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 "uponrequest" 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 "passthrough" 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 passthrough 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

<sup>&</sup>lt;sup>3</sup> 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).