

Joint Taskforce on Deposit Account Control Agreements

R. Marshall Grodner, Marvin D. Heileson, Oliver I. Ireland, John D. Pickering and Edwin E. Smith, Co-Chairs

After the Joint Task Force on Deposit Account Control Agreements unveiled its new form of deposit account control agreement at the Section's 2006 Spring meeting in Tampa, Florida, and the initial report of the task force was published in 61 The Business Lawyer 745 (2006), the task force began to develop a series of inserts designed to accommodate transactions other than the paradigm transaction originally contemplated by the deposit account control agreement (the "DACA") developed by the task force. These transactions include those involving a standing disposition instruction, lock box arrangements, a security interest in a time deposit or other deposit account not payable on demand, the blocking of the debtor's access to the deposit account without a standing disposition instruction, a deposit account from which funds are automatically swept into an omnibus investment account, and first and second lien arrangements over the same deposit account.

All of these inserts have now been promulgated by the task force and are available, together with the task force's initial report and the DACA, on the [task force's web site](#). Each insert contains footnotes and, in one case, a prefatory note to assist the parties in selecting the proper insert for their transaction and in guiding them through possible choices contained in the insert where the task force recognized that different solutions may be present in the market place.

The task force plans to publish an additional report that will summarize and further explain the operation of these inserts. In addition, the task force will make a telephone presentation to the Section relating to the inserts on March 11, 2008, from 1:00 to 2:30 p.m. Eastern time, and will also conduct a program at the Section's 2008 annual meeting in New York in August.

Two projects remain for the task force. The first project is to develop, with the assistance of the Section's Commercial Finance Committee's Subcommittee on Securitizations and Derivatives, a DACA specifically designed for securitizations.

The second project is to develop an agreement relating to security interests in health-care receivables. Under applicable federal law relating to Medicare and Medicaid receivables, with certain exceptions, the secured party may not have a right to collect health-care receivables directly from the account debtor and may not be able to have a control agreement with the depositary bank for a deposit account to which the proceeds of the receivables are credited. The task force is developing a form of agreement among the debtor, the secured party and the depositary bank that falls short of a control agreement but which contains certain safeguards to protect the secured party from the proceeds being diverted by the debtor.

The co-chairs of the task force are Marshall Grodner, Marvin D. Heileson, Oliver I. Ireland, John D. Pickering and Edwin E. Smith. Edwin E. Smith serves generally as the reporter. Eric Marcus serves as the reporter for the securitization DACA. Leslie Polt serves as the reporter for the health-care receivables agreement.