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.