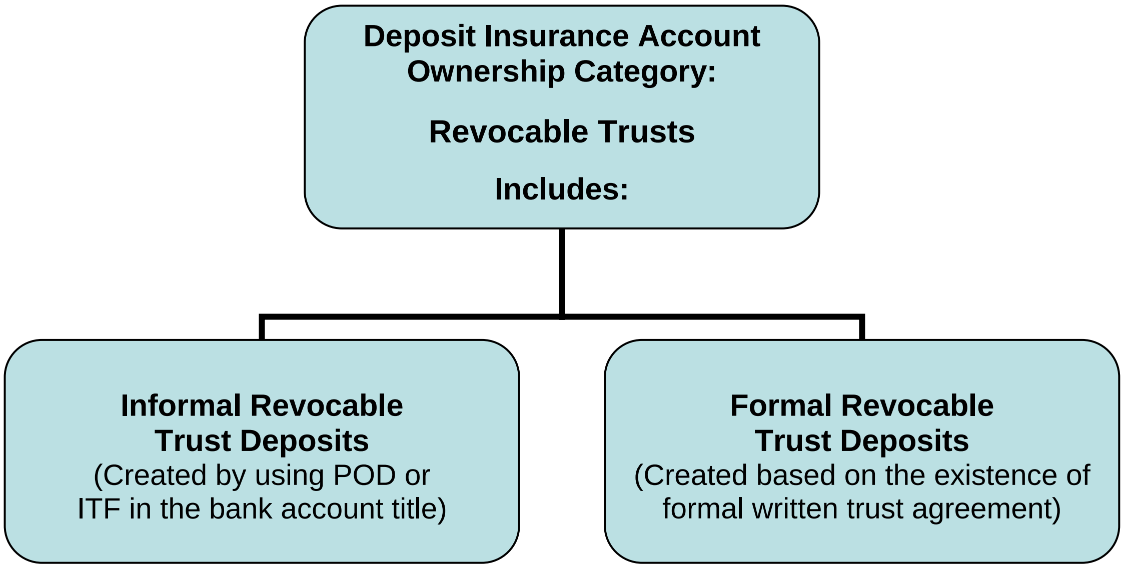
Chapter 2: Overview of Revocable Trusts



The term revocable trust deposit refers to any deposit account that indicates an intention that the funds will pass to one or more named beneficiaries upon the death of the owner. A revocable trust account can be revoked or terminated at the discretion of the owner. The FDIC's insurance regulations distinguish between two types of revocable trusts – *informal trusts and formal trusts*.

Informal revocable trusts, sometimes referred to as "payable on death" (POD) accounts, "in trust for" (ITF) accounts, "as trustee for" accounts, “transfer on death” (TOD), or Totten trust accounts, are created when the account owner signs an agreement (which is usually part of the bank's signature card or other documentation) stating that the funds are payable to one or more beneficiaries upon the owner's death.

Formal revocable trusts, also known as living or family trusts, are written trusts created for estate planning purposes. There is a wide range of descriptive names and terms that are sometimes applied in describing a formal revocable trust agreement. For example, trust agreements may be identified as living trusts, marital trusts, survivor’s trusts, bypass trusts, generation skipping trusts, AB trusts, special needs trusts and a long list of other names.

Regardless of the name or description that appears on the trust, a threshold issue for calculating FDIC deposit insurance coverage is whether the trust actually is revocable at the time of a bank failure. Since trust agreements can last decades, it is possible for the status of the trust to change over time. For example, a revocable trust can become irrevocable upon the death of an owner of the revocable trust. The importance of this issue in calculating FDIC deposit insurance coverage will be discussed throughout the following chapters of the Guide.

Typically, formal revocable trust agreements describe the owner using one of the following terms: *grantor, settlor, trustor, maker or donor.* For consistency, this Guide will use the term "owner" when describing the individuals who own either informal or formal revocable trust deposits.

The FDIC's regulations consider both informal revocable trust deposits (for example, payable on death accounts) and deposits in the name of formal revocable trusts (for example, living or family trusts) as revocable trusts accounts. The FDIC's rules for insurance coverage of informal and formal revocable trust deposits are essentially the same. There are significant differences, however, in the way the two types of revocable trusts are structured (for example, living trusts may provide beneficiaries with life estate interests) that can affect the calculation of deposit insurance coverage. These similarities and differences, and their impact on FDIC deposit insurance coverage, will be described in the following chapters of this Guide.

Regulatory Change Effective April 1, 2004

The FDIC amended its rules on deposit insurance coverage for revocable trust accounts (12 C.F.R. § 330.10) on April 1, 2004. Before the April 2004 rule change, the FDIC advised depositors to limit deposits based on a formal revocable trust agreement to no more than $100,000 at one FDIC-insured bank. The reason was the possible existence within the trust agreement of contingencies that affect beneficiaries' interests in the trust.

Before April 1, 2004, the FDIC's revocable trust regulations provided that if a formal trust agreement had contingent interests, then all contingent interests would be added together and insured up to a maximum of $100,000. Due to the uncertainty this rule created in calculating the actual amount of FDIC deposit insurance coverage for formal revocable trust agreements, the FDIC modified its rules to provide that the FDIC will calculate coverage for revocable trust accounts without regard to the existence of contingencies in a trust agreement. As a result, formal revocable trust agreements now are insured based on the terms and conditions of the trust without regard to the existence of contingencies affecting the beneficiaries' interests.

<u>Note</u>: Contingencies still are considered in calculating coverage for irrevocable trust agreements. (See Chapter 6.)

The April 2004 regulatory change also modified the FDIC's recordkeeping requirements for formal revocable trusts. FDIC-insured institutions no longer need to maintain a copy of the trust agreement or information about the beneficiaries listed in the trust agreement. For deposits opened based on a formal revocable trust agreement, FDIC insured institutions are only required to have the title of the account reflect that the funds in the account are held pursuant to a trust.

<u>Note</u>: The FDIC requirements for establishing an informal revocable trust (payable on death) accounts remain unchanged. The names of the beneficiaries must be identified specifically by name in the bank's account records.

Additional requirements for FDIC deposit insurance coverage for informal and formal trusts are described throughout this Guide.