C. Paragraph (h) is redesignated as paragraph (g) and redesignated paragraph (g) is revised to read as follows:

§ 1435.513 Allocation of marketing allotments to processors.

* * * * *

(f) During any fiscal year in which marketing allotments are in effect and allocated to processors, the total of the quantity of sugar and sugar products marketed by a processor shall not exceed the quantity of the allocation of the allotment made to the processor.

(g) Paragraph (f) of this section shall not apply to any sale of sugar by a processor to another processor that is made to enable the purchasing processor to fulfill the purchasing processor's allocation of an allotment. Such sales shall be reported to CCC within a week of the date of any such sale.

7. In § 1435.514, paragraph (a) is revised to read as follows:

§ 1435.514 Reassignment of deficits.

(a) From time to time in each fiscal year that marketing allotments are in effect, CCC will determine whether processors of sugar beets or sugarcane will be able to market sugar covered by the portions of the allotments allocated to them. These determinations will be made giving due consideration to current inventories of sugar, estimated production of sugar, expected marketings, and any other pertinent factors. These determinations will be made as soon and as frequently as practicable.

* * * * *

8. In § 1435.520, paragraph (b) is revised to read as follows:

§ 1435.520 Sharing processors' allocations with producers.

* * * * *

(b) Whenever allocations of a marketing allotment are established or adjusted, every sugar beet processor and sugarcane processor must provide to CCC such adequate assurances as are required to ensure that the processor's allocation will be shared among producers served by the processor in a fair and equitable manner which adequately reflects each producer's production history.

* * * * *

9. In § 1435.521, paragraph (c) (1) is revised to read as follows:

§ 1435.521 Proportionate shares for producers of sugarcane.

* * * * *

(c) * * *

(1) Establish the State's per-acre yield goal at a level (not less than the average per-acre yield in the State for the preceding 5 years) that will ensure an adequate net return per pound to producers in the State, taking into consideration any available production research data considered relevant;

* * * * *

10. In § 1435.528, paragraphs (a) and (b) are revised to read as follows:

§ 1435.528 Penalties and assessments.

(a) In accordance with section 359b(d)(3) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359bb(d)(3)), any sugar beet processor or sugarcane processor who knowingly markets sugar or sugar products in excess of the processor's allocation in violation of § 1435.513 shall be liable to CCC for a civil penalty in an amount equal to 3 times the U.S. market value, at the time the violation was committed, of that quantity of sugar involved in the violation.

(b) In accordance with section 359b(d)(3) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359bb(d)(3)), any manufacturer of CF who knowingly markets CF in excess of the manufacturer's marketing allotment shall pay to CCC a civil penalty in an amount equal to 3 times the U.S. market value, at the time the violation was committed, of that quantity of CF involved in the violation.

* * * * *

Signed at Washington, DC, on February 2, 1995.

Grant Buntrock,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–3288 Filed 2–8–95; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AB28

Deposit Insurance Coverage

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its deposit insurance regulations to require that: Upon request, an insured depository institution disclose in writing to depositors of employee benefit plan funds, its current Prompt Corrective Action (PCA) capital category, its capital ratios, and whether employee benefit plan deposits would be eligible for ''pass-through'' insurance coverage; upon opening an account comprised of employee benefit plan funds, an insured depository institution disclose in writing its PCA capital category, a description of the requirements for ''pass-through'' insurance coverage and whether, in the institution's judgment, the deposits are eligible for ''pass-through'' deposit insurance; and when employee benefit plan deposits placed with an insured depository institution would no longer qualify for ''pass-through'' insurance coverage, the institution disclose in writing to all existing employee benefit plan depositors within 10 business days the institution's PCA capital category and that new, rolled-over or renewed employee benefit plan deposits will not be eligible for ''pass-through'' deposit insurance coverage.

The FDIC is also making a number of technical amendments to its insurance regulations concerning commingled accounts of bankruptcy trustees, joint accounts, accounts for which an insured depository institution is acting in a fiduciary capacity, and accounts for which an insured depository institution is acting as the trustee of an irrevocable trust.

The intended effect of the final rule is to provide employee benefit plan depositors important information, not otherwise available, on ''pass-through'' deposit insurance which may be needed to prudently manage their funds. The technical amendments clarify the insurance rules involving commingled accounts of bankruptcy trustees, joint accounts, accounts for which an insured depository institution is acting in a fiduciary capacity, and accounts for which an insured depository institution is acting as the trustee of an irrevocable trust.

EFFECTIVE DATES: The amendments to 12 CFR 330.12 are effective on July 1, 1995. The amendments to 12 CFR 330.6, 330.7, 330.10 and 330.11 are effective on March 13, 1995.

FOR FURTHER INFORMATION CONTACT: Daniel M. Gautsch, Examination Specialist, Division of Supervision (202/898–6912) or Joseph A. DiNuzzo, Counsel, Legal Division (202/898–7349), Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

In May 1993, the FDIC Board of Directors (Board) revised § 330.12 of the FDIC's regulations (12 CFR 330.12) (58 FR 29952 (May 25, 1993)) to reflect the new limitations imposed by section 311 of the Federal Deposit Insurance Corporation Improvement Act of 1991

(Pub. L. 102–242, 105 Stat. 2236) (FDICIA) on the ''pass-through'' deposit insurance provided for employee benefit accounts. (''Pass-through'' insurance means that the insurance coverage passes through to each owner/beneficiary of the applicable deposit.) As required by section 311 of FDICIA, under the revised rules, whether an employee benefit plan deposit is entitled to ''pass-through'' deposit insurance coverage is based, in part, upon the capital status of an insured depository institution at the time the deposit is accepted.

Under §§ 330.12 (a) and (b), ''pass-through'' insurance shall not be provided if, at the time an employee benefit plan deposit is accepted, the institution may not accept brokered deposits pursuant to section 29 of the FDI Act (12 U.S.C. 1831f(a)) unless, at the time the deposit is accepted: (1) The institution meets each applicable capital standard; and (2) the depositor receives a written statement from the institution indicating that such deposits are eligible for insurance coverage on a ''pass-through'' basis.[1] The written statement required under this exception must be provided each time a deposit is made or additional employee benefit plan funds are placed with the insured institution. 58 *FR* 29957 (May 25, 1993).

Section 29 of the FDI Act prohibits insured depository institutions that are ''adequately capitalized'' but have not obtained a broker deposit waiver from the FDIC and ''undercapitalized'' institutions (or institutions in lower capital categories) from accepting brokered deposits.[2] A brokered deposit is defined in § 337.6 of the FDIC's regulations (12 CFR 337.6) as any deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker.

On December 8, 1993, the FDIC published in the **Federal Register** a proposed rule (58 *FR* 64521) to impose several specific disclosure requirements upon insured depository institutions regarding the availability of ''pass-through'' insurance coverage for employee benefit plan deposits. In summary, the proposed rule would have required that: (1) Upon request (within two business days after receipt of such request), an insured depository institution provide written notice to any existing or prospective depositor of employee benefit plan funds of the institution's leverage ratio, Tier 1 risked-based capital ratio, total risk-based capital ratio, PCA capital category and whether or not, in the opinion of the institution, employee benefit plan deposits made with the institution would be entitled to ''pass-through'' insurance coverage; (2) upon the opening of any account comprised of employee benefit plan funds, an insured depository institution provide written notice to the depositor of the institution's PCA capital category and whether or not such deposits are eligible for ''pass-through'' insurance coverage; (3) within two business days after an insured depository institution's PCA capital category changes from ''well capitalized'' to ''adequately capitalized'', the institution provide written notice to all depositors of employee benefit plan funds of the institution's new PCA capital category and whether or not new, rolled-over or renewed employee benefit plan deposits would be eligible for ''pass-through'' insurance coverage; and (4) within two business days after an insured depository institution's PCA capital category changes to a category below ''adequately capitalized'', the institution provide written notice to all depositors of employee benefit plan funds indicating that new, rolled-over or renewed deposits of employee benefit plan funds made on or after the date the institution's PCA capital category changed to a category below adequately capitalized will not be eligible for ''pass-through'' insurance coverage.

The FDIC issued the proposed rule, in part, because of numerous comments it received from various sources on the difficulty of obtaining public information concerning an insured institution's capital levels and on its current PCA capital category—information necessary to determine whether employee benefit plan deposits would be eligible for ''pass-through'' insurance coverage.

Discussion of the Final Rule and Comments on the Proposed Rule

The FDIC received 67 comment letters on the proposed rule. Thirty-seven were from banks and savings associations, seventeen from bank or thrift holding companies, seven from trade associations, and six from other interested parties. Numerous suggestions and recommendations were made to revise the proposal.

Only three commenters expressed support for all aspects of the proposed rule. The majority of comments recommended various revisions to make the proposal less burdensome. Many commenters noted that most institutions presently do not have a system for identifying employee benefit plan accounts and that more time was needed to provide the required disclosures to affected depositors. They also expressed concern about the administrative cost of complying with all aspects of the proposal. Others commented that the proposed rule might create a potential liability for insured institutions and promote bank ''runs.'' Most commenters suggested that the FDIC include optional sample disclosures in the regulation.

In issuing the proposed rule for comment the FDIC was cognizant of the attendant regulatory burden that would be imposed upon insured depository institutions. Thus, the FDIC attempted to balance the undesirability of imposing additional regulatory requirements on insured depository institutions with the importance of providing timely notice to existing and prospective employee benefit plan depositors of the extent of ''pass-through'' insurance coverage available for their deposits—information which is important to them and not otherwise generally available. In response to the public comments, the FDIC has modified the requirements of the proposed rule so that the final rule has fewer and less burdensome disclosure requirements than those proposed. The remaining requirements are believed to be essential, however, to ensure that the necessary deposit insurance information is provided to employee benefit plan depositors.

In FDICIA Congress for the first time linked deposit insurance coverage to the capital level of the insured depository institution. This relationship between the scope of deposit insurance and an institution's capital applies only to employee benefit plan deposits. This special category of deposit insurance coverage, therefore, requires special disclosure rules; otherwise, employee benefit plan depositors may be inappropriately disadvantaged. Given the nature of the statutory requirements for ''pass-through'' insurance coverage for employee benefit plan accounts, the Board believes the disclosure requirements are essential to safeguard the interests of employee benefit plan depositors and ultimately plan participants. As indicated below, however, the Board acknowledges that the disclosure requirements do not fully safeguard the interests of the owners of employee benefit plan deposits and believes that amendments to the insurance provisions of the FDI Act are

[1] The recordkeeping requirements of § 330.4 of the FDIC's regulations also would have to be satisfied. 12 CFR 330.12(a) & 330.4.

[2] ''Well capitalized'' insured institutions can, in certain circumstances, avoid a lapse in eligibility for ''pass-through'' insurance of employee benefit plan deposits, should the institution's PCA capital category be reduced to ''adequately capitalized'', by obtaining a broker deposit waiver from the FDIC.

needed to remedy the continuing potential exposure of those owners.

The following is a discussion of the comments received on the various aspects of the proposed rule including comments received on the specific issues raised in the proposed rulemaking:

A. Disclosures Upon Request

The proposed rule would have required that, upon request (within two business days after receipt of such request), an insured depository institution provide written notice to any existing or prospective depositor of employee benefit plan funds of the institution's leverage ratio, Tier 1 risked-based capital ratio, total risk-based capital ratio, PCA capital category and whether, in the opinion of the institution, employee benefit plan deposits placed with the institution would be eligible for ''pass-through'' insurance coverage. A majority of the commenters that specifically addressed this issue favored this provision. They cited the need for depositors to be able to obtain adequate information in order to make an informed decision about where to invest their funds. Those opposed to such a requirement cited the regulatory burden of developing policies and procedures, automation systems, training of customer service personnel and maintaining current capital-related information to ensure compliance with the requirement. Other commenters questioned the need to disclose this capital information because, in their view, the information would confuse most individuals.

A number of commenters also questioned the requirement that institutions make disclosures to prospective employee benefit plan depositors upon request. They indicated that individuals are free to take their business elsewhere if they are not satisfied with the information received. They suggested that market forces can address this issue and recommended that this requirement be deleted from the regulation.

The FDIC agrees that prospective customers are free to take their business elsewhere if they do not get the desired information. Existing customers, however, may have several reasons why they cannot easily move their accounts. Therefore, the final rule has been changed to require disclosures when requested by employee benefit plan customers that already have accounts at an insured institution.

The FDIC believes that the regulatory burden placed on institutions can be mitigated if adequate time is given to establish policies and procedures. Accordingly, the final rule contains a delayed effective date of July 1, 1995. In addition, the capital information to be disclosed is based on the most recently available data and need not be as of the date of the deposit. The FDIC believes that insured institutions should not have to develop any new, specific procedures to develop the capital information required by this portion of the rule. For example, institutions that are clearly ''well capitalized'' and have experienced only minor variations in their capital ratios since the filing of their last quarterly Consolidated Report of Condition and Income (Call Report) may use the capital ratios calculated at that time.

An institution's capital category and the availability of ''pass-through'' insurance are, in almost all cases, believed to be derived from financial information currently available. Further, only a very few insured depository institutions are not eligible for employee benefit plan ''pass-through'' deposit insurance coverage. (Based on September 30, 1994 regulatory reporting data only 279 of 12,774 insured depository institutions were less than ''well capitalized''.) Therefore, it is estimated that the regulatory impact of this portion of the rule will be insignificant.

Some commenters recommended that depositor requests be in writing and be mailed to a central location. The FDIC believes that once procedures are developed it should be no more burdensome to honor an oral request than a written one. In addition, imposing restrictions on existing depositors that request this information would hamper the purpose of providing timely information. Therefore, the FDIC has decided that depositor requests can be made orally or in writing to designated bank employees.

B. Disclosure Upon Opening an Account

The proposed rule also would have required that, upon the opening of any employee benefit plan account, the insured depository institution provide a written notice to the depositor of the institution's PCA capital category and whether or not such deposits are eligible for ''pass-through'' insurance coverage. Commenters generally expressed support for this provision. Some, however, questioned whether disclosing capital information was meaningful to an employee benefit plan depositor.

The FDIC continues to believe that it is essential that an employee plan depositor be notified about whether ''pass-through'' coverage is available for deposits placed with a depository institution. Moreover, based on the comments received on this and related issues, the FDIC also believes that when opening an employee benefit plan account depositors should be informed (or reminded of) the basic requirements of the law and regulations regarding the availability of ''pass-through'' insurance coverage for employee benefit plan deposits. Thus, the FDIC has revised this provision of the final rule to require that the written notice provided to an employee benefit plan depositor include an accurate explanation of the requirements for ''pass-through'' deposit insurance coverage. (A sample disclosure of this information is provided below.) Therefore, the final rule retains the requirement that the written disclosure statement indicate the institution's PCA capital category and whether, in the institution's judgment, the funds being deposited are eligible for deposit insurance coverage. The sample disclosure also contains language informing employee benefit plan depositors that additional information on the institution's capital condition may be requested.

C. Timing of Disclosures

The proposed rule would have required that certain information be provided within two business days to current or prospective employee plan depositors in three different situations: (1) When an institution received a request for information from an employee benefit plan depositor; (2) when an institution's capital category changed from ''well capitalized'' to ''adequately capitalized''; and (3) when an institution's capital category fell below ''adequately capitalized''. Regardless of whether or when notice is provided to the depositor, ''pass-through'' insurance coverage on new, rolled over or renewed deposits may cease immediately upon notice to the insured depository institution that its PCA capital category has been lowered. Thus, the proposed rule requested comments on the feasibility of compliance with the two-day notification requirement and, specifically, on whether a longer time frame might increase the period for which a depositor's employee benefit plan funds would be uninsured.

Of the 42 commenters that specifically addressed the time frame requirement, 40 stated that the two-business-day period was too short. The commenters recommended extending the time requirement from the proposed period of two business days to periods of time ranging from five days to 30 days. The most common recommendation was to extend the period to 10 business days, the same period of time as required under the Federal Reserve's Regulation DD (12 CFR part 230), which implements the Truth in Savings Act. Seven commenters recommended five business days indicating that the required disclosures could be made within five business days once policies and procedures had been established to ensure compliance with the regulation.

Based on the comments received on this issue, the Board has decided to require that the disclosures to be made upon request be made within five business days—the shortest period of time that it believes an institution could be expected to meet the time requirements. In arriving at this time period the FDIC attempted to balance the feasibility of complying with the requirement with the need for employee benefit plan depositors to know, on a timely basis, whether deposits are and will continue to be eligible for ''pass-through'' insurance coverage. Institutions are encouraged to provide the required disclosures sooner, if possible.

The five business day time frame begins upon the bank's receipt of the request and ends when the institution mails or delivers the required information to the depositor. ''Receipt'' means when an institution receives a request, not when it is received by a designated department of the institution.

Secondly, the FDIC has decided to extend to 10 business days the notification time frame when an insured institution must provide notice that new, renewed or roll-over employee benefit plan deposits placed with an institution will not be eligible for ''pass-through'' insurance coverage. The FDIC recognizes that this disclosure is more extensive than an individual request from an employee benefit plan depositor and generally will occur when an institution is experiencing financial problems. Institutions in this situation frequently have management deficiencies and weak internal controls. For these reasons, adoption of a slightly longer time frame is believed appropriate. Institutions are encouraged to provide disclosures sooner, if possible.

Despite its decision to extend the periods in which insured institutions must comply with the disclosure requirements of the final rule, the Board continues to be concerned about employee benefit plan funds that are deposited with an institution before the institution is required to notify depositors of the discontinuation of the availability of ''pass-through'' coverage on such deposits. An example would be where an institution becomes ''undercapitalized'' on Day 1 and a customer deposits employee benefit plan funds before the expiration of the 10 days within which the institution is required to notify employee benefit plan depositors that ''pass-through'' insurance will not be available for deposits placed after Day 1. Under the FDI Act and § 330.12, such deposits would not be eligible for ''pass-through'' coverage because at the time they were ''accepted'' the institution was undercapitalized—and, thus, not permitted to accept brokered deposits. The Board believes that Congress should consider amendments to the insurance provisions of the FDI Act to address this potential pitfall for employee benefit plan depositors and, particularly, the ultimate plan participants.

One commenter recommended that when an institution notifies existing employee benefit plan depositors that ''pass-through'' insurance coverage is no longer available, the affected depositors not be assessed a withdrawal penalty. This would pertain particularly to the situation where a depositor places employee benefit plan funds with an institution between the time that such deposits become ineligible for ''pass-through'' coverage and the time the institution notifies the depositor of the ineligibility of new deposits for such coverage. Because the ''pass-through'' coverage of only newly deposited funds is potentially affected by this time gap and then only if the institution fails, the FDIC has decided not to address the withdrawal penalty issue in the final rule. The institution and its employee benefit plan customers are free to negotiate this matter. The FDIC anticipates that insured institutions will waive any penalty fees in appropriate circumstances.

D. Disclosure When an Institution's PCA Capital Category Changes but ''Pass-Through'' Insurance Coverage Is Still Available

The proposed rule would have required an insured depository institution to provide a written notice to all employee benefit plan depositors when the institution's PCA capital category changed from ''well capitalized'' to ''adequately capitalized'', irrespective of whether employee benefit plan deposits still would be eligible for ''pass-through'' insurance coverage. The FDIC requested comment on whether a disclosure should be required upon such a reduction in an institution's PCA capital category but the institution had obtained a waiver from the FDIC under § 337.6 of the FDIC's regulations to accept brokered deposits, and thus, there would be no change in the availability of ''pass-through'' deposit insurance coverage for employee benefit plan deposits.

Of the 46 commenters that specifically addressed this issue, 40 were against requiring any disclosures if the availability of ''pass-through'' coverage had not changed. Commenters noted that providing disclosures would cause confusion among depositors, create an increased regulatory burden on the institution in having to explain to affected depositors why the notice was being sent even though the availability of ''pass-through'' insurance coverage had not changed, encourage disintermediation, promote financial instability within institutions, and encourage bank ''runs''. They also indicated that such a disclosure requirement would be contrary to the FDIC goals of promoting a safe and sound banking system and of limiting losses to the deposit insurance funds.

The FDIC concludes that this requirement would be an unnecessary burden and has decided to eliminate this provision from the final rule. Although a reduction in an institution's PCA capital category to ''adequately capitalized'' reflects a decline in an institution's capital level and, thus, may be helpful information for an employee benefit plan depositor, this change is only one of many factors that an employee benefit plan depositor should consider when monitoring the financial condition of an insured depository institution. In addition, the final rule requires that employee benefit plan depositors be notified if and when new, renewed or rolled-over employee benefit plan deposits will no longer be eligible for ''pass-through'' insurance coverage. Also, under the final rule, information on an institution's PCA capital category and whether ''pass-through'' coverage is available can be obtained from an institution under the ''upon request'' provision of the final rule.

E. Form of Disclosures

In the proposed rule the FDIC solicited specific comment on the form of disclosure. The five specific areas addressed were whether: (1) the required disclosures should have to be in a separate mailing; (2) a written acknowledgement from the intended recipient of the disclosure should be required; (3) the disclosure should be required to be prominent and conspicuous (for example, requiring bold type); (4) the disclosure should be part of the deposit agreement; and (5) other related information may be disclosed.

The FDIC received only a few comments on each of these areas. In general, commenters favored the option of using a separate mailing, the requirement that disclosures be ''prominent and conspicuous'', and the ability to include other related information in the disclosure—such as explaining why an institution had a capital deficiency. The respondents opposed requiring an institution to obtain a written acknowledgement from employee benefit plan depositors or requiring that the disclosures be part of the deposit agreement.

The FDIC has decided not to establish any specific forms or procedures on the required disclosures except for a general requirement that the required disclosures be ''clear and conspicuous.'' This phrase is believed to be more representative of the standard that disclosures must be in a reasonably understandable form. It does not require that disclosures be segregated from other material or located in any particular place or be in any particular type size.

Institutions may, at their discretion, use any of the above or other disclosure methods as long as it meets the ''clear-and-conspicuous'' standard and the time requirements. For example, an institution that is opening an employee benefit plan account may provide a separate written disclosure statement to the customer or reference the specific section of the deposit agreement that contains the disclosure information.

A reasonableness standard will be used when reviewing compliance with this section of the regulation. Institutions should consider the level of sophistication of a depositor when providing required disclosures to assure that they are communicated in a clear and understandable fashion. The FDIC believes that, in general, managers and administrators of employee benefit plans are more sophisticated financial persons than the average depositor.

F. Discussion of Sample Disclosures

The FDIC requested comment on whether the final rule should include a specific notice that institutions would have to provide to employee benefit plan depositors when an institution's PCA capital category changed from ''well capitalized'' to ''adequately capitalized'' or to a level below ''adequately capitalized.'' The majority of commenters specifically addressing this issue suggested that the FDIC provide sample language in the final rule but recommended that any sample disclosures be optional and that additional information be permitted to be disclosed to the employee benefit plan depositor—such as the reasons for an institution's capital deficiency. Other commenters expressed concern about the tone of the sample language included in the proposed rule while others suggested alternate language.

One commenter recommended that the FDIC also provide a sample disclosure when a depositor opens an employee benefit plan account. Other commenters suggested a disclosure that only informs the depositor whether employee benefit plan deposits would be eligible for ''pass-through'' coverage under the regulations.

Based on these comments, the FDIC has provided below two sample disclosure notices. One applies when a depositor opens an employee benefit plan account and includes a description of the requirements for ''pass-through'' insurance coverage. The other is when new, renewed or rolled-over employee benefit plan deposits would not be eligible for ''pass-through'' insurance coverage.

Additional information can be included with the disclosure as long as the overall disclosure statement meets the clear-and-conspicuous standard in the regulation. This may include, for example, additional information on an institution's capital deficiency and when, in the institution's opinion, the deficiency is expected to be corrected.

A few commenters noted that the sample disclosure statements indicate that the FDIC is not bound, in its insurance determinations, by information provided by insured institutions to depositors on the eligibility of the employee benefit plan deposits to ''pass-through'' insurance coverage. It is correct that the FDIC is not bound in its insurance determinations by information provided by an insured institution to its customers. The FDIC also is not responsible for or bound by a depository institution's failure to provide the required disclosure statements.

Although it may be helpful for an insured institution to inform employee benefit plan depositors that the FDIC is not bound by information provided by an insured institution to its customers, the Board believes the inclusion of that information in the required disclosure statements should be optional. The thrust of the disclosure requirements imposed by the final rule is to alert employee benefit plan depositors to the rules regarding ''pass-through'' insurance coverage and, in particular, to inform them when such coverage is no longer available. Requiring insured institutions to indicate whether the FDIC would be bound by incorrect information in the disclosure statements goes beyond the necessary scope of the required disclosure.

G. Separate Enforcement Provision

The FDIC requested comment on whether a free-standing enforcement and/or penalty provision should be included in the final rule. The few commenters that addressed this question requested that any sanctions imposed be limited to cases of intentional disregard or willful noncompliance and that civil money penalties should not be assessed. In the proposed rule, the FDIC indicated that violations of regulatory requirements would be subject to the full array of enforcement sanctions (including the imposition of civil monetary penalties) contained in section 8 of the FDI Act (12 U.S.C. 1818).

The FDIC has decided that separate enforcement provisions are not required to enforce the requirements of the final rule. The current provisions in section 8 of the FDI Act (12 U.S.C. 1818) are considered adequate and will be used to enforce compliance when deemed appropriate.

H. Inclusion of Information in Call Reports

The FDIC requested comment on whether the capital ratios and PCA category of an institution should be made a general disclosure requirement in, for example, quarterly Consolidated Reports of Condition and Income (Call Reports). In this way, existing and prospective employee benefit plan depositors and other interested parties would be able to obtain an official, publicly available statement of an institution which clearly indicates this important information.

Of the 15 commenters that addressed this issue, 12 favored adding the information to the Call Reports. Those in favor suggested that including this information would provide depositors with an efficient and independent means of obtaining relevant financial data on an insured institution. They also recognized that employee benefit plan administrators have a fiduciary obligation to determine the capital status of an insured institution. Two commenters also recommended that this information be disclosed on Thrift Financial Reports (TFRs). Two others suggested that this information be in lieu of the required disclosures in the proposed rule. One commenter specifically opposed any revision to the Call Report indicating that plan administrators had the sophistication to determine an institution's capital ratios and PCA capital category.

Two other commenters suggested that a ''yes/no'' box be included on the Call Report that would indicate whether ''pass-through'' coverage was available. They opined that this one disclosure would provide employee benefit plan depositors with an explicit statement on a quarterly basis on whether an institution could provide ''pass-through'' coverage and would avoid the question whether an institution classified as ''adequately capitalized'' was able to offer ''pass-through'' insurance coverage.

The FDIC does not have the authority to change the Call Report or the TFR on its own and has decided not to reach a conclusion at this time. Instead it will recommend to the Federal Financial Institutions Examination Council that it consider whether the Call Report and the TFR should be amended to include a line item for designating an institution's PCA capital category.

Although public disclosure of this information would be beneficial to the public, it also could be misleading without further information or investigation. For example, the continued availability of ''pass-through'' coverage would not be known in the case of institutions reporting an ''adequately capitalized'' condition, although this information would raise a ''red flag'' that depositors could investigate further. In addition, a Call Report disclosure is as of the date of the report and it may not reflect interim events between Call Report dates. Moreover, an institution's PCA capital category may not constitute an accurate representation of an institution's overall financial condition or future prospects—factors that employee benefit plan depositors also need to consider. Finally, it should be noted that the PCA rules do not prohibit an institution from disclosing its PCA capital category in response to inquiries from investors, depositors, or other third parties. However, such disclosures should include appropriate caveats in order to avoid misleading the public.

The FDIC considered the recommendation of including a ''yes/no'' box on the Call Report but does not favor this proposal out of a concern that the disclosure would be more prone to reporting error and would create a greater regulatory burden on institutions.

I. Definition of ''Employee Benefit Plan Depositor''

The FDIC indicated in the preamble of the proposed rule that the required information may be provided to an employee benefit plan administrator or manager instead of to each participant in a plan. One commenter recommended that the final rule define the term ''employee benefit plan depositor'' to mean managers or administrators of such plans. Thus, it would make clear that the required disclosures only need be made to the administrator or manager of an employee benefit plan and not to each individual beneficiary of the plan. The FDIC has decided to include such a definition in the final rule. The final rule also specifies that, for purposes of the requirements of the final rule, the definition of the term ''employee benefit plan'' includes eligible deferred compensation plans described in section 457 of the Internal Revenue Code (26 U.S.C. 457).

J. Sample Disclosures

1. A sample disclosure that an insured depository institution may use when a depositor opens an account consisting of employee benefit plan deposits is as follows:

Under federal law, whether an employee benefit plan deposit is entitled to per-participant (or ''pass-through'') deposit insurance coverage is based, in part, upon the capital status of the insured institution at the time each deposit is made. Specifically, ''pass-through'' coverage is not provided if, at the time an employee benefit plan deposit is accepted by an FDIC-insured bank or savings association, the institution may not accept brokered deposits under the applicable provisions of the Federal Deposit Insurance Act. Whether an institution may accept brokered deposits depends, in turn, upon the institution's capital level. If an institution's capital category is either ''well capitalized,'' or is ''adequately capitalized'' and the institution has received the necessary broker deposit waiver from the FDIC, then the institution may accept brokered deposits. If an institution is either ''adequately capitalized'' without a waiver from the FDIC or is in a capital category below ''adequately capitalized,'' then the institution may not accept brokered deposits. The FDI Act and FDIC regulations provide an exception from this general rule on the availability of ''pass-through'' insurance coverage for employee benefit plan deposits when, although an institution is not permitted to accept brokered deposits, the institution is ''adequately capitalized'' *and* the depositor receives a written statement from the institution indicating that such deposits are eligible for insurance coverage on a ''pass-through'' basis. The availability of ''pass-through'' insurance coverage for employee benefit plan deposits also is dependent upon the institution's compliance with FDIC recordkeeping requirements.

[Name of institution]'s capital category currently is [insert prompt corrective action capital category]. Thus, in our best judgment, employee benefit plan deposits are currently eligible for ''pass-through'' insurance coverage under the applicable federal law and FDIC insurance regulations.

Under the FDIC's insurance regulations on employee benefit plan deposits, an insured bank or savings association must notify employee benefit plan depositors if new, rolled-over or renewed employee benefit plan deposits would be ineligible for ''pass-through'' insurance and must provide certain ratios on the institution's capital condition to employee benefit plan depositors who request such information. If you would like additional information on [name of institution]'s capital condition, please make a request [describe procedures for obtaining the additional capital information].

2. A sample disclosure that an insured depository institution may use when new, renewed or rolled-over employee benefit plan deposits will not be eligible for ''pass-through'' insurance coverage is as follows:

On [date] [name of institution]'s capital category changed from [previous PCA category] to [current PCA category]. Because of this change in [name of institution]'s capital category and the institution's inability otherwise to satisfy the applicable FDIC requirements in this regard, any employee benefit plan funds deposited, rolled-over or renewed with [name of institution] after [date] will NOT be eligible for ''pass-through'' (or per-participant) deposit insurance coverage under § 330.12 of the FDIC's regulations. Accordingly, plan deposits made, rolled-over or renewed after [date] will be aggregated and insured only up to $100,000. This unavailability of ''pass-through'' insurance coverage on new, rolled-over or renewed deposits will continue until the institution's capital category improves and/or other applicable requirements are satisfied. Deposits made over the period of time when ''pass-through'' insurance coverage is unavailable will not be eligible for ''pass-through'' coverage unless and until these deposits are rolled-over or renewed at a time when ''pass-through'' insurance coverage is again available. ''Pass-through'' insurance coverage on deposits made before [insert date when ''pass-through'' coverage no longer is available] is not affected.

K. Delayed Effective Date of the Disclosure Requirements

Four commenters recommended that the effective date of the final rule be delayed 150 to 180 days to permit institutions the time needed to develop automation systems, and policies and procedures to ensure compliance. Many commenters indicated they presently do not have a recordkeeping system that will identify employee benefit plan accounts. Some commenters indicated that they would have to notify all existing depositors in order to develop such a recordkeeping system.

As indicated in § 330.12 of the FDIC's regulations, in order for employee benefit plan deposits to be eligible for pass-through insurance coverage, among other things, the recordkeeping requirements of § 330.4 of the FDIC's regulations (12 CFR 330.4) must be satisfied. Under § 330.4, in order for pass-through insurance to be available for fiduciary-type accounts (in which one party has deposited funds for the benefit of others) the bank's deposit account records must disclose the existence of the fiduciary relationship, and the details of the relationship and the interests of the other party(ies) must be ascertainable from the deposit account records of the insured depository institution or records maintained by the depositor, or a third party who has contracted with the depositor to maintain such records on his/her behalf.

Some insured depository institutions that commented on the proposed rule stated that their records did not classify deposits specifically as employee benefit plan deposits; thus, they contended that it would be burdensome to develop and implement a new system for purposes of complying with the proposed disclosure requirements. The FDIC believes the final rule addresses this issue. A list can be maintained for new accounts going forward and a list of existing customers can be established over time. An event triggering the required disclosures when an institution no longer can offer ''pass-through'' insurance coverage is believed to be an infrequent occurrence.

The changes made by FDICIA to insurance coverage applicable to employee benefit plan deposits have been in effect since December 1992. Thus, institutions should be aware of the need to provide customers with timely disclosures on the availability of ''pass-through'' coverage for employee benefit plan deposits. We assume that this already has been done by a general or specific mailing by institutions to affected depositors.

Taking into consideration the period of time the revised ''pass-through'' insurance rules have been in effect but factoring in the ''lead-time'' several commenters said was needed to develop and implement the mechanisms required to comply with the ''upon-request'' disclosure provisions of the final rule, the Board has decided to delay the effective date of the revisions to § 330.12 until July 1, 1995. This should provide insured depository institutions a sufficient period of time to satisfy all of the disclosure requirements of the final rule. This delay in the effective date also takes into consideration section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325) (RCDRIA), which states, in part, that any new regulations and amendments to existing regulations which impose reporting, disclosure, or other requirements on insured depository institutions may only take effect on the first day of a calendar quarter unless certain exceptions are met.

L. Explanation of the Disclosure Requirements Under § 330.12, Including the Requirement Affecting Existing Deposits on the Effective Date of the Final Rule That Are Not Eligible for ''Pass-Through'' Insurance Coverage

The final rule will apply with respect to employee benefit plan funds on deposit with an insured depository institution on the effective date of the final rule and such funds deposited on and after that date. Institutions with employee benefit plan deposits on the effective date of the final rule that, when deposited, were not eligible for ''pass-through'' insurance coverage (under § 330.12(a) and (b) of the FDIC's regulations) must provide to such existing depositors the disclosure statement and notice that ordinarily are required under § 330.12(h)(2) of the final rule when an employee benefit plan account is opened. This requirement encompasses employee benefit plan funds deposited between December 19, 1992 (the effective date of the applicable provisions of FDICIA) and the effective date of the final rule. These depositors otherwise would not come within the scope of the final rule and thus, would not receive the disclosures otherwise required. The disclosure documents referred to above must be provided within 10 business days after the effective date of the final rule.

After the effective date of the final rule, insured depository institutions that accept employee benefit plan deposits that are not eligible for ''pass-through'' insurance coverage are subject to the disclosure requirements contained in § 330.12(h)(3) of the final rule.

M. Coordination With Other Federal Agencies

The FDIC has consulted with the other federal banking and thrift regulators in developing the final rule and intends to continue to work with the other federal regulators to assure, among other things, consistent and minimally burdensome implementation of the final rule.

Technical Amendments to Part 330 Unrelated to the Proposed Amendments to § 330.12

The following is a discussion of the technical amendments to Part 330 made by the final rule that are unrelated to the proposed amendments to § 330.12. The amendments pertain to commingled accounts of bankruptcy trustees, joint accounts, accounts for which an insured depository institution is acting in a fiduciary capacity, and accounts for which an insured depository institution is acting as the trustee of an irrevocable trust. Because, as discussed below, the amendments merely clarify current rules applicable to deposit insurance coverage, they are outside the scope of section 302 of RCDRIA. Thus, they need not take effect on the first day of a calendar quarter; instead, the technical amendments will become effective 30 days after the final rule is published in the **Federal Register**.

A. Commingled Accounts of Bankruptcy Trustees

One technical amendment codifies the FDIC's long-standing staff interpretation of the insurance coverage available to a commingled bankruptcy trustee's account. For many years, the FDIC's staff has advised bankruptcy trustees and other interested parties that, when a bankruptcy trustee appointed under title 11 of the *United States Code* commingles the funds of two or more bankruptcy estates in the same trust account (such an account is viewed as the account of a statutory irrevocable trust created by one of the chapters of title 11 of the *United States Code),* the funds of each title 11 bankruptcy estate will receive pass-through coverage—that is, each bankruptcy estate will be separately insured for up to $100,000—provided that the recordkeeping requirements of 12 CFR 330.4(b) are met.[3] However, in spite of the FDIC's staff interpretation, the Department of Justice's Executive Office for United States Trustees (Executive Office), the organization charged with supervising the administration of bankruptcy estates and trustees, has declined to recognize that there is pass-through insurance for such accounts. In accordance with section 345 of the Bankruptcy Code, 11 U.S.C. 345, the Executive Office has required banks holding such bankruptcy trustee accounts to provide collateral for any such funds that are not insured by the FDIC. But because the Executive Office does not recognize pass-through insurance for such accounts, banks holding such accounts are being required to pledge more collateral than is actually necessary. The Executive Office has stated that it will recognize pass-through coverage, and reduce its

[3] FDIC Advisory Opinions published on this subject include FDIC–93–59 (August 17, 1993), FDIC 89–21 (June 13, 1989), FDIC–88–74 (November 9, 1988), FDIC 87–17 (October 9, 1987), and FDIC–82–8 (March 25, 1982).

collateral requirements accordingly, provided that the FDIC Board takes formal action assuring such accounts pass-through coverage. For this reason, the Board has decided to include an amendment to the FDIC's insurance regulations, in the form of a new § 330.11(d), confirming that pass-through insurance coverage will be provided for such bankruptcy trustee accounts.

The technical amendment codifying the long-standing interpretation by FDIC staff of the insurance coverage available to the commingled account of a bankruptcy trustee qualifies as an interpretative rule; thus, it is exempt from the prior notice and comment requirements ordinarily imposed by the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A).

B. Joint Deposit Accounts

Another technical amendment clarifies the meaning of § 330.7(c) of the FDIC's regulations (12 CFR 330.7(c)), which specifies the requirements an account must meet to qualify for separate insurance coverage as a joint account. Section 330.7(c) exempts certain types of accounts, such as certificates of deposit, from the general requirement that each co-owner must sign a signature card, but the regulation states that ''all such deposit accounts, must, in fact, be jointly owned''. Contrary to the FDIC's long-standing interpretation, some courts have interpreted the quoted language to require the FDIC to consider state law and evidence outside the deposit account records of the insured institution to contradict otherwise unambiguous deposit account records, in connection with claims that what appear to be joint accounts are in fact individually-owned. The FDIC intended, however, that depositors be bound by its recordkeeping regulation at 12 CFR 330.4(a), which requires that the deposit account records be considered conclusive if they are unambiguous. Reliance on the deposit account records is critical if the FDIC is to fulfill its obligation to make insurance determinations and issue checks in a timely fashion after a bank fails. It is also critical in preventing fraudulent claims. Several courts have recognized the need for the FDIC to rely on such records in making insurance determinations. *Fouad & Sons* v. *FDIC,* 898 F.2d 482 (5th Cir. 1990), *In re Collins Securities Corp.*, 998 F.2d 551 (8th Cir. 1993), *Jones* v. *FDIC,* 748 F.2d 1400 (10th Cir. 1984).

For this reason, the amendment as presently proposed would remove the ''but all such deposits must, in fact, be jointly owned'' language from § 330.7(c), and add that all deposit accounts which meet the requirements for qualifying joint accounts, including those which are exempted from the requirement that every co-owner must sign a signature card, will be deemed to be jointly-owned if the FDIC determines that the deposit account records are clear and unambiguous. The signatures of two or more persons on a deposit account signature card or the names of two or more persons on a certificate of deposit shall be conclusive evidence of a joint account if the deposit account records are clear and unambiguous. Only if the deposit account records are found to be ambiguous on the issue of ownership will evidence outside the deposit account records be considered, in accordance with the recordkeeping provisions of § 330.4(a). After taking into account the comments received on this amendment, FDIC staff has revised the amendment proposed earlier (and published for comment at 58 FR 64525 (December 8, 1993)) to conform more closely to the long-standing FDIC practice articulated by § 330.4(a).

The technical amendment on joint account coverage was published for comment as part of the proposed version of this capital disclosure regulation. 58 FR 64521 (December 8, 1993). The FDIC received two comments on the proposed amendment clarifying what evidence is necessary to determine the ownership of a joint account. An industry trade group opposed the amendment because of concern that it might permit the FDIC to ignore outside evidence of ''fundamental claims'' about the ''viability'' of a joint account under state law—for example, evidence that an account signature was forged, that one of the signers was incompetent when he signed, or that his signature was coerced. A savings association cited similar concerns but suggested that any outside evidence on such issues be considered under federal law, not state law.

It is important to emphasize that, when the FDIC says that it will rely on the deposit account records if they are clear and unambiguous, it will do so only to determine the appropriate ownership category for insurance purposes. Such reliance will not necessarily preclude a depositor from proving that a deposit account existed when the bank's deposit account records show no evidence of such an account, or that an account actually contained more funds than are reflected in the bank's deposit account records. When the FDIC determines that the deposit account records are ambiguous or unclear, it has the discretion to consider evidence beyond the deposit account records. Of course, the FDIC need not find such extrinsic evidence persuasive. However, while the FDIC understands that account records may not always accurately reflect the intent of the parties to the account, and that circumstances may sometimes render the accounts invalid under state law,[4] the FDIC believes that it is essential to make insurance determinations without considering outside evidence concerning the ownership category of accounts as long as the account records are clear.

The recordkeeping regulations, by requiring that the deposit account records be considered conclusive if they are unambiguous, serve several important purposes. When a bank fails, it is important that the FDIC be permitted to make insurance determinations and issue checks to depositors in a timely fashion, a timeliness made possible by the FDIC's reliance on those deposit account records that are clear. Reliance on unambiguous account records also permits the FDIC to determine the least cost resolution of a failed institution and to prevent fraudulent insurance claims. These purposes require that the deposit account records, even if they do not correctly reflect the parties' intent, be deemed conclusive if they are unambiguous. Of course, if the records are ambiguous or unclear, the FDIC may, in its discretion, rely on other evidence. Moreover, as the regulations already provide, state law concerning ownership of ambiguously-owned accounts are only the starting point for determining the ownership issue; federal law ultimately controls.

For this reason, the Board has decided to include as part of this final rule the proposed amendment to the FDIC's deposit insurance rules on joint accounts. The amendment clarifies that an account holder seeking to prove that what appears to be a joint account is actually an account held in a right and capacity other than joint ownership (for example, as an individually-owned account) must satisfy the requirements of § 330.4(a) of the FDIC's regulations

[4] On the subject of state law, § 330.3(h) of the FDIC's insurance regulations states that ''while ownership under state law of deposited funds is a necessary condition for deposit insurance, ownership under state law is not sufficient for, or decisive in, determining deposit insurance coverage.'' Instead, ''[d]eposit insurance coverage is also a function of the deposit account records of the insured depository institution, of recordkeeping requirements, and of other provisions of this part, which, in the interest of uniform national rules for deposit insurance coverage, are controlling for purposes of determining deposit insurance coverage''. 12 CFR 330.3(h).

(12 CFR 330.4(a)) on the recognition of deposit ownership. Section 330.4(a) provides, in part, that, if the FDIC determines that the deposit account records of an insured depository institution are clear and unambiguous, no other records will be considered as to the manner in which those funds are owned. Section 330.5(a) of the FDIC's regulations (12 CFR 330.5(a)) already explicitly addresses the situation where more than one natural person has the right to withdraw funds from an account that is actually viewed as individually-owned. The amendment applies to situations involving deposits which appear to be jointly-owned but which are claimed to be held in other rights and capacities.

C. Accounts for Which an Insured Depository Institution Acts as an Agent, Nominee, Guardian, Custodian or Conservator

Another technical amendment concerns § 330.6(a) of the FDIC's regulations (12 CFR 330.6(a)), which governs the insurance coverage provided for agency or fiduciary accounts. Section 330.6(a) currently indicates that funds deposited by an insured depository institution acting in a fiduciary capacity are governed by § 330.10 of the insurance regulations. However, in May 1993 the FDIC amended § 330.10, along with several other sections of the insurance regulations, primarily to implement revisions to the insurance rules made by section 311 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Pub. L. 102–242, 105 Stat. 2236) (58 FR 29952 (May 25, 1993)). One of those required revisions limits, effective December 19, 1993, the separate insurance formerly applicable to an account held by an insured depository institution in a fiduciary capacity to an account held by an insured depository institution as a trustee of an irrevocable trust. However, the May 1993 amendment simply revised § 330.10; § 330.6 continued to refer to § 330.10 but was not revised, stating instead that ''[w]hen such funds are deposited by an insured depository institution acting in a fiduciary capacity, the insurance coverage shall be governed by the provisions of § 330.10 of this part''.

The present technical amendment conforms § 330.6(a) to section 311 of FDICIA. The first sentence of § 330.6(a) states the general rule—that funds owned by a principal or principals and deposited into one or more deposit accounts in the name of a fiduciary shall be insured as if deposited in the name of the principal or principals. The second sentence implements the FDICIA change by stating that, when such funds are deposited by an insured depository institution acting as a trustee of an irrevocable trust, the insurance coverage will be governed by the provisions of § 330.10.

Like the technical amendment on joint account coverage, this technical amendment was published for comment as part of the proposed version of this capital disclosure regulation. 58 FR 64521 (December 8, 1993). The amendment proposed to state clearly, in § 330.6(a), that only funds deposited by an insured depository institution *acting as a trustee of an irrevocable trust* will be eligible for the separate insurance coverage described in § 330.10. Up until this time, § 330.6(a) had stated that funds deposited by an insured depository institution *acting in a fiduciary capacity* would be insured as provided by § 330.10, while § 330.10 stated that it pertains only to funds held by an institution acting as the trustee of an irrevocable trust. Thus, the amendment merely clarifies the language.

The FDIC received four comments on this technical amendment, all of which were favorable. Two, however, noted that the proposed regulatory language for § 330.6(a) seemed to except deposits held by insured depository institutions acting in a representative capacity from the general rule that all deposits held by fiduciaries are insured as if owned by the party represented by the fiduciary. Of course, even deposits held by insured depository institutions acting in a representative capacity follow this general rule. Thus, this final rule includes the proposed amendment to § 330.6(a), as revised to reflect the suggested clarification.

D. Accounts Held by Depository Institutions in Fiduciary Capacities

The final technical amendment further conforms the FDIC's regulations to section 311 of FDICIA, by changing the present title of § 330.10, ''Accounts held by depository institutions in fiduciary capacities'', to ''Accounts held by a depository institution as the trustee of an irrevocable trust''. This change conforms § 330.10 to section 311 of FDICIA and to the rest of § 330.10 itself. Because the amendment merely makes the title consistent with § 330.10, and because the text of § 330.10 was itself published for comment (57 FR 49026 (October 29, 1992), it is unnecessary, under the Administrative Procedure Act, to publish this proposed change for comment. 5 U.S.C. 553(b)(3)(B).

Paperwork Reduction Act

The final rule is intended to reduce uncertainty about whether employee benefit plan deposits are eligible for ''pass-through'' insurance coverage and to require depository institutions to provide timely disclosure to employee benefit plan depositors when ''pass-through'' deposit insurance coverage is no longer available. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

The technical amendments do not require any collections of information pursuant to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Accordingly, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Neither the final rule nor the technical amendments will have a significant impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, the Act's requirements relating to an initial and final regulatory flexibility analysis are not applicable.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, Banking, Savings and loan associations, Trusts and trustees.

The Board of Directors of the Federal Deposit Insurance Corporation hereby amends Part 330 of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

1. The authority citation for Part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819(Tenth), 1820(f), 1821(a), 1822(c).

2. Section 330.6 is amended by revising paragraph (a) to read as follows:

§ 330.6 Accounts held by an agent, nominee, guardian, custodian or conservator.

(a) *Agency or nominee accounts.* Funds owned by a principal or principals and deposited into one or more deposit accounts in the name of an agent, custodian or nominee shall be insured to the same extent as if deposited in the name of the principal(s). When such funds are deposited by an insured depository institution acting as a trustee of an irrevocable trust, the insurance coverage shall be governed by the provisions of § 330.10 of this part.

* * * * *

3. Section 330.7 is amended by revising paragraph (c) to read as follows:

§ 330.7 Joint ownership accounts.

* * * * *

(c) *Qualifying joint accounts.* (1) A joint deposit account shall be deemed to be a qualifying joint account, for purposes of this section, only if:

(i) All co-owners of the funds in the account are natural persons; and

(ii) Each co-owner has personally signed a deposit account signature card; and

(iii) Each co-owner possesses withdrawal rights on the same basis.

(2) The requirement of paragraph (c)(1)(ii) of this section shall not apply to certificates of deposit, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained by an agent, nominee, guardian, custodian or conservator on behalf of two or more persons.

(3) All deposit accounts that satisfy the criteria in paragraph (c)(1) of this section, and those accounts that come within the exception provided for in paragraph (c)(2) of this section, shall be deemed to be jointly owned provided that, in accordance with the provisions of § 330.4(a) of this part, the FDIC determines that the deposit account records of the insured depository institution are clear and unambiguous as to the ownership of the accounts. If the deposit account records are ambiguous or unclear as to the manner in which the deposit accounts are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. The signatures of two or more persons on the deposit account signature card or the names of two or more persons on a certificate of deposit or other deposit instrument shall be conclusive evidence that the account is a joint account unless the deposit records as a whole are ambiguous and some other evidence indicates, to the satisfaction of the FDIC, that there is a contrary ownership capacity.

* * * * *

4. The heading of § 330.10 is revised to read as follows:

§ 330.10 Accounts held by a depository institution as the trustee of an irrevocable trust.

5. Section 330.11 is amended by adding a new paragraph (d) to read as follows:

§ 330.11 Irrevocable trust accounts.

* * * * *

(d) *Commingled accounts of bankruptcy trustees.* Whenever a bankruptcy trustee appointed under Title 11 of the *United States Code* commingles the funds of various bankruptcy estates in the same account at an insured depository institution, the funds of each Title 11 bankruptcy estate will be added together and insured for up to $100,000, separately from the funds of any other such estate.

6. Section 330.12 is amended by revising the heading and introductory text of paragraph (g), redesignating paragraphs (g)(1), (g)(2) and (g)(3) as paragraphs (g)(2), (g)(3) and (g)(4), respectively, and adding new paragraphs (g)(1) and (h) to read as follows:

§ 330.12 Retirement and other employee benefit plan accounts.

* * * * *

(g) *Definitions of ''depositor'', ''employee benefit plan'', ''employee organizations'' and ''non-contingent interest''.* Except as otherwise indicated in this section, for purposes of this section:

(1) The term *depositor* means the person(s) administering or managing an employee benefit plan.

* * * * *

(h) *Disclosure of capital status*—(1) *Disclosure upon request.* An insured depository institution shall, upon request, provide a clear and conspicuous written notice to any depositor of employee benefit plan funds of the institution's leverage ratio, Tier 1 risk-based capital ratio, total risk-based capital ratio and prompt corrective action (PCA) capital category, as defined in the regulations of the institution's primary federal regulator, and whether, in the depository institution's judgment, employee benefit plan deposits made with the institution, at the time the information is requested, would be eligible for ''pass-through'' insurance coverage under paragraphs (a) and (b) of this section. Such notice shall be provided within five business days after receipt of the request for disclosure.

(2) *Disclosure upon opening of an account.* (i) An insured depository institution shall, upon the opening of any account comprised of employee benefit plan funds, provide a clear and conspicuous written notice to the depositor consisting of: an accurate explanation of the requirements for pass-through deposit insurance coverage provided in paragraphs (a) and (b) of this section; the institution's PCA capital category; and a determination of whether or not, in the depository institution's judgment, the funds being deposited are eligible for ''pass-through'' insurance coverage.

(ii) An insured depository institution shall provide the notice required in paragraph (h)(2)(i) of this section to depositors who have employee benefit plan deposits with the insured depository institution on July 1, 1995 that, at the time such deposits were placed with the insured depository institution, were not eligible for pass-through insurance coverage under paragraphs (a) and (b) of this section. The notice shall be provided to the applicable depositors within ten business days after July 1, 1995.

(3) *Disclosure when ''pass-through'' coverage is no longer available.* Whenever new, rolled-over or renewed employee benefit plan deposits placed with an insured depository institution would no longer be eligible for ''pass-through'' insurance coverage, the institution shall provide a clear and conspicuous written notice to all existing depositors of employee benefit plan funds of its new PCA capital category, if applicable, and that new, rolled-over or renewed deposits of employee benefit plan funds made after the applicable date shall not be eligible for ''pass-through'' insurance coverage under paragraphs (a) and (b) of this section. Such written notice shall be provided within 10 business days after the institution receives notice or is deemed to have notice that it is no longer permitted to accept brokered deposits under section 29 of the Act and the institution no longer meets the requirements in paragraph (b) of this section.

(4) *Definition of ''employee benefit plan''.* For purposes of this paragraph, the term *employee benefit plan* has the same meaning as provided under paragraph (g)(2) of this section but also includes any eligible deferred compensation plans described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457).

By order of the Board of Directors.

Dated at Washington, D.C., this 31st day of January, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–3178 Filed 2–8–95; 8:45 am]

BILLING CODE 6714–01–P