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SUPPLEMENTARY INFORMATION:

A. Background

1. The payment schedule

On December 20, 1994, the FDIC adopted a new quarterly-collection procedure for collecting deposit insurance assessments. See 59 FR 67153 (December 29, 1994). The quarterly-collection procedure became effective April 1, 1995; it applies to the second semiannual assessment period of 1995 (beginning July 1, 1995) and thereafter.

The quarterly-collection procedure calls for the FDIC to collect assessment payments four times a year, by means of FDIC-originated direct debits through the Automated Clearing House network. Prior to the final rule adopted here, each payment to be made for a calendar quarter was due just prior to the start of that quarter.¹ The payment for the first calendar quarter of a year (first payment)—the initial payment for the first semiannual period of the year—was due on the prior December 30. The other regular payment dates followed suit. The second-quarter payment was due on March 30. The payment for the third quarter—the initial payment for the second semiannual period of the year—was due on June 30. And the payment for the fourth quarter was due on September 30. (In every case, if the scheduled payment date fell on a holiday or a weekend, the payment was to be made by the previous business day.)

The FDIC published the quarterly-collection procedure as a proposed rule before adopting it. See 59 FR 29965 (June 10, 1994). The FDIC received 51 comment letters on the proposal.

Two commenters pointed out that the quarterly-collection procedure would produce the so-called "5 in 95" anomaly. That is, institutions would pay their full semiannual assessment for the first semiannual period in 1995 in January, in accordance with the assessment regulations then in effect. Institutions would also pay both quarterly payments for the second semiannual period in 1995 (one at the end of June; the other at the end of September). Then institutions would make one more payment in 1995: the first payment for 1996. In effect, in 1995

they would pay assessments for 5 quarters.

The two commenters asked the FDIC to move the payment date for the first payment for 1996 from December 30, 1995, to January, 1996. In response, the FDIC looked into the issue further.

The FDIC concluded, as a result of its inquiry, that the "5 in 95" anomaly would have an adverse effect on relatively few institutions. The FDIC therefore decided to retain the December payment date. The FDIC recognized that the December 1995 payment date could present a one-time problem for some institutions. But the FDIC concluded that this situation was simply a by-product of the shift from a semiannual to a quarterly collection procedure, and would not involve an "extra" assessment payment. The FDIC further observed that this timing issue would adversely affect only institutions that use cash-basis accounting. Finally, the FDIC pointed out that the commenters' recommended solution—moving the December payment date to January—would not cure the problem if adopted only for a single year: the problem would recur in 1996. Curing the problem would require a permanent change in the December payment date. When the FDIC adopted the regulation in final form, the FDIC retained the December 30 payment date. See 59 FR 67153, 67157 (December 29, 1994).

Shortly after adopting the quarterly-collection procedure, however, the FDIC began to receive information suggesting that more institutions would be adversely affected by the December payment date than was initially thought. Moreover, the Independent Bankers Association of America (IBAA) issued a letter to the FDIC requesting the FDIC to reconsider the issue in light of the December payment date's effect on cash-basis institutions. The FDIC's Board of Directors viewed the IBAA's request as a "petition for the amendment of a regulation" within the meaning of the FDIC's policy statement "Development and Review of FDIC Rules and Regulations," 2 FED. DEPOSIT INS. CORP. LAWS, REGULATIONS, RELATED ACTS 5057 (1984). The FDIC therefore proposed the rule that is here adopted in final form. 60 FR 40776 (August 10, 1995).

The final rule moves the regular payment date for the first payment from December 30 of the prior year (or the preceding business day) to January 2 (or the next business day) of the current year. The final rule does not change the other regular payment dates.

2. Doubled Payments

Prior to the final rule adopted here, the FDIC's regulations did not provide a standard method for institutions to pay amounts other than the regular quarterly payments.

The final rule gives each institution the option of paying double the amount of a quarterly payment, if the payment is made on a payment date (regular or alternate, as the case may be) that comes prior to the start of the calendar quarter for which it is due. The final rule specifies the methodology for making doubled payments.

3. Interest on Underpaid and Overpaid Assessments

The FDIC pays interest on amounts that insured institutions overpay on their assessments, and charges interest on amounts by which insured institutions underpay their assessments. The interest rate has been the same in either case: namely, the United States Treasury Department's current value of funds rate which is issued under the Treasury Fiscal Requirements Manual (TFRM rate) and published in the Federal Register. See 12 CFR 327.7(b).²

The TFRM rate is based on aged data, however, and quickly becomes obsolete in volatile interest-rate markets. For example, the rate set for January through June, 1995, was based on the average rate data from October, 1993, through September, 1994. The practical consequence is that the TFRM rate for the January-to-June period in 1995 was 3% per annum, when the actual market rate at that time was over 5% per annum.

The FDIC is replacing the TFRM rate with a rate keyed to the 3-month Treasury bill discount rate. The new rate takes effect on January 1, 1996.

4. The Assessment-Schedule Notice

Under the FDIC's regulations, the semiannual assessment rate schedule is announced in advance, along with the amount and basis for any adjustment to the rate schedule. Prior to the final rule adopted here, the announcement was to be made 45 days prior to the invoice date—that is, the date on which the FDIC issues assessment invoice notices to institutions—for the first quarter of the semiannual period to which the adjusted assessment schedule applies. 12 CFR 327.9(b)(3)(ii).

The final rule reduces the advance-notice period to 15 days.

² The Treasury Fiscal Requirements Manual is now called the Treasury Financial Manual.

¹ Thirty days before each regular payment date, the FDIC provides to each institution an invoice showing the amount that the institution must pay. The FDIC prepares the invoice from data that the institution has reported in its report of condition for the previous quarter. See 12 CFR 327.3(c) & (d).