

## Are My Trust, Fiduciary and Custody Assets Safe? Backgrounder from the ABA

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### Understanding the difference between account types

Many bank customers are confused about the difference between deposit, trust, fiduciary and custodial accounts. Here are some simple answers:

Assets held in **deposit accounts** become liabilities of the bank. As such, deposits create a debtor-creditor relationship between the bank and the depositor. In exchange for the money deposited, a liability of the bank is created which is the bank's contractual promise to repay the amount on deposit plus, where applicable, interest. As a result of a recent change in the law, through December 31, 2009 deposit accounts are insured by the Federal Deposit Insurance Corporation (FDIC) up to \$250,000 per individual per bank. In addition and, again, through December 31, 2009, the FDIC provides optional insurance for the full amount of funds held in transaction accounts (such as checking accounts) that do not pay interest. *Check with your bank to see if it has opted out of this optional full insurance or check at [www.fdic.gov](http://www.fdic.gov). **Importantly**, trust and custody transaction accounts that hold available cash for more than one account and sweep these funds into overnight investments are **not** eligible for this optional coverage.*

Assets, including certificates of deposit, held in **trust and fiduciary accounts** other than cash do not become assets or liabilities of the bank and are, indeed, segregated from the bank's assets. The bank acts as trustee or fiduciary to the account and, in this connection, provides investment management, investment advice and other services to the account. Account ownership remains vested in the individuals or entities for whose benefit the bank is acting as trustee or fiduciary and the assets are not subject to the claims of creditors. Cash in trust and fiduciary accounts that are transaction accounts that do not pay interest may be fully insured by the FDIC. Cash held in the trustee bank in other types of deposit accounts is insured up to \$250,000 and any amount over \$250,000 must be fully collateralized by the trustee.

Assets, including certificates of deposit, held in **custodial accounts** in the trust department of a bank, other than cash, do not become assets or liabilities of the bank and are segregated from the bank's assets. The bank's role as custodian is to hold the assets for safekeeping, to collect dividends and interest and provide other similar services. Account ownership in the assets, other than cash, remains vested in the individuals or entities for whose benefit the bank is acting as custodian and the assets are not subject to the claims of creditors. Cash in custody accounts that is held in non-interest bearing transaction accounts may be fully insured by the FDIC. Cash held in the trustee bank in other types of deposit accounts is insured up to \$250,000.

### What happens if a bank fails?

Since **deposit accounts** become liabilities of the bank, it follows that the depositor would become a creditor in the event a bank failed. However, the FDIC generally fully insures depositors whose funds are held in non-interest bearing transaction accounts. Other types of deposit accounts are insured for up to \$250,000 per individual per bank.

Since assets held in **trust, fiduciary and custodial accounts** (other than cash) do *not* become assets or liabilities of the bank (title is held by the account's owner(s)), it follows that none of this property is subject to the claims of the bank's creditors. As a result, a failure of a bank will have no adverse effect on trust, fiduciary or custodial accounts: they remain the property of the account's owner(s).

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In the event that a bank with trust, fiduciary or custodial powers fails, the FDIC will seek to transfer responsibility for administration of the accounts to a successor trust institution as quickly as possible. Provided this effort is successful, the account beneficiaries would need to either accept this new arrangement or make provisions with the successor bank for alternative arrangements.

Should the search for a successor trustee to the failed bank be unsuccessful, the FDIC will then promptly notify all affected beneficiaries to either personally reclaim their property or designate an alternate institution to which the trust, fiduciary or custodial property may be conveyed.

Therefore, the safety of trust, fiduciary and custodial assets is not dependent upon whether the bank has assets greater than its liabilities. Property held in these accounts belongs to the owner(s) of the accounts and would be unaffected by a bank failure.

*This Backgrounder is provided with the understanding that the American Bankers Association is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought. Contact Cristeena Naser at (202) 663-5332 or e-mail [cnaser@aba.com](mailto:cnaser@aba.com)*

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