depository institution voluntarily terminates its insured status and its deposits are not assumed by another insured depository institution.

**§ 307.2 Certification of assumption of deposit liabilities.**

(a) *Certification required.* Whenever any of the deposit liabilities of an insured depository institution are assumed (whether by merger, consolidation, other statutory assumption, or by contract) by another insured depository institution, the assuming insured depository institution shall provide a written certification to the FDIC that it has assumed deposit liabilities from the transferring insured depository institution. The certification shall be provided to the FDIC within 30 calendar days after the assumption takes effect and shall state the date the assumption took effect.

(b) *Exception.* The certification required by paragraph (a) of this section shall not be required when deposit liabilities are transferred and assumed by an operating insured depository institution from an insured depository institution in default, as defined in section 3(x)(1) of the FDI Act (12 U.S.C. 1813(x)(1)), that has been placed in an FDIC-administered receivership.

(c) *Form of certification.* The certification required by paragraph (a) of this section shall be provided on the letterhead of the assuming insured depository institution, be signed by a duly authorized official of the institution, and may follow the format of the certification contained in appendix A to this part.

(d) *Filing.* The certification required by paragraph (a) of this section shall be provided to the appropriate FDIC Regional Director of the Division of Supervision, as determined by reference to 12 CFR part 303, for the assuming insured depository institution.

(e) *Evidence of assumption.* The receipt by the FDIC of the certification required by paragraph (a) of this section shall constitute satisfactory evidence of such deposit assumption, as required by section 8(q) of the FDI Act (12 U.S.C. 1818(q)), and the separate deposit insurance on the deposits so assumed shall terminate in the manner specified in section 8(q)(2) of the FDI Act (12 U.S.C. 1818(q)(2)). In appropriate circumstances, the FDIC, in its sole discretion, may also consider other evidence of such deposit assumption to be satisfactory for purposes of section 8(q).

(f) *Issuance of an order.* Except where the FDIC has been appointed as receiver for an insured depository institution in default, the FDIC shall issue an order terminating the insured status of the transferring insured depository institution, pursuant to section 8(q)(1) of the FDI Act (12 U.S.C. 1818(q)(1)), in the event that all of the transferring institution's deposits are assumed by one or more insured depository institutions.

**§ 307.3 Notice to depositors when insured status is voluntarily terminated and deposits are not assumed.**

(a) *Notice required.* Any insured depository institution seeking to voluntarily terminate its insured status, but whose deposit liabilities will not be assumed by another insured depository institution, shall provide prior written notification to each of its depositors, at the depositor's last address of record on the books of the institution, of the date of the termination of its insured status under the FDI Act.

(b) *Prior approval of notice.* Prior to distributing the notice to depositors required by paragraph (a) of this section, a copy of the proposed notice shall be provided to the appropriate FDIC regional director of the Division of Supervision, as determined by reference to 12 CFR part 303, for approval. After being approved for distribution, the notice shall be provided to depositors in the time and manner specified by the appropriate regional director.

(c) *Form of notice.* The notice to depositors required by paragraph (a) of this section shall be provided on the letterhead of the insured depository institution and, unless otherwise specified by the appropriate Regional Director of the Division of Supervision, may follow the format of the notice contained in appendix B to this part.

(d) *Obligations.* The FDIC may require the insured depository institution to take such other actions as the FDIC considers appropriate for the protection of depositors.

**Appendix A to Part 307—Certification of Change in Insured Status**

(Date)

(Name and Address of Regional Director)

SUBJECT: *Certification of Change In Insured Status*

This certification is being provided pursuant to 12 U.S.C. 1818(q) and 12 CFR 307.2(a). On *(state the date the deposit assumption took effect), (state the name of the depository institution assuming the deposit liabilities)* assumed (if a partial assumption, state the amount) (if all deposits were assumed, state ''all'') of the deposits of *(state the name of the insured depository institution whose deposits were assumed).* Please contact the undersigned if additional information is needed.

(Name of Assuming Institution)

By: ________________________________

(Name and Title)

**Appendix B to Part 307—Notice to Depositor of Voluntary Termination of Insured Status**

(Date)

(Name and Address of Depositor)

SUBJECT: *Notice to Depositor of Voluntary Termination of Insured Status*

The insured status of *(name of insured depository institution)* under the provisions of the Federal Deposit Insurance Act, will terminate as of the close of business on the ________ Day of __________________, 19____ (''termination date''). Insured deposits in the *(name of insured depository institution)* on the termination date, less all subsequent withdrawals from such deposits, will continue to be insured by the Federal Deposit Insurance Corporation, to the extent provided by law, until *(date).* Any deposits made by you after the termination date, either new deposits or additions to existing deposits, will not be insured by the Federal Deposit Insurance Corporation.

This notice is being provided pursuant to 12 U.S.C. 1818(a)(6) and 12 CFR 307.3(a).

Please contact *(name of institution official in charge of depositor inquiries),* at *name and address of insured depository institution* if additional information is needed regarding this Notice or the insured status of your account.

By order of the Board of Directors. Dated at Washington, D.C., this 29th day of April, 1997.

Federal Deposit Insurance Corporation

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 97–12549 Filed 5–13–97; 8:45 am]

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## FEDERAL DEPOSIT INSURANCE CORPORATION

## 12 CFR Part 330

### RIN 3064–AB73

## Simplification of Deposit Insurance Rules

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Proposed rule.

**SUMMARY:** The FDIC is seeking comment on specific proposed revisions to the FDIC's deposit insurance regulations. The intended effect of the proposed rule is to simplify and revise the FDIC's regulations on deposit insurance by making several technical revisions and certain substantive revisions.

**DATES:** Written comments must be received by the FDIC on or before August 12, 1997.

**ADDRESSES:** Written comments are to be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to Room F–402, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838; Internet address: comments@FDIC.gov). Comments will be available for inspection in the FDIC Public Information Center, room 100, 801 17th Street, N.W., Washington, D.C., between 9:00 a.m. and 5:00 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. DiNuzzo, Counsel, Legal Division, (202) 898–7349, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

**SUPPLEMENTARY INFORMATION:**

## Background

One of the FDIC's corporate operating projects under its Strategic Plan is to simplify the deposit insurance rules. The purpose is to promote public understanding of deposit insurance and to increase financial institution and consumer understanding of deposit insurance. This effort to simplify the FDIC's insurance regulations, found in 12 CFR part 330 (part 330), is also intended to satisfy the provisions in section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4803(a), to reduce regulatory burden and improve efficiency.

The FDIC revised its insurance regulations twice in the recent past. The first time, in 1990, was necessitated by the termination of the Federal Savings and Loan Insurance Corporation (FSLIC). The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101–73, 103 Stat. 183 (1989)) required the FDIC to issue uniform insurance regulations for deposits in all insured depository institutions, including those previously insured by the FSLIC. The second set of recent changes in the FDIC insurance rules were made pursuant to provisions in the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242 (1991)). A provision in FDICIA, in essence, limited the insurance coverage of employee benefit and retirement plans. Also, in February 1995, the FDIC issued disclosure requirements in connection with the limited availability of insurance for employee benefit plan accounts, 60 FR 7701 (Feb. 9, 1995), codified at 12 CFR 330.12.

The amendments made to the insurance rules in 1990 reconciled differences between the FSLIC insurance regulations and the then-existing FDIC regulations. They also revised the insurance regulations to, among other things, better organize and define terms used in the regulations, convert long-standing interpretive opinions into regulations, resolve outstanding issues and clarify ambiguous provisions. Although the insurance rules were revised in 1990 and, to a lesser extent in 1993 and 1995, the Board of Directors believes that the revisions in the proposed rule would be helpful. The need for these changes has been brought to the FDIC's attention in several ways, especially through the steady receipt of letters and phone calls on insurance questions. Experience with bank and thrift failures also has enabled the staff to identify procedural aspects of the regulations which, when applied in accordance with the regulations, may prove unfair to certain depositors in some situations.

The FDIC must be mindful of the applicable statutory parameters in considering whether and to what extent to modify the insurance regulations. The general statutory basis for and guidance on deposit insurance is found in section 11(a) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1821(a), which provides, in relevant part, that depositors are insured up to $100,000 based on the ''right'' and ''capacity'' in which the deposits are maintained. The statute does not define ''depositor,'' ''right'' or ''capacity.'' The FDIC regulations implementing the ''right-and-capacity'' language recognize different categories of insured accounts based on an analysis of ownership. Thus, the rules provide ''separate'' insurance coverage for different types of accounts which are owned in different ways. For example, accounts owned by an individual are not added to joint accounts in which that same individual has an ownership interest. ''Separate'' insurance means that each category of account in which a person has an ownership interest is covered for up to $100,000 separately insured from the funds in other categories of accounts.

## Advance Notice of Proposed Rulemaking

In May 1996 the FDIC issued an Advance Notice of Proposed Rulemaking (ANPR), 61 FR 25596 (May 22, 1996), soliciting preliminary views on whether and, if so, how the FDIC should simplify its deposit insurance regulations. The ANPR requested comment on all aspects of streamlining, simplifying and clarifying the insurance rules, including the likely effect of such changes on consumers and the banking industry. The FDIC also sought comment on several specific revisions to the insurance rules that the Board was then considering.

The possible areas of simplification identified in the ANPR were: (1) Rewriting certain parts of the rules to make them clearer and easier to understand; (2) eliminating step one of the two steps involved in determining the insurance coverage for joint accounts; (3) revising the recordkeeping rules allowing the FDIC more flexibility (for the benefit of depositors) in determining the ownership of deposits held in a custodial or fiduciary capacity; (4) changing the rules on ''payable upon death'' accounts; (5) modifying the way the FDIC insures certain types of accounts upon the death of the owner(s) of the accounts; (6) recommending to Congress that the FDI Act be amended to change the way employee benefit plans are insured; and (7) revising the rules on living trust accounts.

The comment period for the ANPR closed on August 20, 1996. The FDIC received sixty-eight comments on the ANPR, almost all of which supported the FDIC's deposit insurance simplification efforts. The FDIC considered the comments received on the ANPR in preparing the specific revisions in the proposed rule. Comments on the ANPR are identified and discussed below in the context of specific issues and proposed revisions.

## Approach to Deposit Insurance Simplification

The Board believes that certain technical revisions and moderate substantive revisions to the deposit insurance rules are warranted. The technical changes are described below in the section-by-section discussion of the proposed rule. They consist of numerous wording and organizational changes to the insurance rules intended to make the rules clearer and easier to understand. The technical changes also encompass the addition of several examples in the insurance regulations illustrating the application of the various deposit insurance rules. The proposed substantive revisions in the proposed rule are as follows.

*Proposed Substantive Revisions*

1. The Recordkeeping Rules for Fiduciary Accounts

The insurance regulations impose specific recordkeeping requirements as a precondition for insuring parties other than those whose names appear on the depository institution's deposit account records. 12 CFR 330.4(a).[1] For example,

[1] The rules derive from section 12(c) of the FDI Act (12 U.S.C. 1822(c)) which provides that the FDIC is not required to recognize as the owner of

if A is acting as an agent for B, C, and D and places funds belonging to them in an insured bank or thrift, the institution's deposit account records must show that A is holding the account as an agent in order for the FDIC to recognize the ownership interests of B, C, and D. The FDIC will then insure the account as if it were held directly by B, C, and D (the owners of the account) as long as either the institution's deposit account records or the agent's records (maintained in ''good faith and in the regular course of business'') evidence B, C, and D's ownership interests in the account. *Id.* at 330.4(b). In this context, we say that the insurance ''passes-through'' the agent to the owner(s) of the account. The same ''pass-through'' principle applies to other types of custodial and fiduciary accounts, including those that constitute a separate right and capacity, such as irrevocable trust accounts and employee benefit plan accounts. *Id.* at 330.10 & 330.12.

The concept of ''pass-through'' insurance stems from and is consistent with the statutory principle that insurance is provided according to the right and capacity in which the funds are owned. In this agency situation B, C, and D's ownership interests in the agency account would be added to any other funds held at the same bank or thrift by or for them (in the same ownership capacity) and insured to a limit of $100,000. *Id.* at 330.6(a). Thus, if A had an individual account at a bank and an agent was holding funds for him or her at the same bank, the funds in the individual account would be added to his or her ownership interest in the agency account and insured to a combined limit of $100,000, assuming compliance with the recordkeeping requirements explained above. *Id.* at 330.4.

The reasons the FDIC imposes recordkeeping requirements for ''pass-through'' insurance purposes are: (1) To safeguard against fraud when an insured institution fails and the FDIC is called upon to pay insurance claims and (2) to enable the FDIC to estimate the amount of insured deposits when considering the resolution options for a failing insured depository institution.[2]

The recordkeeping requirements intentionally limit the FDIC's ability to consider evidence outside the deposit account records of an insured institution in determining the ownership of deposits. They establish a presumption that deposited funds are actually owned in the manner indicated on the account records. Those records are binding on the depositor if they are ''clear and unambiguous.'' *Id.* at 330.4(a). The FDIC has the discretion, however, to decide whether records are clear and unambiguous. If the FDIC determines that the records are unclear or ambiguous, then it may consider evidence other than the deposit account records. The issue the FDIC has faced from time to time is whether this discretion provides the FDIC with sufficient flexibility to recognize beneficial and/or multiple ownership of accounts when such ownership is not reflected on the bank or thrift's deposit account records. In other words, if the deposit account records are not unclear or ambiguous, the regulations restrict the FDIC from considering extraneous evidence in determining the ownership interest of the deposits, even if such evidence exists and would demonstrate ownership other than that reflected in the institution's deposit account records.

A specific situation at a recent bank failure involved a deposit account held by a title company as agent for customers in the process of buying and selling houses. Because the bank's deposit account records did not indicate the agency nature of the account, the funds were deemed to be owned by the title company and insured to a limit of $100,000; thus, the funds were not afforded the ''pass-through'' coverage (for each customer of the title company) that would have applied if the bank's records had indicated that the title company was acting as an agent.

The revisions to the deposit insurance recordkeeping rules in the proposed rule are intended to provide the FDIC with more flexibility in considering the actual ownership interests in deposit accounts held by fiduciaries and thereby prevent possible hardships. The approach used in the proposed rule is to allow the FDIC to look beyond the deposit accounts records of the depository institution where account titles are indicative of a fiduciary relationship. Two examples would be accounts held by escrow agents and those held by entities such as title companies, who commonly hold funds for others.[3] Another situation would be where an account is held in the name of an entity, or the nominee of that entity, whose primary business is to hold, for safekeeping reasons, deposits for others.

The FDIC received forty-two comments on the ANPR concerning this possible revision to the insurance coverage recordkeeping rules. The vast majority of those who commented encouraged the FDIC to revise the recordkeeping rules to allow the FDIC more flexibility in determining the ownership of account funds. Others commented that the FDIC should relax the recordkeeping rules only if it can be done without increasing the compliance burden on insured banks and thrifts.

The FDIC requests specific comment on whether the recordkeeping rules for ''multi-tiered fiduciary relationships'' should be revised. 12 CFR 330.4(b)(3). Those rules specify alternative requirements in situations where a fiduciary is holding funds for another party who also is a fiduciary. The rules were added to the FDIC's insurance regulations in 1990 to codify the FDIC staff views on the recordkeeping requirements for such multi-tiered (or multiple pass-through) fiduciary accounts. Preliminarily, the FDIC believes that the rules provide certainty to the industry on the subject and, thus, should be retained. As indicated, however, the FDIC seeks comments on the necessity and clarity of these special recordkeeping rules.

2. Treatment of Accounts Upon the Death of the Owner(s) of the Accounts

Depending on the applicable state law, the ownership interest of a deposit account often changes upon the death of the owner of a deposit account. For deposit insurance purposes, the FDIC has adopted this general principle of state law[4] and thus, under the FDIC's current position, if the beneficiaries/executor of the decedent do not act immediately after the decedent's death to restructure the account(s), insurance coverage of the decedent's accounts may be decreased, sometimes significantly. For example, if a husband and wife hold a joint account, a POD account and two individual accounts in their respective names, the death of one spouse would

a deposit any claimant whose name or interest as owner is not disclosed on the records of the depository institution if such recognition would increase the aggregate amount of the insured deposits in the institution.

[2] In many cases where an insured institution is declared insolvent, the FDIC transfers some or all of the assets and deposit liabilities to another institution. In such cases, speed and accuracy in accounting for the assets and liabilities being transferred is critical to the consummation of the transaction. Permitting the FDIC to rely on the account records facilitates these transactions and prevents post-default fraudulent claims to increase insurance coverage.

[3] This option also would encompass multi-tiered fiduciary relationships where, for example, an agent maintains a deposit account for a party who also is an agent. The current regulations include special recordkeeping rules for such situations. 12 CFR 330.4(b)(3).

[4] The FDIC's insurance regulations provide that, while ownership under state law is a necessary condition for deposit insurance, ownership under state law is not decisive in determining deposit insurance coverage. 12 CFR 330.3(h).

result in the surviving spouse's becoming the sole owner of the joint account and the POD account. Thus, the accounts would be aggregated with the surviving spouse's individual account, possibly resulting in a substantial reduction in insurance coverage.

Over the years the FDIC has received several questions and complaints about the treatment of deposit accounts, for deposit insurance purposes, upon the death of the owner of the deposits. A question of fairness has been raised about whether a survivor of a decedent should be ''penalized'' for not rearranging the decedent's bank accounts quickly enough after the decedent's death so as not to cause a reduction in deposit insurance coverage. Some have complained that time is needed after the death of an accountholder before proof can be shown to the depository institution of the decedent's death. Specifically, a delay is sometimes occasioned before death certificates are available. Moreover, state laws are not consistent about when, after the death of a depositor, the ownership interests in deposit accounts actually change.

The ANPR requested comment on whether the FDIC should provide a ''grace period'' after the death of a depositor during which the accounts would be insured as if the depositor had not died. Almost all of those who commented on this issue expressed support for such a grace period, noting that it seemed fair and was within the FDIC's authority to provide. The FDIC believes that there is merit in allowing survivors a limited amount of time to attend to a decedent's deposit accounts, particularly if in some situations the survivors would have no control over the decedent's accounts until certain administrative and probate requirements are satisfied. Although it is infrequent that a depositor dies and his or her depository institution closes at or about the same time, there have been and will be situations where individuals were and will be faced with this unfortunate sequence of events. Although, for purposes of national uniformity, the FDIC currently deems the ownership interests in deposit accounts to change immediately upon the death of a depositor, the laws of all the states are not uniform on this issue.

For these reasons, the proposed rule would permit a six-month period after the death of an accountholder during which time the insurance coverage of the accounts in which the decedent has an ownership interest would not change, unless those authorized to do so restructure the account(s), thereby rendering the grace period inapplicable.[5] The use of the six-month grace period is not intended to result in a reduction in coverage. The regulation therefore provides that the grace period is optional and shall not be applied if the result would be a decrease in deposit insurance coverage. The FDIC specifically requests comment on whether the proposed six months is the appropriate length of time for the grace period.

3. The Rules on Living Trust Accounts

A ''living trust'' is a formal trust in which the owner retains control of the trust assets during his or her lifetime and designates the beneficiaries of the assets upon his or her death. The owner may revoke or change the terms of the trust during his or her lifetime. In 1993 the FDIC Legal Division prepared guidelines on the insurance of revocable accounts, with an emphasis on living trusts. The guidelines were updated in 1994. FDIC Adv. Op. 94–32 (May 18, 1994) (Guidelines). The Guidelines are necessarily detailed and somewhat complex. At the same time the Legal Division prepared the Guidelines, the FDIC also adopted an informal policy not to review complex living trust documents to determine POD coverage but, instead, to make copies of the Guidelines available and recommend that persons inquiring about such coverage consult with the lawyer who drafted the living trust. Despite the availability of the FDIC's Guidelines and the existence of the FDIC's current policy not to review trust documents, the FDIC still receives numerous questions about the insurance of POD accounts held in connection with living trusts.

Over the years the FDIC has found that the vast majority of deposit accounts held pursuant to a living trust are not eligible for insurance coverage under the POD rules because the trusts contain ''defeating contingencies.'' As explained in the Guidelines, a defeating contingency exists when a named beneficiary in a living trust would not, simply by operation of the settlor's death, become the owner of the trust assets. A contingency of some sort has to be satisfied before the beneficiary becomes entitled to the assets. One example would be that the beneficiary must be married at the time of the settlor's death to be entitled to the assets. The existence of a defeating contingency in a living trust would disqualify the portion of the funds in the POD account corresponding to the unqualified beneficiary for POD insurance coverage treatment, because POD coverage is conditioned in part upon the intention of the owner that the funds in the account pass to the named beneficiary(ies) upon the owner's death. 12 CFR 330.8(a). In such situations, the funds in the POD account corresponding to an unqualified beneficiary would be treated as single-ownership funds of the owner of the account. *Id.* at 330.8(b).

Because, in the FDIC's experience, it seems that at least a majority of POD accounts held in connection with living trusts do not qualify for POD coverage, an argument can be made that, to avoid depositor confusion, the FDIC should simply amend its regulations to indicate accounts held pursuant to living trusts would not qualify for insurance coverage under the POD account category. In fact, the FDIC suggested this option in the ANPR. As indicated in some of the comments received on this alternative, however, the POD coverage category is broader than just POD accounts and includes all types of accounts held in connection with revocable trusts that satisfy the requirements in the POD insurance coverage regulations. It seems inappropriate, therefore, to exclude accounts held in connection with living trusts from POD insurance treatment where the requirements of the regulation are otherwise satisfied.

As an alternative to eliminating the living trust deposit accounts from the POD insurance category, the FDIC is proposing to amend the POD rules to indicate that those rules might apply to accounts held in connection with living trusts, but only if the requirements of the POD regulation are satisfied. The revised rules would specify that the existence of a ''defeating contingency'' would prevent corresponding funds in a POD account from receiving POD deposit insurance coverage, as to the beneficiary whose interest in the assets of the living trust is subject to the defeating contingency.

*Other Possible Substantive Changes Mentioned in the ANPR*

In the ANPR the FDIC requested comments on three additional possible substantive revisions to the deposit insurance rules. For the reasons indicated below, however, those possible revisions are not included as part of the proposed rule.

[5] The former FSLIC, as a matter of policy, allowed a grace period of six months following the death of a depositor for the decedent's deposits to be restructured. If an insured thrift failed during the grace period and additional insurance would be available if the decedent had not died, the FSLIC insured the account(s) based on the account ownership shown on the institution's records as if the decedent were still living. The reason for the FSLIC policy was to ''lessen the hardship'' that might be caused otherwise.

1. The Joint Account Rules

Joint ownership is one of the account categories that qualifies for separate insurance coverage. 12 CFR 330.7. Thus, a depositor who has an individual deposit and interests in joint accounts at the same insured bank or thrift is insured for up to $100,000 per category of account. Currently deposit insurance for joint accounts is determined by a two-step process: first, all joint accounts that are identically owned (*i.e.*, held by the same combination of individuals) are added together and the combined total is insurable up to the $100,000 maximum; second, each person's interests in joint accounts involving different combinations of individuals are combined and the total is insured up to the $100,000 maximum. The general rules are: (1) No one joint account can be insured for over $100,000, (2) multiple joint accounts with identical ownership cannot be insured for over $100,000 in the aggregate, and (3) no one person's insured interest in the joint account category can exceed $100,000.

These rules governing joint accounts are somewhat complex and sometimes misunderstood by both consumers and bankers. Thus, in the ANPR the FDIC raised the possibility of simplifying the current joint account rules by eliminating the first step of the two-step process. Under this alternative, all funds held in joint accounts would be allocated among the owners and each owner's interests in all joint accounts (held at the same depository institution) would be added and insured up to $100,000 in the aggregate. The ANPR comments on this possible revision to the joint account rules were uniformly favorable. Members of the banking industry and others, however, have raised questions about the potential "moral hazard" of expanding deposit insurance coverage beyond current limits. The moral hazard exists, in this context, because insured depositors do not have an incentive to monitor and discipline their institutions. The managers of those insured banks and thrifts, consequently, may take more risks than they otherwise would. Members of Congress also have expressed concerns about expanding federal deposit insurance coverage. Moreover, there are legislative proposals that take the opposite approach by seeking to limit FDIC insurance.

The FDIC acknowledges that, while the possible amendment to the joint account rules mentioned in the ANPR would simplify and likely improve public understanding of the joint account rules, it also could increase deposit insurance coverage significantly. For example, under the current rules a qualifying joint deposit account held by A&B for $200,000 would be insured for $100,000 based on the "step one" rule that no joint account owned by the same combination of individuals can be insured for more than $100,000. If step one were eliminated, that same account would be insured for up to $200,000. In this connection, the staff of the Board of Governors of the Federal Reserve System performed an analysis in 1992 in conjunction with the FDIC study, *The Costs, Feasibility and Privacy Implications of Tracking Deposits.* The Federal Reserve analysis concluded that eliminating step one of the joint account rules would result in a $22 billion increase in insurance coverage. Although the FDIC is uncertain that the Federal Reserve analysis is an accurate measurement of the potential increase in deposit insurance, the analysis raises concerns that require further consideration.

For these reasons, the FDIC has decided to further study the policy, economic and other implications of eliminating step one of the joint account rules. The FDIC staff will conduct such a study and report its findings to the Board. The objective is to simplify the joint account rules without significantly increasing deposit insurance.

2. The Rules on "Payable on Death" Accounts

The insurance rules provide for separate coverage for funds owned by an individual and deposited into any account commonly referred to as a "payable-on-death" account, tentative or "Totten" trust account, revocable trust account, or similar account (POD accounts). 12 CFR 330.8. The regulation limits qualifying beneficiaries to the owner's spouse, children and grandchildren. *Id.* at 330.8(a). The owner is insured up to $100,000 as to each such named qualifying beneficiary, separately from any other accounts of the owner or the beneficiaries. Thus, if the individual names his spouse, three children and two grandchildren as beneficiaries, the account would be insured up to $600,000, assuming the other requirements of the regulation are satisfied. Over the years the FDIC has received numerous questions on why other types of relatives of POD account owners are not included within the qualifying degree of kinship. Thus, in the ANPR the FDIC requested comment on whether and, if so, how the POD insurance rules should be changed. The FDIC received fifty-one ANPR comments on this issue. The majority of those who commented encouraged the FDIC to expand the qualifying beneficiaries to include those likely to be named by a POD account owner/settlor. Others commented that the current rules seem fair and should be retained. As with the possible amendments to the joint account rules mentioned in the ANPR, however, members of the banking industry and others have raised questions about the potential "moral hazard" of expanding deposit insurance coverage. Members of Congress also have expressed concerns about expanding federal deposit insurance.

Expanding the list of qualifying beneficiaries in the POD accounts rules would provide additional depositors with access to POD insurance and could significantly expand the scope of deposit insurance. Thus, at this time the FDIC believes that the best alternative is to retain the current POD rules and to continue to study the nature and scope of POD coverage. The staff will conduct such a study and report its findings to the Board.

3. Statutory Requirements Regarding Employee Benefit Plans

Under an amendment to the FDI Act made by FDICIA, pass-through insurance coverage is not available to employee benefit plan deposits that are accepted by an insured bank or thrift when the institution does not meet prescribed capital requirements. 12 U.S.C. 1821(a)(1)(D). If an institution accepts employee benefit plan deposits at a time when it is not sufficiency capitalized, such deposits are insured only up to $100,000 per plan (as opposed to $100,000 per participant of the plan). This FDICIA-originated provision is the only one in the FDI Act and the FDIC's regulations to base insurance coverage on the capital sufficiency of the insured institution where the deposits are placed. Section 330.12 of the FDIC's insurance regulations implements this statutory limitation on pass-through coverage for employee benefit plan deposits. 12 CFR 330.12. The FDIC believes that the statute is complex and difficult for the industry and the public to understand.

The FDIC raised this matter in the ANPR. Based on the varied comments received, the FDIC intends to study the issue further to determine what, if any, action need be taken by the FDIC.

*Section-by-Section Discussion of the Proposed Rule*

The following is an identification and, where appropriate, an explanation of the various proposed revisions to each section of the FDIC's insurance regulations.

Section 330.1—Definitions

Various clarifying and technical changes are proposed to be made to this definitional section of part 330. Some definitions provided in other provisions of part 330 (for example, the definition of ''independent activity'' in section 330.9) are moved to this section. The definition of ''Corporation'' (meaning the FDIC) is added to the section.

Section 330.2—Authority and Purpose

This section is reduced to simply stating the purpose of part 330. The narrative description of the FDIC's authority to issue deposit insurance regulations is eliminated as no longer necessary.

Section 330.3—General Principles

Certain examples are added to this section. Because of its importance, paragraph (g) on the continuation of separate insurance after a merger of depository institutions is moved to a new separate § 330.4. The rules on the insurance coverage of bank investment contracts and the relevant definitions are moved from the current § 330.13 to this section. Section 330.13 is thereby eliminated.

A new paragraph (j) is added to provide a six-month grace period for insurance coverage after a deposit owner dies, if allowing for such a grace period would not result in a reduction of insurance coverage.

Section 330.4—Continuation of Separate Deposit Insurance After Merger of Insured Depository Institutions

This is a new section comprised of the provisions in the current § 330.3(g). The FDIC receives numerous questions on the deposit insurance implications of bank mergers and acquisitions. It seems appropriate for these provisions to be contained in a separate, more easily accessible section of the regulations.

Section 330.5—Recognition of Deposit Ownership and Recordkeeping Requirements

The section would amend the current § 330.4. The recordkeeping requirements would be amended to provide an exception to the general rule that the deposit account records of a depository institution must expressly disclose the existence of a fiduciary relationship in order for the FDIC to recognize the fiduciary nature of the account. The exception provides that the general requirement would not apply if the FDIC determines, in its discretion, that the titling of the account and the underlying deposit account records of the depository institution indicate the existence of a fiduciary relation. The section specifies that the exception might apply, for example, where the deposit account title or records indicate that the account is held by an escrow agent, title company, or an entity (or its agent or nominee) whose business is to hold, for safekeeping reasons, deposits for others.

This section also would be amended to allow for the grace period provided for in the proposed § 330.3(j).

Section 330.6—Single Ownership Accounts

This is essentially the same as the current § 330.5. The language has been modified slightly and an example is provided. Also, the ''decedent's account'' provision in this section would cross-reference the grace period provided for in the proposed § 330.3(j).

Section 330.7—Accounts Held by an Agent, Nominee, Guardian, Custodian or Conservator

This is the current § 330.6. The language of the section has been modified slightly. The provision on mortgage servicing accounts has been clarified to indicate that such accounts are not entitled to separate insurance, but are insured as custodial accounts under the general rules of the section. The provision on annuity contract accounts has been moved to a new, separate § 330.8.

Section 330.8—Annuity Contract Accounts

This is a new section comprised of the provisions in current § 330.6(f). Funds in such accounts are entitled to separate insurance coverage. It is appropriate, therefore, that the provisions be in a separate section of the regulations.

Section 330.9—Joint Ownership Accounts

This is the current § 330.7. Examples have been added to illustrate how the joint account rules operate. The language of other parts of the section has been modified.

Section 330.10—Revocable Trust Accounts

This is the current § 330.8. Examples are provided on the general rule and the rule involving the interests of nonqualifying beneficiaries. A paragraph on living trusts has been added to clarify when accounts held in connection with living trusts would be insured under this provision. Other parts of the section have been clarified.

Section 330.11—Accounts of a Corporation, Partnership or Unincorporated Association

These are the rules currently provided in § 330.9. The definition of ''independent activity'' is moved to § 330.1. The language of other parts of the section has been modified slightly.

Section 330.12—Accounts Held by a Depository Institution as the Trustee of an Irrevocable Trust

This is the current § 330.10. The language is modified slightly.

Section 330.13—Irrevocable Trust Accounts

This is the current § 330.11. The definitions of ''trust interest'' and ''non-contingent trust interest'' are moved to § 330.1. The language of other parts of the section is modified slightly.

Section 330.14—Retirement and Other Employee Benefit Plan Accounts

This is the current § 330.12. No changes are proposed to this provision.

The Current Section 330.13—Bank Investment Contracts

The substantive parts of this regulation are moved to § 330.1 and the remainder is eliminated. The FDIC is proposing to delete this section because it is largely definitional and essentially reiterates the corresponding statutory provisions.

Section 330.15—Public Unit Accounts

This is the current § 330.14 and is essentially unchanged.

The Current Section 330.15—Notice to Depositors

The FDIC proposes to eliminate this section as no longer necessary.

Section 330.16—Effective Dates

Changes have been made to this section to indicate that the designated effective dates apply to former changes to part 330. The FDIC proposes to retain the substance of this section because the effective dates might be relevant in connection with time deposits issued prior to December 19, 1991, that have not yet matured.

**Request for Comment**

The Board of Directors of the FDIC is seeking comment on all of the above-mentioned possible means of simplifying the deposit insurance rules, including the likely effect of such changes on consumers and the banking industry. Comments are specifically requested on the identified proposed substantive revisions. The Board also is seeking suggestions on any other ways that the rules might be streamlined, simplified or clarified.

**Paperwork Reduction Act**

The proposed rule is intended to simplify the rules governing FDIC deposit insurance. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

**Regulatory Flexibility Act**

The proposed rule would not 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*). The proposed revisions to the deposit insurance rules would apply to all FDIC-insured depository institutions and would impose no new reporting, recordkeeping or other compliance requirements upon those entities. 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, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

The Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to revise part 330 of title 12 of the Code of Federal Regulations to read as follows:

## PART 330—DEPOSIT INSURANCE COVERAGE

Sec.
330.1 Definitions.
330.2 Purpose.
330.3 General principles.
330.4 Continuation of separate deposit insurance after merger of insured depository institutions.
330.5 Recognition of deposit ownership and recordkeeping requirements.
330.6 Single ownership accounts.
330.7 Accounts held by an agent, nominee, guardian, custodian or conservator.
330.8 Annuity contract accounts.
330.9 Joint ownership accounts.
330.10 Revocable trust accounts.
330.11 Accounts of a corporation, partnership or unincorporated association.
330.12 Accounts held by a depository institution as the trustee of an irrevocable trust.
330.13 Irrevocable trust accounts.
330.14 Retirement and other employee benefit plan accounts.
330.15 Public unit accounts.
330.16 Effective dates.

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

### § 330.1 Definitions.

For the purposes of this part:

(a) *Act* means the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(b) *Corporation* means the Federal Deposit Insurance Corporation.

(c) *Default* has the same meaning as provided under section 3(x) of the Act (12 U.S.C. 1813(x)).

(d) *Deposit* has the same meaning as provided under section 3(l) of the Act (12 U.S.C. 1813(l)).

(e) *Deposit account records* means account ledgers, signature cards, certificates of deposit, passbooks, corporate resolutions authorizing accounts in the possession of the insured depository institution and other books and records of the insured depository institution, including records maintained by computer, which relate to the insured depository institution's deposit taking function, but does not mean account statements, deposit slips, items deposited or cancelled checks.

(f) *FDIC* means the Federal Deposit Insurance Corporation.

(g) *Independent activity.* A corporation, partnership or unincorporated association shall be deemed to be engaged in an ''independent activity'' if the entity is operated primarily for some purpose other than to increase deposit insurance.

(h) *Insured branch* means a branch of a foreign bank any deposits in which are insured in accordance with the provisions of the Act.

(i) *Insured deposit* has the same meaning as that provided under subsection 3(m)(1) of the Act (12 U.S.C. 1813(m)(1)).

(j) *Insured depository institution* is any depository institution whose deposits are insured pursuant to the Act, including a foreign bank having an insured branch.

(k) *Natural person* means a human being.

(l) *Non-contingent trust interest* means a trust interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031–7 of the Federal Estate Tax Regulations (26 CFR 20.2031–7) or any similar present worth or life expectancy tables which may be adopted by the Internal Revenue Service.

(m) *Sole proprietorship* means a form of business in which one person owns all the assets of the business, in contrast to a partnership or corporation.

(n) *Trust estate* means the determinable and beneficial interest of a beneficiary or principal in trust funds but does not include the beneficial interest of an heir or devisee in a decedent's estate.

(o) *Trust funds* means funds held by an insured depository institution as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement.

(p) *Trust interest* means the interest of a beneficiary in an irrevocable express trust (other than an employee benefit plan) created either by written trust instrument or by statute, but does not include any interest retained by the settlor.

### § 330.2 Purpose.

The purpose of this part is to clarify the rules and define the terms necessary to afford deposit insurance coverage under the Act and provide rules for the recognition of deposit ownership in various circumstances.

### § 330.3 General principles.

(a) *Ownership rights and capacities.* The insurance coverage provided by the Act and this part are based upon the ownership rights and capacities in which deposit accounts are maintained at insured depository institutions. All deposits in an insured depository institution which are maintained in the same right and capacity (by or for the benefit of a particular depositor or depositors) shall be added together and insured in accordance with this part. Deposits maintained in different rights and capacities, as recognized under this part, shall be insured separately from each other. (Example: single ownership accounts and joint ownership accounts are insured separately from each other.)

(b) *Deposits maintained in separate insured depository institutions or in separate branches of the same insured depository institution.* Any deposit accounts maintained by a depositor at one insured depository institution are insured separately from, and without regard to, any deposit accounts that the same depositor maintains at any other separately chartered and insured depository institution, even if two or more separately chartered and insured depository institutions are affiliated through common ownership. (Example: Deposits held by the same individual at two different banks owned by the same bank holding company would be insured separately, per bank.) The deposit accounts of a depositor maintained in the same right and capacity at different branches or offices of the same insured depository institution are not separately insured; rather they shall be added together and insured in accordance with this part.

(c) *Deposits maintained by foreigners and deposits denominated in foreign currency.* The availability of deposit insurance is not limited to citizens and residents of the United States. Any person or entity that maintains deposits in an insured depository institution is entitled to the deposit insurance provided by the Act and this part. In addition, deposits denominated in a foreign currency shall be insured in accordance with this part. Deposit insurance for such deposits shall be determined and paid in the amount of United States dollars that is equivalent in value to the amount of the deposit denominated in the foreign currency as of close of business on the date of default of the insured depository institution. The exchange rates to be used for such conversions are the 12 p.m. rates (the ''noon buying rates for cable transfers'') quoted for major currencies by the Federal Reserve Bank of New York on the date of default of the insured depository institution, unless the deposit agreement specifies that some other widely recognized exchange rates are to be used for all purposes under that agreement, in which case, the rates so specified shall be used for such conversions.

(d) *Deposits in insured branches of foreign banks.* Deposits in an insured branch of a foreign bank which are payable by contract in the United States shall be insured in accordance with this part, except that any deposits to the credit of the foreign bank, or any office, branch, agency or any wholly owned subsidiary of the foreign bank, shall not be insured. All deposits held by a depositor in the same right and capacity in more than one insured branch of the same foreign bank shall be added together for the purpose of determining the amount of deposit insurance.

(e) *Deposits payable solely outside of the United States and certain other locations.* Any obligation of an insured depository institution which is payable solely at an office of such institution located outside the States of the United States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, is not a deposit for the purposes of this part.

(f) *International banking facility deposits.* An ''international banking facility time deposit'', as defined by the Board of Governors of the Federal Reserve System in Regulation D (12 CFR 204.8(a)(2)), or in any successor regulation, is not a deposit for the purposes of this part.

(g) *Bank investment contracts.* As required by section 11(a)(8) of the Act (12 U.S.C. 1828(a)(8)), any liability arising under any investment contract between any insured depository institution and any employee benefit plan which expressly permits ''benefit responsive withdrawals'' or transfers (as defined in section 11(a)(8) of the Act) are not insured deposits for purposes of this part. The term ''substantial penalty or adjustment'' used in section 11(a)(8) of the Act means, in the case of a deposit having an original term which exceeds one year, all interest earned on the amount withdrawn from the date of deposit or for six months, whichever is less; or, in the case of a deposit having an original term of one year or less, all interest earned on the amount withdrawn from the date of deposit or three months, whichever is less.

(h) *Application of state or local law to deposit insurance determinations.* In general, deposit insurance is for the benefit of the owner or owners of funds on deposit. However, 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. Deposit 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.

(i) *Determination of the amount of a deposit*—(1) *General rule.* The amount of a deposit is the balance of principal and interest unconditionally credited to the deposit account as of the date of default of the insured depository institution, plus the ascertainable amount of interest to that date, accrued at the contract rate (or the anticipated or announced interest or dividend rate), which the insured depository institution in default would have paid if the deposit had matured on that date and the insured depository institution had not failed. In the absence of any such announced or anticipated interest or dividend rate, the rate for this purpose shall be whatever rate was paid in the immediately preceding payment period.

(2) *Discounted certificates of deposit.* The amount of a certificate of deposit sold by an insured depository institution at a discount from its face value is its original purchase price plus the amount of accrued earnings calculated by compounding interest annually at the rate necessary to increase the original purchase price to the maturity value over the life of the certificate.

(3) *Waiver of minimum requirements.* In the case of a deposit with a fixed payment date, fixed or minimum term, or a qualifying or notice period that has not expired as of such date, interest thereon to the date of closing shall be computed according to the terms of the deposit contract as if interest had been credited and as if the deposit could have been withdrawn on such date without any penalty or reduction in the rate of earnings.

(j) *Continuation of insurance coverage following the death of a deposit owner.* When a deposit owner dies, eligibility for the category of insurance coverage of the account(s) owned by that person shall be unaffected until the earlier of: the restructuring of the account(s) or six months after the death of the deposit owner. The operation of this grace period, however, shall not result in a reduction of coverage during the six-month period, unless the account(s) is (are) restructured. If an account is not withdrawn or restructured within six months after the depositor's death, the insurance shall be provided on the basis of actual ownership in accordance with the provisions of § 330.5(a)(1).

**§ 330.4 Continuation of separate deposit insurance after merger of insured depository institutions.**

Whenever the liabilities of one or more insured depository institutions for deposits are assumed by another insured depository institution, whether by merger, consolidation, other statutory assumption or contract:

(a) The insured status of the institutions whose liabilities have been assumed terminates on the date of receipt by the FDIC of satisfactory evidence of the assumption; and

(b) The separate insurance of deposits assumed continues for six months from the date the assumption takes effect or, in the case of a time deposit, the earliest maturity date after the six-month period. In the case of time deposits which mature within six months of the date the deposits are assumed and which are renewed at the same dollar amount (either with or without accrued interest having been added to the principal amount) and for the same term as the original deposit, the separate insurance applies to the renewed deposits until the first maturity date after the six-month period. Time deposits that mature within six months of the deposit assumption and that are renewed on any other basis, or that are not renewed and thereby become demand deposits, are separately insured only until the end of the six-month period.

**§ 330.5 Recognition of deposit ownership and recordkeeping requirements.**

(a) *Recognition of deposit ownership*—(1) *Evidence of deposit ownership.* Except as indicated in this paragraph (a)(1) or as provided in § 330.3(j), in determining the amount of insurance available to each depositor, the FDIC shall presume that deposited funds are actually owned in the manner indicated on the deposit account records of the insured depository institution. If the FDIC, in its sole discretion, determines that the deposit account records of the insured depository institution are clear and unambiguous, those records shall be considered binding on the depositor, and the FDIC shall consider no other records on the manner in which the funds are owned. If the deposit account records are ambiguous or unclear on the manner in which the funds 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. Despite the general requirements of this paragraph (a)(1), if the FDIC has reason to believe that the insured depository institution's deposit account records misrepresent the actual ownership of deposited funds and such misrepresentation would increase deposit insurance coverage the FDIC may consider all available evidence and pay claims for insured deposits on the basis of the actual rather than the misrepresented ownership.

(2) *Recognition of deposit ownership in custodial accounts.* In the case of custodial deposits, the interest of each beneficial owner may be determined on a fractional or percentage basis. This may be accomplished in any manner which indicates that where the funds of an owner are commingled with other funds held in a custodial capacity and a portion thereof is placed on deposit in one or more insured depository institutions without allocation, the owner's insured interest in the deposit in any one insured depository institution would represent, at any given time, the same fractional share as his or her share of the total commingled funds.

(b) *Recordkeeping requirements*—(1) *Disclosure of fiduciary relationships.* The ''deposit account records'' (as defined in § 330.1) of an insured depository institution must expressly disclose, by way of specific references, the existence of any fiduciary relationship including, but not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian, pursuant to which funds in an account are deposited and on which a claim for insurance coverage is based. No claim for insurance coverage based on a fiduciary relationship will be recognized if no fiduciary relationship is evident from the deposit account records of the insured depository institution. The general requirement for the express indication that the account is held in a fiduciary capacity will not apply, however, in instances where the FDIC determines, in its sole discretion, that the titling of the deposit account and the underlying deposit account records sufficiently indicate the existence of a fiduciary relationship. This exception may apply, for example, where the deposit account title or records indicate that the account is held by an escrow agent, title company or a company whose business is to hold deposits and securities for others.

(2) *Details of fiduciary relationships.* If the deposit account records of an insured depository institution disclose the existence of a relationship which might provide a basis for additional insurance (including the exception provided for in paragraph (b)(1) of this section), the details of the relationship and the interests of other parties in the account must be ascertainable either from the deposit account records of the insured depository institution or from records maintained, in good faith and in the regular course of business, by the depositor or by some person or entity that has undertaken to maintain such records for the depositor.

(3) *Multi-tiered fiduciary relationships.* In deposit accounts where there are multiple levels of fiduciary relationships, there are two alternative methods of satisfying paragraphs (b)(1) and (b)(2) of this section to obtain insurance coverage for the interests of the true beneficial owners of a deposit account.

(i) One method is to:

(A) Expressly indicate, on the deposit account records of the insured depository institution, the existence of each and every level of fiduciary relationships; and

(B) Disclose, at each level, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting.

(ii) An alternative method is to:

(A) Expressly indicate on the deposit account records of the insured depository institution that there are multiple levels of fiduciary relationships;

(B) Disclose the existence of additional levels of fiduciary relationships in records, maintained in good faith and in the regular course of business, by parties at subsequent levels; and

(C) Disclose, at each of the levels, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting. No person or entity in the chain of parties will be permitted to claim that they are acting in a fiduciary capacity for others unless the possible existence of such a relationship is revealed at some previous level in the chain.

(4) *Exceptions to recordkeeping requirements*—(i) *Deposits evidenced by negotiable instruments.* If any deposit obligation of an insured depository institution is evidenced by a negotiable certificate of deposit, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, negotiable traveler's check, letter of credit or other negotiable instrument, the FDIC will recognize the owner of such deposit obligation for all purposes of claim for insured deposits to the same extent as if his or her name and interest were disclosed on the records of the insured depository institution; Provided, That the instrument was in fact negotiated to such owner prior to the date of default of the insured depository institution. The owner must provide affirmative proof of such negotiation, in a form satisfactory to the FDIC, to substantiate his or her claim. Receipt of a negotiable instrument directly from the insured depository institution in default shall, in no event, be considered a negotiation of said instrument for purposes of this provision.

(ii) *Deposit obligations for payment of items forwarded for collection by depository institution acting as agent.* Where an insured depository institution in default has become obligated for the payment of items forwarded for collection by a depository institution acting solely as agent, the FDIC will recognize the holders of such items for all purposes of claim for insured deposits to the same extent as if their name(s) and interest(s) were disclosed as depositors on the deposit account records of the insured depository institution, when such claim for insured deposits, if otherwise payable, has been established by the execution and delivery of prescribed forms. The FDIC will recognize such depository institution forwarding such items for the holders thereof as agent for such holders for the purpose of making an assignment to the FDIC of their rights against the insured depository institution in default and for the purpose of receiving payment on their behalf.

**§ 330.6 Single ownership accounts.**

(a) *Individual accounts.* Funds owned by a natural person and deposited in one or more deposit accounts in his or her own name shall be added together and insured up to $100,000 in the aggregate. Exception: Despite the general requirement in this paragraph (a), if more than one natural person has the right to withdraw funds from an individual account (excluding persons who have the right to withdraw by virtue of a Power of Attorney) the account shall be treated as a joint ownership account (although not necessarily a qualifying joint account) and shall be insured in accordance with the provisions of § 330.9, unless the deposit account records clearly indicate, to the satisfaction of the FDIC, that the funds are owned by one individual and that other signatories on the account are merely authorized to withdraw funds on behalf of the owner.

(b) *Sole proprietorship accounts.* Funds owned by a business which is a ''sole proprietorship'' (as defined in § 330.1) and deposited in one or more deposit accounts in the name of the business, shall be treated as the individual account(s) of the person who is the sole proprietor, added to any other individual accounts of that person, and insured up to $100,000 in the aggregate.

(c) *Single-name accounts containing community property funds.* Community property funds deposited into one or more deposit accounts in the name of one member of a husband-wife community shall be treated as the individual account(s) of the named member, added to any other individual accounts of that person, and insured up to $100,000 in the aggregate.

(d) *Accounts of a decedent and accounts held by executors or administrators of a decedent's estate.* Funds held in the name of a decedent or in the name of the executor, administrator, or other personal representative of his or her estate and deposited into one or more deposit accounts shall be added together and insured up to $100,000 in the aggregate; provided, however, that nothing in this paragraph shall affect the operation of § 330.3(j). The deposit insurance provided by this paragraph (d) shall be separate from any insurance coverage provided for the individual deposit accounts of the executor, administrator, other personal representative or the beneficiaries of the estate.

**§ 330.7 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 § 330.13.

(b) *Guardian, custodian or conservator accounts.* Funds held by a guardian, custodian, or conservator for the benefit of his or her ward, or for the benefit of a minor under the Uniform Gifts to Minors Act, and deposited into one or more accounts in the name of the guardian, custodian or conservator shall, for purposes of this part, be deemed to be agency or nominee accounts and shall be insured in accordance with paragraph (a) of this section.

(c) *Accounts held by fiduciaries on behalf of two or more persons.* Funds held by an agent, nominee, guardian, custodian, conservator or loan servicer, on behalf of two or more persons jointly, shall be treated as a joint ownership account and shall be insured in accordance with the provisions of § 330.9.

(d) *Mortgage servicing accounts.* Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal and interest, shall be insured in accordance with paragraph (a) of this section for the interest of each owner (mortgagee, investor or security holder) in such accounts. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a) of this section for the ownership interest of each mortgagor in such accounts.

(e) *Custodian accounts for American Indians.* Paragraph (a) of this section shall not apply to any interest an individual American Indian may have in funds deposited by the Bureau of Indian Affairs of the United States Department of the Interior the (''BIA'') on behalf of that person pursuant to 25 U.S.C. 162(a), or by any other disbursing agent of the United States on behalf of that person pursuant to similar authority, in an insured depository institution. The interest of each American Indian in all such accounts maintained at the same insured depository institution shall be added together and insured, up to $100,000, separately from any other accounts maintained by that person in the same insured depository institution.

**§ 330.8 Annuity contract accounts.**

(a) Funds held by an insurance company or other corporation in a deposit account for the sole purpose of funding life insurance or annuity contracts and any benefits incidental to such contracts, shall be insured separately in the amount of up to $100,000 per annuitant, provided that, pursuant to a state statute:

(1) The corporation establishes a separate account for such funds; and

(2) The account cannot be charged with the liabilities arising out of any other business of the corporation; and

(3) The account cannot be invaded by other creditors of the corporation in the event that the corporation becomes insolvent and its assets are liquidated.

(b) Such insurance coverage shall be separate from the insurance provided for any other accounts maintained in a different right and capacity by the corporation or the annuitants at the same insured depository institution.

**§ 330.9 Joint ownership accounts.**

(a) *Separate insurance coverage.* Qualifying joint accounts, whether owned as joint tenants with right of survivorship, as tenants in common or as tenants by the entirety, shall be insured separately from any individually owned (single ownership) deposit accounts maintained by the co-owners. (Example: If A has a single ownership account and also is a joint owner of a qualifying joint account, A's interest in the joint account would be insured separately from his or her interest in the individual account.) Qualifying joint accounts in the names of both husband and wife which are comprised of community property funds shall be added together and insured up to $100,000, separately from any funds deposited into accounts bearing their individual names.

(b) *Determination of insurance coverage.* Step one: all qualifying joint accounts owned by the same combination of individuals shall first be added together and insurable up to $100,000 in the aggregate. (Example: A qualifying joint account owned by ''A&B'' would be added to a qualifying joint account owned by ''B&A'' and the insurable limit on the combined balances in those accounts would be $100,000.) Step two: the interests of each co-owner in all qualifying joint accounts, whether owned by the same or different combinations of persons, shall then be added together and the total shall be insured up to $100,000. (Example: ''A&B'' have a qualifying joint account with a balance of $100,000; ''A&C'' have a qualifying joint account with a balance of $150,000; and ''A&D''

have a qualifying joint account with a balance of $100,000. The balance in the account owned by ''A&C'' exceeds $100,000, so under step one the excess amount, $50,000, would be uninsured. A's combined ownership interests in the insurable amounts in the accounts would be $150,000, of which under step two $100,000 would be insured and $50,000 would be uninsured; B's ownership interest would be $50,000, all of which would be insured; C's insurable ownership interest would be $50,000, all of which would be insured; and D's ownership interest would be $50,000, all of which would be insured.)

(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'' (as defined in § 330.1); 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 signature-card 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 § 330.5(a), 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 (although not necessarily a qualifying 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.

(d) *Nonqualifying joint accounts.* A deposit account held in two or more names which is not a qualifying joint account, for purposes of this section, shall be treated as being owned by each named owner, as an individual, corporation, partnership, or unincorporated association, as the case may be, and the actual ownership interest of each individual or entity in such account shall be added to any other single ownership accounts of such individual or other accounts of such entity, and shall be insured in accordance with the rules in this part governing the insurance of such accounts.

(e) *Determination of interests.* The interests of the co-owners of qualifying joint accounts, held as tenants in common, shall be deemed equal, unless otherwise stated in the depository institution's deposit account records. This section applies regardless of whether the conjunction ''and'' or ''or'' is used in the title of a joint deposit account, even when both terms are used, such as in the case of a joint deposit account with three or more co-owners.

**§ 330.10 Revocable trust accounts.**

(a) *General rule.* Funds owned by an individual and deposited into an account evidencing an intention that upon the death of the owner the funds shall belong to one or more qualified beneficiaries shall be insured in the amount of up to $100,000 in the aggregate as to each such named qualifying beneficiary, separately from any other accounts of the owner or the beneficiaries. For purposes of this provision, the term ''qualifying beneficiaries'' means the owner's spouse, child/children or grandchild/grandchildren. (Example: If A establishes a qualifying account payable upon death to his spouse, two children and one grandchild, assuming compliance with the rules of this provision, the account would be insured up to $400,000 separately from any other different types of accounts either A or the beneficiaries may have with the same depository institution.) Accounts covered by this provision are commonly referred to as a tentative or ''Totten trust'' account, ''payable-on-death'' account, or revocable trust account.

(b) *Required intention.* The required intention in paragraph (a) of this section that upon the owner's death the funds shall belong to one or more qualifying beneficiaries must be manifested in the title of the account using commonly accepted terms such as, but not limited to, ''in trust for'', ''as trustee for'', ''payable-on-death to'' or any acronym therefor. In addition, the beneficiaries must be specifically named in the deposit account records of the insured depository institution. The settlor of a revocable trust account shall be presumed to own the funds deposited into the account.

(c) *Interests of nonqualifying beneficiaries.* If a named beneficiary of an account covered by this section is not a qualifying beneficiary, the funds corresponding to that beneficiary shall be treated as individually owned (single ownership) accounts of such owner(s), aggregated with any other single ownership accounts of such owners, and insured up to $100,000 per owner. (Examples: If A establishes an account payable upon death to his or her nephew, the account would be insured as a single ownership account owned by A. Similarly, if B establishes an account payable upon death to her husband, son and nephew, the POD account would be eligible for POD coverage up to $200,000 corresponding to the two qualifying beneficiaries (*i.e.*, the spouse and child). The amount corresponding to the non-qualifying beneficiary (*i.e.*, the nephew) would be deemed to be owned by B in her single-ownership capacity and insured accordingly.)

(d) *Joint revocable trust accounts.* Where an account described in paragraph (a) of this section is established by more than one owner and held for the benefit of others, some or all of whom are within the qualifying degree of kinship, the respective interests of each owner (which shall be deemed equal unless otherwise stated in the insured depository institution's deposit account records) held for the benefit of each qualifying beneficiary shall be separately insured up to $100,000. However, where a husband and a wife establish a revocable trust account naming themselves as the sole beneficiaries, such account shall not be insured according to the provisions of this section but shall instead be insured in accordance with the joint account provisions of § 330.9.

(e) *Definition of ''children'' and ''grandchildren''.* For the purpose of establishing the qualifying degree of kinship set forth in paragraph (a) of this section, the term ''children'' includes any biological, adopted and step-children of the owner and ''grandchildren'' includes biological, adopted, or step-children of any of the owner's children.

(f) *Living trusts.* This section also applies to revocable trust accounts held in connection with a so-called ''living trust'', a formal trust which an owner creates and retains control over during his or her lifetime. If a named beneficiary in a living trust is a qualifying beneficiary under this section, then the deposit account held in connection with the living trust may be eligible for deposit insurance under this section, assuming compliance with all the provisions of this part. If, however, for example, the living trust includes a ''defeating contingent'' relative to that beneficiary's interest in the trust assets, then insurance coverage under this section would not be provided. For purposes of this section, a ''defeating contingency'' is generally defined as a condition which would prevent the beneficiary from acquiring a vested and non-contingent interest in the funds in the deposit account upon the owner's death.

**§ 330.11 Accounts of a corporation, partnership or unincorporated association.**

(a) *Corporate accounts.* (1) The deposit accounts of a corporation engaged in any ''independent activity'' (as defined in § 330.1) shall be added together and insured up to $100,000 in the aggregate. If a corporation has divisions or units which are not separately incorporated, the deposit accounts of those divisions or units shall be added to any other deposit accounts of the corporation. If a corporation maintains deposit accounts in a representative or fiduciary capacity, such accounts shall not be treated as the deposit accounts of the corporation but shall be treated as fiduciary accounts and insured in accordance with the provisions of § 330.7.

(2) Notwithstanding any other provision of this part, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to section 8 of the Investment Company Act of 1940 or that would be required so to register but for the fact it is not created under the laws of the United States or a state or but for sections 2(b), 3(c)(1), or 6(a)(1) of that act shall be deemed to be a corporation for purposes of determining deposit insurance coverage.

(b) *Partnership accounts.* The deposit accounts of a partnership engaged in any ''independent activity'' (as defined in § 330.1) shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be separate from any insurance provided for individually owned (single ownership) accounts maintained by the individual partners. A partnership shall be deemed to exist, for purposes of this paragraph, any time there is an association of two or more persons or entities formed to carry on, as co-owners, an unincorporated business for profit.

(c) *Unincorporated association accounts.* The deposit accounts of an unincorporated association engaged in any independent activity shall be added together and insured up to $100,000 in the aggregate, separately from the accounts of the person(s) or entity(ies) comprising the unincorporated association. An unincorporated association shall be deemed to exist, for purposes of this paragraph, whenever there is an association of two or more persons formed for some religious, educational, charitable, social or other noncommercial purpose.

(d) *Non-qualifying entities.* The deposit accounts of an entity which is not engaged in an ''independent activity'' (as defined in § 330.1) shall be deemed to be owned by the person or persons owning the corporation or comprising the partnership or unincorporated association, and, for deposit insurance purposes, the interest of each person in such a deposit account shall be added to any other deposit accounts individually owned by that person and insured up to $100,000 in the aggregate.

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

(a) *Separate insurance coverage.* ''Trust funds'' (as defined in § 330.1) held by an insured depository institution in its capacity as trustee of an irrevocable trust, whether held in its trust department, held or deposited in any other department of the fiduciary institution, or deposited by the fiduciary institution in another insured depository institution, shall be insured up to $100,000 of each owner or beneficiary represented. This insurance shall be separate from, and in addition to, the insurance provided for any other deposits of the owners or the beneficiaries.

(b) *Determination of interests.* The insurance for funds held by an insured depository institution in its capacity as trustee of an irrevocable trust shall be determined in accordance with the following rules:

(1) *Allocated funds of a trust estate.* If trust funds of a particular ''trust estate'' (as defined in § 330.1) are allocated by the fiduciary and deposited, the insurance with respect to such trust estate shall be determined by ascertaining the amount of its funds allocated, deposited and remaining to the credit of the claimant as fiduciary at the insured depository institution in default.

(2) *Interest of a trust estate in unallocated trust funds.* If funds of a particular trust estate are commingled with funds of other trust estates and deposited by the fiduciary institution in one or more insured depository institutions to the credit of the depository institution as fiduciary, without allocation of specific amounts from a particular trust estate to an account in such institution(s), the percentage interest of that trust estate in the unallocated deposits in any institution in default is the same as that trust estate's percentage interest in the entire commingled investment pool.

(c) *Limitation on applicability.* This section shall not apply to deposits of trust funds belonging to a trust which is classified as a corporation under § 330.11(a)(2).

**§ 330.13 Irrevocable trust accounts.**

(a) *General rule.* Funds representing the ''non-contingent trust interest(s)'' (as defined in § 330.1) of a beneficiary deposited into one or more deposit accounts established pursuant to one or more irrevocable trust agreements created by the same settlor(s) (grantor(s)) shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be separate from the coverage provided for other accounts maintained by the settlor(s), trustee(s) or beneficiary(ies) of the irrevocable trust(s) at the same insured depository institution. Each ''trust interest'' (as defined in § 330.1) in any irrevocable trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his or her contribution to the trust.

(b) *Treatment of contingent trust interests.* In the case of any trust in which certain trust interests do not qualify as non-contingent trust interests, the funds representing those interests shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be in addition to the coverage provided for the funds representing non-contingent trust interests which are insured pursuant to paragraph (a) of this section.

(c) *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.

**§ 330.14 Retirement and other employee benefit plan accounts.**

(a) *''Pass-through'' insurance.* Except as provided in paragraph (b) of this section, any deposits of an employee benefit plan or of any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457) in an insured depository institution shall be insured on a ''pass-through'' basis, in the amount of up to $100,000 for the non-contingent interest of each plan participant, provided that the FDIC's recordkeeping requirements, as outlined in § 330.5, are satisfied.

(b) *Exception.* ''Pass-through'' insurance shall not be provided pursuant to paragraph (a) of this section with respect to any deposit accepted by an insured depository institution which, at the time the deposit is accepted, may not accept brokered deposits pursuant to section 29 of the Act 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.

(c) *Aggregation*—(1) *Multiple plans.* Funds representing the non-contingent interests of a beneficiary in an employee benefit plan, or eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986, which are deposited in one or more deposit accounts shall be aggregated with any other deposited funds representing such interests of the same beneficiary in other employee benefit plans, or eligible deferred compensation plans described in section 457 of the Internal Revenue Code of 1986, established by the same employer or employee organization.

(2) *Certain retirement accounts.* (i) Deposits in an insured depository institution made in connection with the following types of retirement plans shall be aggregated and insured in the amount of up to $100,000 per participant:

(A) Any individual retirement account described in section 408(a) of the Internal Revenue Code of 1986 (26 U.S.C. 408(a));

(B) Any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986; and

(C) Any individual account plan defined in section 3(34) of the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1002) and any plan described in section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. 401(d)), to the extent that participants and beneficiaries under such plans have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plans.

(ii) The provisions of this paragraph (c) shall not apply with respect to the deposits of any employee benefit plan, or eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986, which is not entitled to ''pass-through'' insurance pursuant to paragraph (b) of this section. Such deposits shall be aggregated and insured in the amount of $100,000 per-plan.

(d) *Determination of interests*—(1) *Defined contribution plans.* The value of an employee's non-contingent interest in a defined contribution plan shall be deemed to be the employee's account balance as of the date of default of the insured depository institution, regardless of whether said amount was derived, in whole or in part, from contributions of the employee and/or the employer to the account.

(2) *Defined benefit plans.* The value of an employee's non-contingent interest in a defined benefit plan shall be deemed to be the present value of the employee's interest in the plan, evaluated in accordance with the method of calculation ordinarily used under such plan, as of the date of default of the insured depository institution.

(3) *Amounts taken into account.* For the purposes of applying the rule under paragraph (c)(2) of this section, only the present vested and ascertainable interests of each participant in an employee benefit plan or ''457 Plan,'' excluding any remainder interest created by, or as a result of, the plan, shall be taken into account in determining the amount of deposit insurance accorded to the deposits of the plan.

(e) *Treatment of contingent interests.* In the event that employees' interests in an employee benefit plan are not capable of evaluation in accordance with the rules contained in this section, or an account established for any such plan includes amounts for future participants in the plan, payment by the FDIC with respect to all such interests shall not exceed $100,000 in the aggregate.

(f) *Overfunded pension plan deposits.* Any portion(s) of an employee benefit plan's deposits which are not attributable to the interests of the beneficiaries under the plan shall be deemed attributable to the overfunded portion of the plan's assets and shall be aggregated and insured up to $100,000, separately from any other deposits.

(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.

(2) The term *employee benefit plan* has the same meaning given to such term in section 3(3) of the Employee Retirement Income Security Act of 1974 (ERISA)(29 U.S.C. 1002) and includes any plan described in section 401(d) of the Internal Revenue Code of 1986.

(3) The term *employee organization* means any labor union, organization, employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

(4) The term *non-contingent interest* means an interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031–7 of the Federal Estate Tax Regulations (26 CFR 20.2031–7) or any similar present worth or life expectancy tables as may be published by the Internal Revenue Service.

(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 (h), 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).

**§ 330.15 Public unit accounts.**

(a) *Extent of insurance coverage*—(1) *Accounts of the United States.* Each official custodian of funds of the United States lawfully depositing such funds in an insured depository institution shall be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all time and savings deposits; and

(ii) Up to $100,000 in the aggregate for all demand deposits.

(2) *Accounts of a state, county, municipality or political subdivision.* Each official custodian of funds of any state of the United States, or any county, municipality, or political subdivision thereof, lawfully depositing such funds in an insured depository institution in the state comprising the public unit or wherein the public unit is located (including any insured depository institution having a branch in said state) shall be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all time and savings deposits; and

(ii) Up to $100,000 in the aggregate for all demand deposits. In addition, each such official custodian depositing such funds in an insured depository institution outside of the state comprising the public unit or wherein the public unit is located, shall be insured in the amount of up to $100,000 in the aggregate for all deposits, regardless of whether they are time savings or demand deposits.

(3) *Accounts of the District of Columbia.* (i) Each official custodian of funds of the District of Columbia lawfully depositing such funds in an insured depository institution in the District of Columbia (including an insured depository institution having a branch in the District of Columbia) shall be separately insured in the amount of:

(A) Up to $100,000 in the aggregate for all time and savings deposits; and

(B) Up to $100,000 in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the District of Columbia shall be insured in the amount of up to $100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(4) *Accounts of the Commonwealth of Puerto Rico and other government possessions and territories.* (i) Each official custodian of funds of the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or The Commonwealth of the Northern Mariana Islands, or of any county, municipality, or political subdivision thereof lawfully depositing such funds in an insured depository institution in Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or The Commonwealth of the Northern Mariana Islands, respectively, shall be separately insured in the amount of:

(A) Up to $100,000 in the aggregate for all time and savings deposits; and

(B) Up to $100,000 in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the commonwealth, possession or territory comprising the public unit or wherein the public unit is located, shall be insured in the amount of up to $100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(5) Accounts of an Indian tribe. Each official custodian of funds of an Indian tribe (as defined in 25 U.S.C. 1452(c)), including an agency thereof having official custody of tribal funds, lawfully depositing the same in an insured depository institution shall be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all time and savings deposits; and

(ii) Up to $100,000 in the aggregate for all demand deposits.

(b) *Rules relating to the official custodian*—(1) *Qualifications for an official custodian.* In order to qualify as an ''official custodian'' for the purposes of paragraph (a) of this section, such custodian must have plenary authority, including control, over funds owned by the public unit which the custodian is appointed or elected to serve. Control of public funds includes possession, as well as the authority to establish accounts for such funds in insured depository institutions and to make deposits, withdrawals, and disbursements of such funds.

(2) *Official custodian of the funds of more than one public unit.* For the purposes of paragraph (a) of this section, if the same person is an official custodian of the funds of more than one public unit, he or she shall be separately insured with respect to the funds held by him or her for each such public unit, but shall not be separately insured by virtue of holding different offices in such public unit or, except as provided in paragraph (c) of this section, holding such funds for different purposes.

(3) *Split of authority or control over public unit funds.* If the exercise of authority or control over the funds of a public unit requires action by, or the consent of, two or more officers, employees, or agents of such public unit, then they will be treated as one ''official custodian'' for the purposes of this section.

(c) *Public bond issues.* Where an officer, agent or employee of a public unit has custody of certain funds which by law or under a bond indenture are required to be set aside to discharge a debt owed to the holders of notes or bonds issued by the public unit, any deposit of such funds in an insured depository institution shall be deemed to be a deposit by a trustee of trust funds of which the noteholders or bondholders are pro rata beneficiaries, and the beneficial interest of each noteholder or bondholder in the deposit shall be separately insured up to $100,000.

(d) *Definition of ''political subdivision''.* The term ''political subdivision'' includes drainage, irrigation, navigation, improvement, levee, sanitary, school or power districts, and bridge or port authorities and other special districts created by state statute or compacts between the states. It also includes any subdivision of a public unit mentioned in paragraphs (a)(2), (a)(3) and (a)(4) of this section or any principal department of such public unit:

(1) The creation of which subdivision or department has been expressly authorized by the law of such public unit;

(2) To which some functions of government have been delegated by such law; and

(3) Which is empowered to exercise exclusive control over funds for its exclusive use.

**§ 330.16 Effective dates.**

(a) *Prior effective dates.* Former §§ 330.1(j), 330.10(a), 330.12(c), 330.12(d)(3) and 330.13 (*See* 12 CFR part 330, as revised January 1, 1997.) became effective on December 19, 1993.

(b) *Time deposits.* Except with respect to the provisions in former § 330.12 (a) and (b), (*See* 12 CFR part 330, as revised January 1, 1997.) and current § 330.14 (a) and (b), any time deposits made before December 19, 1991 that do not mature until after December 19, 1993, shall be subject to the rules as they existed on the date the deposits were made. Any time deposits made after December 19, 1991 but before December 19, 1993 shall be subject to the rules as they existed on the date the deposits were made. Any rollover or renewal of such time deposits prior to December 19, 1993 shall subject those deposits to the rules in effect on the date of such rollover or renewal. With respect to time deposits which mature only after a prescribed notice period, the provisions of these rules shall be effective on the earliest possible maturity date after June 24, 1993 assuming (solely for purposes of this section) that notice had been given on that date.

By order of the Board of Directors.

Dated at Washington, D.C., this 29th day of April, 1997.

Federal Deposit Insurance Corporation

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 97–11965 Filed 5–13–97; 8:45 am]

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## DEPARTMENT OF THE TREASURY

## Office of Thrift Supervision

## 12 CFR Part 566

**[No. 97–44]**

**RIN 1550–AA77**

## Liquidity

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of Thrift Supervision (OTS) is proposing to update, simplify, and streamline its liquidity regulation. This proposal follows a detailed review of the regulation to determine whether it is necessary, imposes the least possible burden consistent with statutory requirements and safety and soundness, and is written in a clear, straightforward manner. Today's proposal is made pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review and section 303 of the Community Development and Regulatory Improvement Act of 1994.

**DATES:** Comments on this proposed rule must be received on or before July 14, 1997.

**ADDRESSES:** Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention Docket No. 97–44. These submission may also be hand delivered to 1700 G Street, NW, from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, NW, from 9:00 A.M. until 4:00 P.M. on business days.

**FOR FURTHER INFORMATION CONTACT:** Francis Raue, Program Analyst, (202) 906–5750, Robyn Dennis, Manager, Thrift Policy, (202) 906–5751, Supervision Policy, or Susan Miles, Senior Attorney, (202) 906–6798, Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Objectives of the Proposal

In a comprehensive review of the agency's regulations in the spring of 1995, OTS identified numerous obsolete or redundant regulations that could be quickly repealed. OTS also identified several key regulatory areas for a more intensive, systematic regulatory burden review. The first areas reviewed—lending and investment authority, subsidiaries and equity investments, corporate governance, conflicts of interest, corporate opportunity and hazard insurance—were selected because they have a significant impact on thrift operations, and had not been developed on an interagency basis or been comprehensively reviewed for many years. OTS has issued comprehensive final regulations in all of these areas.[1]

Today's proposal is a part of the next phase of OTS's review of its regulations. The proposed liquidity rule follows an intensive review of the relevant statute and regulation, legal interpretations, and requirements of other federal banking agencies. Like other OTS reinvention efforts, this proposal was prepared in consultation with those who use the regulation on a daily basis, including the agency's regional examination staff.

Both the industry and OTS regulatory staff have consistently cited the liquidity requirement and attendant calculations as an unnecessary burden. Consequently, the review process has led to a consensus that the statutory liquidity requirement no longer serves any useful purpose and should be eliminated. The OTS has in the past recommended legislative action to repeal this requirement.

In the interim, OTS has reviewed its current liquidity regulation and has identified modifications that would reduce the burden of compliance to the maximum extent possible, consistent with the requirements of the statute and safety and soundness considerations. Specifically, the burden of compliance with the liquidity regulation would be decreased by: (1) reducing the liquidity base by excluding withdrawable accounts payable in more than one year

[1] 61 FR 50951 (September 30, 1996) (Lending and Investment); 61 FR 66561 (December 18, 1996) (Subsidiaries and Equity Investments); 61 FR 60173 (November 27, 1996) (Conflicts of Interest, Corporate Opportunity and Hazard Insurance); 61 FR 64007 (December 3, 1996) (Corporate Governance).