

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 risk-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