



# Regulatory Panel

Division of Risk Management Supervision

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# Overview

- FDIC Asset Management Data
- Examination Priorities and Trends
- Asset Management Trending Topics
- Selected Financial Institution Letters
- Selected FDIC Manual Updates

# FDIC ASSET MANAGEMENT DATA

	<u>Managed</u>	<u>Non-Managed</u>	<u>Total Assets</u>
Personal Trust and Agency Accounts	\$114,915,990	\$ 46,256,096	\$161,172,086
Employee Benefit – Defined Contribution	\$ 12,167,641	\$ 29,622,960	\$ 41,790,601
Employee Benefit – Defined Benefit	\$ 20,628,806	\$ 32,149,172	\$ 52,777,978
Other Employee Benefit and Retirement Related	\$ 30,147,647	\$ 10,307,733	\$ 40,455,380
Corporate Trust And Agency Account	\$ 1,813,200	\$ 34,209,572	\$ 36,022,772
Investment Management and Investment Advisory	\$134,418,803	\$ 9,017,021	\$143,435,824
Foundation and Endowment	\$ 32,082,651	\$ 1,577,790	\$ 33,660,441
Other Fiduciary Accounts	\$ 5,244,117	\$ 32,867,725	\$ 38,111,842
<b>Total Fiduciary Accounts</b>	<b>\$351,418,855</b>	<b>\$196,008,069</b>	<b>\$547,426,924</b>
Custody and Safekeeping Accounts		\$597,592,678	\$597,592,678

Source 12-31-2022 Call Report Data RC-t ( in \$ thousand)

# Examination Focus Priorities and Trends

- Large Bank examinations
- Transaction testing and account reviews as we return back to on-site examinations
- Succession Planning
- Regulatory Reporting – Schedule RC-T
- Trust Committee Documentation
- Unique Assets
- Third Party Risk Management

# Asset Management Trending Topics

- Digital Assets Investing and Custody
- Environmental, Social, Governance (ESG) Investing
- Secure 2.0 Act of 2022
- Department of Labor's (DOL) PTE 2020-02
- Simplification of Deposit Insurance Rules for Trust

# Digital Assets and Custody

## Engaging in Crypto-Related Activities (Investing or Custody)

- Ensure the specific activity is in compliance with relevant laws, including those related to anti-money laundering/countering the financing of terrorism, and consumer protection.
- Ensure the activity is engaged in a safe and sound manner.
- Ensure the bank has put in place appropriate measures and controls to identify and manage the risk associated with the activity.
  - Sufficient Risk Assessment
  - Proper Vendor Due Diligence
  - Trust Committee Oversight

# Digital Assets and Custody

- An FDIC-supervised institution that engages, or intends to engage in, any Crypto-related activities should notify the FDIC and provide any information requested by the FDIC that will allow the agency to assess the safety and soundness, consumer protection, and financial stability implications of such activities.
- The FDIC will review the relevant information submitted by the FDIC-supervised institution related to crypto-related activities and provide relevant supervisory feedback to the institution, as appropriate.

## **Staff Accounting Bulletin No. 121 (Mar. 2022)**

- Addresses accounting by an SEC reporting entity for activities involving an obligation to safeguard customer crypto-assets.
- Requires recording of a safeguarding liability and a corresponding asset at fair value.

# Digital Assets and Custody

## **Deposit Insurance**

FDIC deposit insurance does not cover the failure of a non-bank entity, such as a crypto company. Deposit insurance does not protect consumers invested in non-deposit products such as stocks, bonds, mutual funds, securities, commodities, or a material omission in violation of Section 18(a)(4) of the FDI Act and Part 32 crypto assets.

Recently – some Cease & Desist Orders involving Crypto exchanges and non-financial service provider from making false and misleading statements about FDIC Insurance.

Section 18(a)(4) of the FDI Act, 12 U.S.C. § 1828(a)(4), and Part 328 prohibit any person from using the FDIC's name or logo, or similar terms, to represent or imply that an uninsured deposit liability, obligation, certificate, or share is insured, or from knowingly misrepresenting the extent and manner in which a deposit liability, obligation, certificate or share is insured under the FDI Act. Further, Part 328 requires that whenever anyone other than an insured depository institution states that a product is insured by the FDIC, that person must identify the insured depository institution(s) where the funds will be placed, and failure to do so constitutes 8.

# Environmental, Social, Governance Investing

ESG has rapidly become a highly desirable investment strategy for investors as well as a source of considerable growth for investment managers.

- The DOL issued a final rule on 11/22/2022 that allows plan fiduciaries to consider climate change and other environmental, social and governance factors when selecting retirement investments and exercising shareholder rights, such as proxy voting. This reverses the prior administration's stance on these factors, and clarifies actions plan fiduciaries can take going forward.

➤ <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/final-rule-on-prudence-and-loyalty-in-selecting-plan-investments-and-exercising-shareholder-rights>

# Secure 2.0 Act of 2022

Congress passed SECURE Act 2.0 which will implement several changes for retirement savings, including:

- Automatic enrollment
- Saver's match
- increased catch-up contributions,
- and changes to emergency withdrawals and saving.

As part of the examination process, the FDIC will be reviewing the compliance with the mandatory distribution and other record keeping requirements.

- Mandatory Distributions – SECURE Act 2.0 raises the mandatory distribution age from 72 to 73 (starting in 2023) and then to 75 (starting in 2033).

## DOL PTE 2020-02

DOL PTE 2020-02 expands the definition of a “prohibited transaction” under ERISA to include any recommendation for rolling over 401(k) assets into an IRA (or from one IRA to another) when doing so would increase the compensation for the advisor. To qualify for an exemption to this rule, advisors must comply with the below key conditions:

- Acknowledging Fiduciary Status
- Compliance with DOL’s Impartial Conduct Standards
- Provide written disclosure to clients of why the recommendation to rollover assets is the client’s best interest
- Conduct an annual review of the firm’s compliance with PTE 2020-02 in writing to the senior executive to make certification of report contents
- Adopt and implement policies and procedures to comply with the DOL’s Impartial Conduct Standards and mitigate conflicts of interest.

# Simplification of Deposit Rules for Trust

## 12 CFR Part 330-Deposit Insurance Coverage

### Purpose of the Rulemaking

- Currently, three different sets of rules can apply to trust deposits at FDIC-insured banks, confusing depositors.
- Trust rules often require detailed and time consuming review of trust documentation, which may cause delays in making payments after a bank failure.
- Use of complex trusts by depositors has increased, adding to the difficulty of deposit insurance determinations.

# Simplification of Deposit Rules for Trust

## Overview of Amended Rules

- Amendments apply to all FDIC-insured banks and savings associations
- The revocable trust and irrevocable trust deposit insurance categories are merging into a category known as trust accounts
  - This category also includes informal revocable trusts, such as payable-on-death accounts
  - A separate insurance category is being retained from insured depository institution as trustee of an irrevocable trust, as it is based in statute

# Simplification of Deposit Rules for Trust

## Trust Accounts Category

One streamlined calculation for coverage, based on the method currently used for revocable trusts with 5 or fewer beneficiaries:

- A grantor's trust deposits are insured up to \$250,000 multiplied by the number of beneficiaries, not to exceed five beneficiaries
- Effectively limits coverage of each grantor's trust deposits to \$1,250,000 per insured depository institution

# Selected Financial Institution Letters (FIL)

- FIL-35-2022-Advisory to FDIC-Insured Institutions Regarding Deposit Insurance and Dealing with Crypto Companies
  - <https://www.fdic.gov/news/financial-institution-letters/2022/fil22035.html>
- FIL-16-2022 Notification of Engaging in Crypto-Related Activities
  - <https://www.fdic.gov/news/financial-institution-letters/2022/fil22016.html>
- FIL-13-2022 - Request for Comment on Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions
  - <https://www.fdic.gov/news/financial-institution-letters/2022/fil22013.html>

# Selected Financial Institution Letters (FIL) cont.

FIL-75-2021 – Joint Statement on Crypto-Asset Policy Sprint Initiative and Next Steps

- <https://www.fdic.gov/news/financial-institution-letters/2021/fil21075.html>

FDIC Fact Sheet to the Public on FDIC Deposit Insurance and Crypto Companies

- <https://www.fdic.gov/news/press-releases/2022/pr22058.html>

FIL-07-2022 – Final Rulemaking on Simplification of Deposit Insurance Rules for Trust and Mortgage Service Accounts

- <https://www.fdic.gov/news/financial-institution-letters/2022/fil22007.html>

# Selected FDIC Manual Updates

## FDIC RMS Manual Update-Examination Planning Section 21.1

- <https://www.fdic.gov/regulations/safety/manual/section 21-1.pdf>

## FDIC Trust Manual Update – Management Section 1

- <https://www.fdic.gov/regulations/examinations/trustmanual/section-01/section-01.pdf>



**THANK  
YOU**

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