

# PASS-THROUGH DEPOSIT INSURANCE COVERAGE (12 C.F.R. § 330.5; 12 C.F.R. § 330.7)

## I. Definition

“Pass-through” deposit insurance is a method of insuring depositors whose funds are placed and held at an FDIC-insured bank through a third party. Pass-through insurance is not a separate ownership category or ownership type. Pass-through refers to arrangements through which deposit accounts are established by a third party for the benefit of one or more other parties, also known as principals. The deposit account can be established for the benefit of a single owner or it can be a commingled account where deposits from multiple principals are deposited in the same account.

## II. Common Pass-through Arrangements

Common pass-through arrangements include, but are not limited to:

- Parent acting as guardian for a minor child (e.g., “Uniform Transfer to Minors” or (UTMA) or “Uniform Gifts to Minors” (UGMA))
- Lawyer or law firm holding client funds (IOLTA)
- Executors, estate administrators, or other similar roles
- Decedent estate accounts
- Agents, custodians, nominees, trustees (other than trustees of revocable or irrevocable trusts), or fiduciaries
- Companies that offer financial products or services through partnerships or arrangements with FDIC-insured banks
- Brokers who offer brokered CDs
- Companies that place their customers’ funds into different banks to help customers maximize their deposit insurance coverage

The third party in these arrangements may be referred to in account agreements and other documents as a fiduciary, custodian, agent, trustee, guardian, or similar term. Some of these terms have specific legal meanings in other contexts, but for purposes of pass-through insurance, the concept is that there is a person or entity depositing funds at an FDIC-insured bank on behalf of the actual owner of the funds.

Accounts with pass-through deposit insurance coverage are not insured as a separate ownership category. The deposit insurance coverage for such accounts depends on the actual ownership

category in which the principal or owner holds the funds. For example, ABC Brokerage Firm established a single account for Lisa Johnson at AnyTown Bank.

In this scenario, Lisa Johnson is the owner of the funds and her account would be added with any other single accounts she has at AnyTown Bank and insured as her single account for up to \$250,000.

In other words, assuming Lisa has other single accounts at AnyTown Bank, she does not receive separate coverage simply because the brokerage firm opened one of the accounts. However, assuming the requirements discussed below are met, coverage is provided as though the actual owner (Lisa, in this example) directly opened the account at the IDI. Note that if the pass-through insurance requirements are not satisfied, the deposits will be combined with all other deposits in the broker's name, and insured to the broker for up to \$250,000.

### III. Requirements

The FDIC reviews potential pass-through arrangements at the time the IDI fails to determine if the requirements for pass-through insurance are satisfied. Deposits held by a third party on behalf of one or more principals are insured on a pass-through basis as the deposits of the principal (the actual owner) to the same extent as if the deposits were deposited directly by the principal only if *all* of the following three requirements are met:

1. Funds must be in fact owned by the principal and not by the third party who set up the account (i.e., the fiduciary or custodian who is placing the funds). To confirm the actual ownership of the deposited funds, the FDIC may review:
  - a. The agreement between the third party establishing the account and the principal
  - b. Applicable state law
2. The IDI's account records must indicate the agency nature of the account (e.g., XYZ Company as Custodian for employees, XYZ for the benefit of (FBO) of customers, Jane Doe UTMA John Smith, Jr.). Note that in some instances, an account might be titled in the name of the insured bank itself while reflecting that it is held for benefit of another party (e.g., *AnyTown Bank FBO XYZ Company Customers*).
3. The records of the IDI, third party depositing the funds, or another third party in the usual course of business must indicate both the identities of the principals as well as their ownership interests in the deposit. Note that the third party does not have an ownership interest in the deposit.

If *all* of these requirements are not satisfied, the deposits will be insured to the named account owner (typically the third party), aggregated with any other funds that the third party holds at the same bank in the same deposit insurance category. This could result in uninsured deposits.

The first requirement above will not be satisfied if the third party depositing the funds has entered into a debtor/creditor relationship with the purported owner as opposed to an agent/principal relationship. The creation of a debtor/creditor relationship may occur if the purported agent has changed the terms of the IDI's deposit contract, such as the terms relating to maturity dates or interest rates. For example, if a customer of a deposit broker is promised by the third party that he or she will earn 3% on his or her deposit when the IDI is paying only 2%, the third party would be a debtor with an independent obligation to pay 3%.

In such a scenario, the deposits at the IDI would not be eligible for pass-through coverage to the customers. Rather, the deposits would be treated as corporate deposits belonging to the third party.

The scenario above (in which the third party pays interest in excess of the interest paid by the IDI) should be contrasted with scenarios in which a third party retains the interest (or a portion of the interest) paid by the IDI as the agent's fee. In the latter scenario, pass-through coverage is possible because the agent does not assume independent debt obligations. Of course, the agent should disclose the existence of all such fees to its customers.

#### **IV. Requirements for Multi-Tier Pass-Through Arrangements**

Accounts utilizing pass-through insurance may involve multiple levels of relationships. For example, one agent may hold deposits as nominee for another agent who in turn holds the deposits as an agent for a third party, who in turn is an agent for a fourth party. For deposit accounts that involve multiple levels of relationships, there are two ways to satisfy the FDIC's disclosure rules:

##### **Option 1:**

- a. Indicate on the deposit account records the existence of each and every level of the relationship; and
- b. Identify, at each level, the name and interests of the entity on whose behalf the party at each level is acting.

##### **Option 2:**

- a. Indicate on the deposit account records that the depositor is acting on behalf of certain persons or entities who may, in turn, be acting in a capacity for others; and
- b. Indicate the existence of additional levels of relationships in records maintained in good faith and in the normal course of business by parties at subsequent levels; and
- c. Indicate at each of the levels the names and interests of the persons 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 on behalf of others unless the possible existence of such a relationship is revealed at some previous level in the chain.

## V. Aggregation of Deposits

*Pass-through is not a separate ownership category.* As detailed in this section, accounts held by a third party, provided all the requirements are met, are insured based on the actual ownership of the funds. Therefore, deposits held through a pass-through arrangement are added to a depositor's other accounts in the same ownership category at the same IDI.

The manner in which the funds are deposited, whether directly by the actual owner or through a third party, does not affect aggregation. In other words, since accounts involving pass-through arrangements are not a separate ownership category, deposit insurance coverage is determined based on the ownership category in which the funds are held. For example, if a fiduciary, such as a broker, has opened a single account on behalf of Barry Richards in XYZ Bank and Barry Richards directly opens another single account directly with XYZ Bank, both of these deposits are combined and insured for up to \$250,000.

## VI. Failure to Meet Requirements

If the ownership, disclosure, and recordkeeping requirements discussed in this section are not met, the accounts will be insured as the deposits of the named account holder in either the Single Accounts or Business/Organization Accounts category. These deposits will then be added to any other deposits the third party may hold in the same ownership category at the same IDI, and the total will be insured for up to \$250,000.

For more information on how pass-through deposit insurance coverage works, including accounts opened by IDIs when acting in a fiduciary capacity, please review FDIC Financial Institution Letter FIL-29-2010, Guidance on Deposit Placement and Collection Activities. For more information on how the FDIC processes brokered deposits when an IDI fails, please refer to the FDIC's [Deposit Broker's Processing Guide](#).