary is a natural person, or a charity or other non-profit organization (a "qualified person"). The amount of total qualifying deposit insurance has also been increased. While before there was a maximum account limitation of \$500,000 of deposit insurance for any one account, (\$100,000 times up to a maximum of five qualifying beneficiaries), that limitation no longer exists. Rather, the maximum available coverage is determined by the status of each of the qualified persons who have an actual or contingent interest in the account as a beneficiary. Solely for the purposes of making a calculation of the maximum deposit insurance benefits which are available to each of the qualified persons affiliated with an account, each qualified person is considered to be an "owner" although legally that ownership interest will not occur until the death of the actual owner. The "ownership" interest of each of the qualified persons is insured up to a maximum of \$250,000 for all accounts of that type with that bank in which the qualified person has an interest. The \$250,000 per qualified person insurance limit applies to all formal and informal revocable trust accounts that a qualified person has at the same bank.

As indicated above, the foregoing is a general description of the important changes to the amount of deposit insurance available on these types of accounts. In some instances, there may be more qualifications that must be met to take advantage of the increased deposit insurance.

Consolidator Accounts. A related issue is the use of “consolidators” who offer services to act as a fiduciary or agent to “scatter” a person’s deposits into a number of separate banks so that no one deposit is in excess of the insured limits. The deposits are often kept in the name of the consolidating company for the benefit of the fund’s true owners. Some of these services are very reliable, but depositors must exercise caution in using such a service, and verify that the services are correctly set up, properly establish and account for such deposits and comply with the recordkeeping requirements of 12 C.F.R. § 330.4 in order for the deposits not to be consolidated by the FDIC in the event of a bank failure.

### **Transaction Account Guarantee Program (“TLGP”).**

The third major component of FDIC’s programs is the TLGP or “transaction account guarantee program” which provided an unlimited guarantee of the funds deposited in non-interest bearing transaction accounts at participating FDIC insured institutions. Please note the limitation to participating FDIC-insured institutions. Most banks and savings and loans are eligible to participate in TLGP. However, the program is voluntary and not all banks will elect to participate in the program. While each FDIC insured institution was initially automatically enrolled in TLGP, each bank had the ability to “opt out” of the program. If a bank continues in the TLGP, they must pay an increased fee to FDIC based on certain categories of accounts, so some banks may determine that the additional fees are not worth the benefit. If a bank opts out of the TLGP, then the amount of deposits in non-interest bearing transaction accounts are included in the maximum FDIC guaranteed amounts which are discussed above. A bank’s decision to remain in, or opt out of, the TLGP will be made available to the public. The FDIC will maintain and post on its Web site ([www.fdic.gov](http://www.fdic.gov)) a list of those banks that have opted out of either or both components of the TLGP and banks are required to post notices regarding the availability of this program. Moreover, you can expect that most banks electing to enroll in the program will make their participation well known.

Which accounts qualify for this unlimited amount of deposit insurance? Any account from which funds can be withdrawn at any time and as to which interest is neither accrued nor paid and which the bank does not have the right to require advance notice of an intended withdrawal qualifies for this category of account. It primarily will involve demand deposit or “regular” checking accounts

that allow an unlimited number of deposits and withdrawals at any time. It does not include savings accounts on which interest is paid, Certificates of Deposit or money market deposit accounts (MMDAs). Some, but not all, negotiable order of withdrawal (NOW) accounts are included in the program. In order for a NOW account to be eligible for this unlimited amount of deposit insurance, the interest rate on the account must be 0.50 percent or lower.

This additional deposit insurance is available to individuals and businesses. It is also in addition to, and separate from, the normal deposit insurance coverage (the general \$250,000 type). So by way of example if a person or entity had a certificate of deposit for \$250,000 and \$25,000 in a non interest bearing checking account, all of the deposits would be insured; the \$250,000 under the normal deposit insurance coverage and the \$25,000 under expanded unlimited demand deposit program. But if an individual had an additional savings account with \$30,000 with the same bank, that \$30,000 would not be insured since it is in excess of the \$250,000 maximum insurance for one account owner.

There are specific rules relating to sweep accounts which in general indicate that the type of account where the money ends up determines if it qualifies under this unlimited amount of deposit insurance provision. So by way of example, if your regular checking account is swept each day into a money market account on which interest is paid, then the amount of deposit insurance available is determined by the amount of deposit insurance available for that money market account, and may be limited to \$250,000, unless other additional amounts are available due to joint ownership, as previously discussed. If the funds are swept from various accounts and “consolidated” into a non interest bearing account, then there is no limit on the amount of deposit insurance under TLGP.

### **Business Bank Accounts May Be Treated Differently Under Some Conditions.**

Some individual investors have focused on the FDIC limit on insured deposits, and have structured their bank deposits to maximize it (e.g., by maintaining deposits at several separate insured banks). However, many business owners maintain all of their banking accounts at a single financial institution, for reasons including business relationships and even the express requirements of loan documents. This discussion therefore, focuses on how

the new \$250,000 limit and the TLGP Program applies to business deposits concentrated at a single bank.

Except for the unlimited deposit insurance on demand deposit amounts insured in the TLGP program, the FDIC provides a maximum of \$250,000 of insurance coverage for the total amount of all bank accounts of an "entity" at one bank. "Entities" includes corporations, limited liability companies, partnerships, not-for-profit organizations and unincorporated associations (which include religious, community and civic organizations and social clubs that are not incorporated). However, to qualify for the maximum coverage, each entity must be engaged in an independent activity, meaning that the entity is operated primarily for some purpose other than to increase insurance coverage. This maximum amount of \$250,000 in insurance coverage includes the total of all amounts on deposit by the entity in its checking accounts, savings accounts, money market accounts and certificates of deposit that the entity has at a single bank except those demand deposit accounts which are excluded and have their own coverage under the TLGP Program. Separate accounts owned by the same entity, even if designated for different purposes, are not separately insured. Instead, such accounts are added together and insured up to \$250,000. So for example, if a corporation has an operating account, a payroll account and an accounts payable account, all are included in computing the maximum amount of insured deposits. However, if any one of those accounts is demand deposit account, it would be excluded in determining whether the maximum \$250,000 insured amount had been reached. Trust accounts, escrow accounts and retirement benefit accounts are treated separately for computing the \$250,000 maximum coverage, but must be examined individually to determine the extent of deposit insurance that applies to such accounts. If a corporation has divisions or units that are not separately incorporated, the deposit accounts of those divisions or units which are not demand deposit accounts will be added to any other deposit accounts of the corporation for purposes of determining the limit of deposit insurance coverage.

Funds deposited by a corporation, partnership, or unincorporated association are insured separately from the personal accounts of the stockholders, partners or members. This means that in addition to any demand deposit accounts which a business owner has, a business owner can have \$250,000 in personal accounts, and an additional \$250,000 of accounts for each of the separate independent entities that he owns and enjoy full FDIC coverage for both types of accounts. The number of partners, members or account signatories that a corporation, partnership, or unincorporated association has does not affect coverage. For example, deposits owned by a homeowners association are insured up to \$250,000 in total, not \$250,000 for each member of the association. However, deposits owned by a business organized as a sole proprietorship are not insured as an entity. Rather, they are insured as the single account deposits of the person who is the sole proprietor. So, funds deposited in the sole proprietorship's name are added to any other accounts of the sole proprietor and the total is insured to a maximum of \$250,000.

An important factor determining whether separate entities will receive their full \$250,000 in coverage is whether each such entity is engaged in "independent activities". If the regulators impose the FDIC insurance limit on a particular bank failure, the FDIC will review the failed institution's deposits to apply the \$250,000 limit. An entity shall be deemed to be engaged in an independent activity for purposes of this limitation "if the entity is operated primarily for some purpose other than to increase deposit insurance." 12 C.F.R. § 330.9(d). The fact that each entity is separately chartered and/or has its own tax ID number is not dispositive as to whether each entity is engaged in independent activity, and therefore entitled to its own separate \$250,000 in FDIC insurance coverage. FDIC-Advisory Opinion-95-14 August 23, 1995. The fact that entities are solely owned by the same individual does not preclude each from entitlement to its own separate \$250,000 insurance coverage, as long as each entity is separately chartered and is engaged in a separate independent activity. Nor does the fact that the entities are not now engaged

in the original activities for which they were established preclude an entity from continuing to have an entitlement to its own separate \$250,000 insurance coverage, so long as it has not altered its business purpose to be operated primarily for the purpose by engaging in other disqualifying activities.

**Insurance on Bank Senior Unsecured Debt.** The FDIC also has an additional program designed to assist FDIC insured institutions raise capital. For banks choosing to enroll in this “Debt Guarantee Program”, FDIC will fully insure new senior unsubordinated debt of banks, and in some cases, bank holding companies, issued after October 13, 2008, through and including June 30, 2009 with a maturity of June 30, 2012 or earlier. While primarily aimed at bank to bank transactions, it also includes non-contingent promissory notes, commercial paper and other unsubordinated unsecured notes issued by a participating bank or bank holding company. It can include debt denominated in both dollars and foreign currency. It must be evidenced by a written instrument with a specified and fixed principal amount payable on a date certain. It also must specifically indicate that it is FDIC insured. There is no limitation on the amount of the debt held by an individual or entity as long as it is specifically subject to such guarantee. There are other limitations and qualifications which must be met and the purpose of mentioning it here is merely to make you aware of the program and the possible availability of such debt instruments as an investment option. We can provide further details of this type of investment if you are interested.

## Conclusion

Each individual or business should review their account structure and holdings to determine the nature and extent of their exposure to financial losses from uninsured deposits, and act appropriately to mitigate any such exposure. Attorneys in our firm are available to assist you with questions about your deposits and the utilization of various methods to ensure you have

the maximum deposit insurance protection, or if you are unfortunate enough to have deposits in a failed deposit institution, we can assist you with any problems you have in obtaining the full amounts of your deposits.

For additional information, you may contact one of our attorneys at Berger Singerman or you may utilize the information and programs available on FDIC’s web site which can be accessed at <http://www.fdic.gov>. A program called “Edie the Estimator” is available for simple computations, but you must be careful that you fully understand all of the terms used for the various categories or types of deposits to avoid an erroneous conclusion. ■

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