

Deposit Insurance for Accounts Held by Government Depositors

Section 330.15 of the FDIC's regulations (12 C.F.R. 330.15) governs the insurance coverage of public unit accounts. For deposit insurance purposes, the term "public unit" includes a state, county, municipality, or any "political subdivision" of the public unit. Under section 330.15, the "official custodian" of the funds belonging to the public unit - rather than the public unit itself - is insured as the depositor.

Permanent Rule

The insurance coverage of public unit accounts depends upon the type of deposit and the location of the insured depository institution. All time and savings deposits owned by a public unit and held by the public unit's official custodian in an insured depository institution within the State in which the public unit is located are added together and insured up to \$250,000. Separately, all demand deposits owned by a public unit and held by the public unit's official custodian in an insured depository institution within the State in which the public unit is located are added together and insured up to \$250,000. For the purpose of these rules, the term 'time and savings deposits' includes NOW accounts and money market deposit accounts but does not include interest-bearing demand deposit accounts (which were permitted after July 21, 2011). The term 'demand deposits' means both interest-bearing and noninterest-bearing deposits that are payable on demand and for which the depository institution does not reserve the right to require advance notice of an intended withdrawal. The insurance coverage of accounts held by government depositors is different if the depository institution is located outside the State in which the public unit is located. In that case, all deposits, both time and savings deposits and demand deposits, owned by the public unit and held by the public unit's official custodian are added together and insured up to \$250,000. Time and savings deposits are not insured separately from demand deposits.

As mentioned above, a political subdivision (through its official custodian) is entitled to its own insurance coverage. The term "political subdivision" is defined to include 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. The term "political subdivision" also includes any subdivision or principal department of a public unit (state, county, or municipality) if the subdivision or department meets the following tests:

- The creation of the subdivision or department has been expressly authorized by the law of such public unit;
- Some functions of government have been delegated to the subdivision or department by such law; and
- The subdivision or department is empowered to exercise exclusive control over funds for its exclusive use.

The term "political subdivision" does not include subordinated or non-autonomous divisions, agencies, or boards within subdivisions or principal departments.

Again, a public unit (including a political subdivision) is insured through its official custodian. If the same individual is an official custodian for more than one public unit, he or she is separately insured for the deposits belonging to each public unit. On the other hand, two or more individuals are treated as one official custodian if action or consent by all of these individuals is required for the exercise of control over the funds of a single public unit.

An official custodian is an officer, employee, or agent of a public unit having official custody of public funds and lawfully depositing the funds in an insured institution. In order to qualify as an official custodian, a person must have plenary authority - including control - over the funds. Control of public funds includes possession as well as the authority to establish accounts in insured depository institutions and to make deposits, withdrawals and disbursements.

Deposit insurance coverage cannot be increased by dividing funds among several putative official custodians who lack plenary authority over such funds. Likewise, coverage cannot be increased by dividing funds among several accounts controlled by the same official custodian for the same public unit.

Collateralization of Public Unit Deposits

Depending on applicable state or federal law, public unit deposits may be secured by collateral or assets of the bank. In the event of the failure of the bank, the FDIC will honor the collateralization agreement if the agreement is valid and enforceable under applicable law. The FDIC does not guarantee, however, that the collateral will be sufficient to cover the amount of the uninsured funds. As such, although it does not increase the insurance coverage of the public unit deposits, collateralization provides an avenue of recovery in the unlikely event of the failure of an insured bank.

Special Rule for Public Bonds

A special rule applies to funds held by an officer, agent or employee of a public unit under a law or bond indenture that requires the funds to be set aside to discharge a debt owed to the holders of notes or bonds issued by the public unit. A deposit of such funds in an insured depository institution is insured up to \$250,000 for the beneficial interest of each bondholder. This coverage is separate from the coverage for other deposits owned by the public unit at the same institution. In order to obtain this special coverage, however, the deposit account must satisfy certain disclosure requirements applicable to deposits held by agents or fiduciaries. Specifically, the deposit account records of the insured depository institution must disclose the existence of the fiduciary relationship or the fiduciary nature of the deposit. In addition, the details of the fiduciary relationship and the interests of the bondholders must be ascertainable from the records of the depository institution or the records of the depositor maintained in good faith and in the regular course of business.

The relevant section of the FDIC's deposit insurance regulations can be found at: [12 C.F.R. 330.15](#).

If you have questions or comments about the insurance coverage of public unit accounts, contact the Federal Deposit Insurance Corporation by telephone at 1-877-ASK-FDIC or by mail at 550 17th Street, NW, Washington, DC 20429.

(e) AGREEMENTS AGAINST INTERESTS OF CORPORATION.--

- (1) IN GENERAL.--No agreement which tends to diminish or defeat the interest of the Corporation in any asset acquired by it under this section or section 11, either as security for a loan or by purchase or as receiver of any insured depository institution, shall be valid against the Corporation unless such agreement--
- (A) is in writing,
 - (B) was executed by the depository institution and any person claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the depository institution,
 - (C) was approved by the board of directors of the depository institution or its loan committee, which approval shall be reflected in the minutes of said board or committee, and
 - (D) has been, continuously, from the time of its execution, an official record of the depository institution.
- (2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.--An agreement to provide for the lawful collateralization of--
- (A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;
 - (B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;
 - (C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or
 - (D) one or more qualified financial contracts, as defined in section 11(e)(8)(D), shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.

[Codified to 12 U.S.C. 1823(e)]

[Source: Section 2[13(e)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 889), effective September 21, 1950, as amended by section 113(m) of title I of the Act of October 15, 1982 (Pub. L. No. 97--320; 96 Stat. 1474), effective October 15, 1982; section 217(4) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 256), effective August 9, 1989; section 317 of title III of the Act of September 23, 1994 (Pub. L. No. 103--325; 108 Stat. 2223), effective September 23, 1994; section 909 of title IX of the Act of April 20, 2005 (Pub. L. No. 109--8; 119 Stat. 183), effective April 20, 2005]