B. The Final Rule

1. Payment Dates for First Payments

a. The Regular Payment Date

The final rule delays the first payment's regular payment date from December 30 of the prior year to January 2 of the current year (or, if January 2 is a holiday or weekend, the first business day thereafter). Every institution will ordinarily make its first payment on that date. In this regard, the final rule adopts the rule as proposed.

The final rule is designed to protect cash-basis institutions against the adverse consequences of having to make an extra assessment payment during 1995. The remedy is necessarily a continuing one. Accordingly, the FDIC has changed the payment date permanently.

The FDIC believes that the delay in the payment date confers a financial benefit to institutions, because they may earn additional interest on the funds they retain for the additional time. The FDIC does not consider that it is appropriate to give a benefit of this kind to some institutions but not others, however. Accordingly, the FDIC is changing the payment date for all institutions, not just for cash-basis institutions.

The FDIC further believes that most institutions have already prepared to comply with the direct-debit procedures, and will suffer no procedural disadvantage from the delayed payment date. The FDIC will therefore follow the same procedures as before in collecting the first payment.

b. The Alternate Payment Date

The FDIC recognizes, however, that some institutions may prefer the existing payment schedule, notwithstanding the fact that they will be making five payments during 1995. The final rule accommodates these institutions. The final rule provides that an institution may elect to pay its first payment for any year on an alternate payment date during the prior December. The final rule adopts the rule as proposed in this regard.

The alternate payment date is December 30 of the prior year (or, if December 30 is a holiday or a weekend, the preceding business day). The FDIC will collect payments made on that date by electronically debiting institutions' accounts, just as the FDIC collects other quarterly assessment payments.

In order to elect the December date, an institution must file a certification to that effect by the preceding November 1. The election is effective with respect to the first payment for the upcoming year, and remains in effect until terminated. The institution must complete a preprinted form supplied by the FDIC to make the certification. The form will be available from the FDIC's Division of Finance. The institution's chief financial officer, or an officer designated by the institution's board of directors, must sign the form. An electing institution must certify that it will pay its first assessment on the alternate payment date.

An institution may terminate its election of the December date in the same way as it makes the election: By certifying that it is terminating the election for an upcoming year. As in the case of the original election, the institution must use a pre-printed form supplied by the FDIC to make the certification, and must file the form by November 1 of the prior year. The institution will then revert to the regular payment schedule for the upcoming year and for all future years.

An institution that terminates an election may make a new election at any time.

The rule as proposed called for institutions to follow these procedures. The final rule adopts the rule as proposed in this regard.

The FDIC will not pay interest on payments made prior to the regular payment date. If an institution elects the alternate payment date, or otherwise pays an assessment before the regular payment date for that payment, the FDIC will not pay interest on the amount that is ordinarily to be paid on the regular payment date.

Of course, it is possible for an institution that makes its payment on the alternate payment date to pay an excess amount. The FDIC will pay interest on the excess amount, but not on the amount due for the quarterly payment. Furthermore, the FDIC will only pay such interest to the same extent as if the institution had made the excess payment on the regular payment date: That is, interest will not begin to run until the day after the regular payment date. Conversely, if an institution elects the alternate payment date, and underpays the amount due, the FDIC will only charge interest on the amount of the underpayment beginning on the day after the regular payment date.

The proposed rule said that the FDIC would charge and pay interest in the manner described here. The final rule adopts the proposed rule in the regard.

The FDIC believes that it is appropriate to allow the alternate payment option for two reasons. The FDIC recognizes that institutions that keep their books on an accrual basis are not materially harmed by having to pay

five quarters' worth of assessments in 1995. (By the same token, these institutions are not materially harmed by delaying the payment date from December to January.) Some of these institutions may prefer to pay some or all of their first semiannual assessments on the alternate payment date for their own business reasons. The FDIC further recognizes that institutions may have arranged their affairs in the expectation that the first payment for 1996 will be due in 1995. The FDIC is providing the option of paying on the alternate payment date in order to enable these institutions to avoid unnecessary disruption and financial disadvantage.

2. Doubled Payments

The proposed rule said that, when an institution elects the alternate payment date for the first payment, the institution may further elect to pay either the amount of the first payment or twice that amount. The final rule retains this point.

One commenter suggested, however, that some institutions may want to make a doubled payment at the start of the second semiannual assessment period as well as at the start of the first one. The final rule accommodates this suggestion.

The final rule says that, whenever an institution makes a payment on a payment date (regular or alternate, as the case may be) that comes before the start of the quarter for which the payment is due, the institution may make a doubled payment. In other words, institutions may make doubled payments on March 30, June 30, September 30, and December 30.

The doubled-payment election would remain in effect from year to year until terminated, but only for the selected payment date. If an institution wished to make doubled payments for a second payment date, the institution would file another election with respect to the second date.

The procedure enables institutions to make doubled payments at the start of either or both semiannual periods, as they choose. The procedure further gives an institution with a fiscal year that starts at the beginning of the second or fourth calendar quarter the option of making a doubled payment prior to that calendar quarter.

The FDIC recognizes that cash-basis institutions may have fiscal years that do not coincide with the calendar year. The FDIC is adopting this option to give such institutions (and others) the flexibility to schedule their payments as they see fit for their own financial purposes.