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VIA ELECTRONIC MAIL

December 1, 2008

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street N.W.
Washington, D.C. 20429

Re: Deposit Insurance Coverage for Revocable Living Trust Accounts
73 *Federal Register* 56706, September 30, 2008

Dear Mr. Feldman:

The American Bankers Association (ABA) is responding to the interim rule by the Federal Deposit Insurance Corporation (FDIC) to simplify the deposit insurance rules for revocable trust accounts by eliminating the concept of “qualifying beneficiaries.”¹ Our members are keenly interested in this interim rule because it both expands the beneficiaries eligible for revocable trust accounts and, at the same time, bolsters public confidence in the nation’s banking system.

ABA supports the proposal and makes recommendations for further changes that would amend the recordkeeping rules for revocable trust accounts to providing that titling requirements are satisfied by computer records that indicate the type of account ownership.

Discussion

FDIC’s current rules provide that all revocable trust accounts are insured up to the Standard Maximum Deposit Insurance Amount (SMDIA)—currently \$250,000—per “qualifying beneficiary” designated by the owner of the account.² If there are multiple owners of a revocable trust account, coverage is available separately for each owner, per “qualifying beneficiary” as to each owner. Qualifying beneficiaries are defined as the owner’s spouse, children, grandchildren, parents and siblings. The interim rule would eliminate the concept of “qualifying beneficiaries” and instead permit beneficiaries of revocable trust accounts to be any natural person or charitable organization.

¹ The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation’s banking industry and strengthen America’s economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry’s \$13.6 trillion in assets and employ over 2 million men and women.

² As a result of the statutory increase in deposit insurance enacted in the Emergency Economic Stabilization Act on October 3, 2008, the maximum amount of deposit insurance in all of FDIC’s rules is \$250,000.

The interim rule would also change the treatment of life estates in formal revocable trust accounts to provide that each such interest will be deemed to be \$250,000. Finally, the interim rule would continue to provide revocable trust treatment for revocable trusts that have become irrevocable due to the death of the owner(s).

The elimination of the qualified beneficiary requirement will be most welcomed by those who have previously been unable to take advantage of this type of deposit account ownership because they had no qualifying beneficiaries. The addition of charitable organizations as permissible beneficiaries will also provide further flexibility to permit depositors to retain greater amounts of insured funds in their banks. In addition, ABA believes that the provisions concerning the treatment of life estates and irrevocable trusts springing from revocable trusts are appropriate and will greatly simplify calculation of the amount of deposit insurance on revocable trust accounts.

To balance the need to make the deposit insurance rules readily understandable while retaining reasonable limitations on coverage levels, the interim rule would alter coverage for revocable trust owners with (1) more than five times the SMDIA (currently \$1.25 million) in their accounts *and* (2) who name six or more different beneficiaries of the trust(s). Deposit insurance coverage for such accounts would be the *greater* of either \$1.25 million or the total of all the beneficiaries' interests in the account, limited to \$250,000 per beneficiary.

Importantly, coverage for owners of revocable trust accounts containing less than \$1.25 million would be provided at up to \$250,000 per beneficiary without regard to any unequal interests. By contrast, the coverage of such accounts with more than \$1.25 million *and* six or more beneficiaries would be based on the particular interest of each beneficiary, limited to a maximum of \$250,000 per beneficiary.

To illustrate the difference between these two coverage rules, assume a depositor has a revocable trust account in which four of five beneficiaries are to receive \$100,000, while the fifth gets the remainder in the account. If the account contained \$1.25 million when the bank failed, the owner would be eligible for deposit insurance coverage of \$1.25 million, or \$250,000 per each of five beneficiaries, regardless of the unequal interests. However, if that same revocable trust contained \$1.5 million and five of six beneficiaries were to receive \$100,000 with the sixth getting the remainder, the total of the deposit insurance per beneficiary interest is \$750,000: \$500,000 (\$100,000 for each of five beneficiaries) and \$250,000 (for the remainder beneficiary). Because the applicable rule for determining deposit insurance coverage is the *greater* of \$1.25 million or the total interests of the beneficiaries (limited to \$250,000/beneficiary), the owner would be eligible for \$1.25 million of deposit insurance coverage.

While ABA agrees that the balance FDIC has struck is a reasonable one, we are aware that the different treatment of accounts with more than \$1.25 million and six or more beneficiaries has caused significant confusion among bankers due to the treatment of the unequal interests. We also recognize that the vast majority of revocable trust accounts are likely to be below the two thresholds. Accordingly, after the agency has gained experience with the provision, we ask FDIC to review the differentiation to see if it is warranted.

Account Titling. FDIC's deposit insurance rules have long required that the title of a revocable trust account reflect the nature of the account, whether through the inclusion of the words "trust," "in trust for," payable on death," or abbreviations for those or similar terms. The purpose of the requirement was to make it easier for FDIC resolutions staff to quickly determine which accounts might be eligible for more than the standard amount of deposit insurance.

Because most insured institutions now have computerized recordkeeping, bankers often ask whether the use of a computer code to denote account ownership is sufficient for revocable trust titling purposes. We understand that this is not permissible under the current rules, and we strongly urge FDIC to reconsider the revocable trust titling requirements in light of new types of information systems.

Conclusion

In conclusion, ABA supports the elimination of the “qualified beneficiaries” restriction for revocable trust accounts, as well as the other provisions of the interim rule.

If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Cristeena G. Naser". The signature is written in a cursive, flowing style.

Cristeena G. Naser