

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency****12 CFR Part 8**

[Docket No. 96-27]

RIN 1557-AB41

**Assessment of Fees; National Banks; District of Columbia Banks****AGENCY:** Office of the Comptroller of the Currency, Treasury.**ACTION:** Interim rule with request for comment.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending its regulation governing assessments by providing that national banks that are not the largest national bank in a bank holding company (referred to as non-lead banks) will pay assessments that are less than these banks otherwise would pay. This amendment reflects the cost savings that are realized by the OCC's Supervision by Risk Program, whereby the OCC focuses on the risk profile of a consolidated company. The intended effect of this rulemaking is to enable the OCC to lower assessments on non-lead banks.

**DATES:** This interim rule is effective on December 2, 1996. Comments must be received by January 31, 1997.

**ADDRESSES:** Comments should be directed to, and may be inspected and copied at: Communications Division, OCC, 250 E Street, SW., Washington, D.C. 20219, Attention: Docket No. 96-27. In addition, comments may be sent via FAX, at (202) 874-5274 or via Internet at [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov)

**FOR FURTHER INFORMATION CONTACT:** Roy Madsen, Assistant Chief Financial Officer, Financial Review, Policy and Analysis, (202) 874-5130; Patricia S. Grady, Senior Attorney, Administrative and Internal Law Division, (202) 874-4460; or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874-5090, Office of the Comptroller of the Currency, Washington, D.C. 20219.

**SUPPLEMENTARY INFORMATION:****Background**

The OCC charters, regulates, and supervises approximately 2,800 national banks and 66 federal branches and agencies of foreign banks in the U.S., accounting for more than half the nation's banking assets. Its mission is to ensure a safe, sound, and competitive national banking system that supports the citizens, communities, and economy of the United States. The OCC funds the

activities that further this mission by imposing assessments, fees, and other charges on national banks, as necessary and appropriate to meet the OCC's expenses, pursuant to 12 U.S.C. 482.

The OCC charges each national bank a semiannual assessment according to a formula that is described in part 8 of the agency's regulations (12 CFR part 8). In general, a national bank's semiannual assessment is computed as follows. First, the bank identifies its asset-size category by consulting the chart setting out ten such categories that is contained in part 8. Once the bank determines its asset-size category, the bank then calculates its assessment by adding two numbers. The first number is called the "base amount,"<sup>1</sup> and is provided by the OCC to all banks in the annual "Notice of Comptroller of the Currency Fees" (Notice of Fees) and in each semiannual assessment notice (Assessment Notice). Each bank derives the second number by multiplying the "marginal rate" for the bank's asset-size category, which also is provided by the OCC in the Notice of Fees and Assessment Notices, by the amount of the bank's assets that exceeds the next lowest asset-size category threshold. The bank then adds the product of this multiplication to the base amount to arrive at its total assessment.

The variables in this formula allow the OCC some flexibility in adjusting assessments to reflect its costs. For example, the applicable marginal rate declines as asset size grows, resulting in the lowest marginal rates applying to assets in the largest asset-size categories. This regressive rate structure reflects the OCC's experience that the economies of scale realized in the examination and supervision of large institutions allow a proportionately smaller expenditure of OCC resources than is required in the case of smaller banks.<sup>2</sup>

The regulation being amended by this rulemaking does not, however, reflect the significant additional economies now being realized as a result of the OCC's new risk-based approach to bank supervision. The OCC's Supervision by Risk Program creates the potential for cost savings in the OCC's supervision of banks in holding company structures

that the current regulation does not reflect. Under this program, the OCC focuses on the risk profile of the consolidated company in recognition of the fact that exposure to risk at the national bank level may be either mitigated or increased by activities company-wide.<sup>3</sup>

To implement the Supervision by Risk program effectively, the OCC must obtain the information necessary to evaluate risks to a national bank that may be presented by other entities in the banking organization. Many banks already use information systems that integrate data from affiliated companies. This type of system facilitates retrieval of the data by OCC examiners, which, in turn, reduces the costs incurred by the OCC in obtaining the information that is essential to the supervisory process. In the OCC's experience, the largest national bank in a bank holding company often has systems that are sufficiently comprehensive, detailed, and reliable to facilitate company-wide risk evaluation.

The declining marginal rate structure in the current assessment regulation reflects the economies of scale realized in the OCC's examination and supervision of large banks, but the rule does not reflect the additional economies that result when the OCC can facilitate its supervision of smaller banks in a bank holding company by relying on information that is available from the largest national bank in that holding company. As a consequence, under the current regulation, a non-lead bank (defined as any national bank in a bank holding company other than the largest national bank) would pay an assessment that does not necessarily reflect these efficiencies.<sup>4</sup> This rulemaking changes the current regulation, consistent with the OCC's supervision-by-risk approach, to enable the OCC to reduce the assessments to be paid by non-lead national banks in a bank holding company.

Although the Supervision by Risk Program requires the OCC to focus on the risk profile of the consolidated company, the OCC also must continue to examine and supervise each national bank within a banking organization. Reviewing related banks in a banking

<sup>1</sup> The base amount for a given bank is calculated by the OCC by multiplying the lower endpoint of a bank's asset-size category by a "marginal rate" determined by the OCC. For a more complete description of the way in which the OCC computes the base amount, see 12 CFR 8.2(a)(1).

<sup>2</sup> See, e.g., 53 FR 31705 (August 19, 1988) ("Fixed costs of supervision, such as basic preparatory tasks, do not vary proportionately from small to large banks. Further, statistical techniques used in the examination process permit larger institutions to be examined with proportionately fewer resources.").

<sup>3</sup> For further discussion of the OCC's Supervision by Risk Program, see various components of the *Comptroller's Handbook*, including especially the components entitled "Bank Supervision Process" (April 1996) and "Large Bank Supervision" (December 1995).

<sup>4</sup> This situation is not present in the case of a national bank that is not in a holding company structure, because there is no similar opportunity for the OCC to conduct a significant amount of its supervision of the bank by obtaining information from an affiliated bank.

organization as if they comprised one consolidated entity would ignore the fact that not all aspects of the OCC's supervision can be accomplished by viewing a banking organization on a whole-company basis. Important components of the OCC's supervision are charter-specific and require examination at the individual bank level. For example, if one national bank in a banking organization engages in certain specialized or sophisticated activities (such as capital markets activities) but the others do not, reviewing consolidated information on a whole-company basis may not permit the OCC to evaluate the condition of the bank engaged in the specialized or sophisticated activity. Careful review at the bank level is necessary to ensure that each national bank conducts its operations safely and soundly and in a manner that comports with applicable law.

The OCC also must examine each national bank to ensure each bank's compliance with the fair lending and consumer protection laws that the OCC administers. The Community Reinvestment Act (CRA), for instance, requires the OCC to assess each national bank's record of meeting the credit needs of the bank's entire community. 12 U.S.C. 2903. Consistent with this statutory mandate, the OCC conducts a CRA examination of every national bank. Similarly, the OCC examines every national bank in order to determine compliance with laws such as the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) and the Truth-in-Lending Act (15 U.S.C. 1601 *et seq.*). Effective supervision in these areas requires the OCC to conduct bank-by-bank reviews of loan files and practices.

In order to better reflect the costs incurred by the OCC in carrying out its diverse supervisory responsibilities, this interim rule retains the requirement that each national bank pay an assessment but adds a provision to part 8 that states that the OCC will charge a non-lead national bank an assessment that will be less than the bank otherwise would pay if it were either the lead bank in a holding company or independent.

#### Description of the Interim Rule

Pursuant to new § 8.2(a)(6), the OCC will charge a non-lead national bank an assessment that will be lower than the assessment the bank otherwise would pay. The specific percentage of the assessment reduction will be provided in the semiannual Assessment Notice. New § 8.2(a)(6)(ii)(B) defines *lead bank* as the largest national bank controlled by a bank holding company, based on a comparison of the total assets held by

each national bank owned by that bank holding company as reported in the Consolidated Reports of Condition and Income that the national banks in question file for the quarter immediately preceding the payment of a semiannual assessment. The rule defines *bank holding company* and *control* as having the same meanings as these terms have in section 2 of the Bank Holding Company Act of 1956 (BHCA) (12 U.S.C. 1841(a)(1) and (a)(2), respectively). Generally speaking, a company is a bank holding company under the BHCA if it controls a bank. A company will be deemed to control a bank if the company owns, controls, or has power to vote at least 25 percent of any class of the bank's voting securities, controls the election of a majority of the bank's directors, or is found to exercise a controlling influence over the management or policies of the bank.

Each non-lead national bank will continue to compute the components of its assessment under the interim rule in the same way as it currently does, as summarized at the outset of this preamble discussion. However, once a non-lead bank determines these components, it then will reduce the sum of the components by the percentage specified in the Notice of Fees in order to determine its assessment.

The interim rule also deletes the provisions in current part 8 prohibiting the proration of assessments. The current rule states that each bank and Federal branch or agency that is subject to the OCC's jurisdiction must pay the full amount of its assessment for the next six-month period, "without proration for any reason." 12 C.F.R. § 8.2(a)(5) and (b). This prohibition is inconsistent with the reduction in non-lead banks' assessments because the reduction is effectively a proration of these banks' assessments. The interim rule removes the prohibition against prorations in order to avoid creating an inconsistency within the regulation.

The OCC solicits comment on these amendments made to reflect differences in the costs of the OCC's supervision based on the organizational structure in which a national bank operates. The OCC also welcomes comment on any other aspect of this interim rule.

#### Use of Immediately Effective Interim Rule

The OCC has determined that notice and comment is not required before adopting the rule. The interim rule involves agency practice and procedure and thus is exempt under 5 U.S.C. 553(b)(A) from the prior notice requirements of the Administrative Procedures Act (5 U.S.C. 500 *et seq.*).

The determination of how assessments are imposed is internal to the OCC, since the Comptroller is required to recover expenses but is not required to follow specific calculations or formulae when making this determination. As a result, the OCC may revise its assessment structure as necessary to meet its expenses. In addition, the rule is exempt pursuant to 5 U.S.C. 553(b)(B) from the prior notice requirements because delaying adoption of the rule pending receipt of comments would be unnecessary and contrary to the public interest. The rule confers a benefit on national banks by enabling the OCC to lower the total amount of assessments paid by affiliated national banks. It will not have the effect of raising the assessment of any national bank.

The agency also has determined that the rule may be immediately effective pursuant to 5 U.S.C. 553(d)(1) and (d)(3). By enabling the OCC to reduce assessments, the rulemaking will have the effect of granting a partial exemption from the assessment obligations that otherwise would apply to non-lead banks. Accordingly, the rule may be immediately effective under 5 U.S.C. 553(d)(1). There also is good cause to dispense with a delayed effective date under 5 U.S.C. 553(d)(3), namely, that the interim rule needs to be effective in time to ensure that reductions will be reflected in the Notice of Comptroller of the Currency Fees that will be mailed in early December to all national banks.

The OCC will continue to provide each national bank a semiannual Assessment Notice, and national banks will continue to have at least 30 days following receipt of a semiannual assessment notice in which to pay the assessment. Although the OCC is not required to provide notice and public comment under the Administrative Procedure Act, 5 U.S.C. 553(b)(A) and (b)(B), the OCC invites comment on any aspect of this interim rule.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply to this interim rule. The Regulatory Flexibility Act applies whenever an agency is required by 5 U.S.C. 553 or any other law to publish general notice of proposed rulemaking for any proposed rule. 5 U.S.C. 603(a). As is explained more fully in the preceding section captioned "Use of Immediately Effective Interim Rule," publication of this rule for comment is unnecessary and contrary to the public interest. Accordingly, section 553 does not require the OCC to publish general notice of a proposed rulemaking (see 5 U.S.C. 553(b)(A) and (b)(B)).

Further, there is no other law that requires the OCC to publish a proposed rule concerning assessments. Section 5240 of the Revised Statutes (12 U.S.C. 481 and 482) authorizes the OCC to impose and collect assessments as necessary or appropriate (12 U.S.C. 482), but does not require the OCC to implement that grant of authority by means of a regulation. Since the OCC is not required to publish a general notice of proposed rulemaking for this rule, the Regulatory Flexibility Act does not apply.

#### Executive Order 12866

The OCC has determined that this interim rule is not a significant regulatory action for purposes of Executive Order 12866.

#### Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the interim rule will not result in expenditures by State, local, and tribal

governments, or by the private sector, of \$100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives. As discussed in the preamble, the interim rule will enable the OCC to reduce the amount of the assessments paid by non-lead banks in a banking organization.

#### List of Subjects in 12 CFR Part 8

Assessments, Fees, National banks.

#### Authority and Issuance

For the reasons set forth in the preamble, part 8 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

### **PART 8—ASSESSMENT OF FEES; NATIONAL BANKS; DISTRICT OF COLUMBIA BANKS**

1. The authority citation for part 8 is revised to read as follows:

Authority: 12 U.S.C. 93a, 481, 482, and 3102; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

2. In § 8.2, paragraph (b) is redesignated as paragraph (b)(1) and the two undesignated paragraphs at the end of the section are designated as paragraphs (b)(2) and (b)(3), respectively.

3. In § 8.2, the last sentence of paragraph (a)(5) and the last sentence of newly designated paragraph (b)(3) are amended by removing the phrase "without proration for any reason".

4. Section 8.2 is amended by adding a new paragraph (a)(6) to read as follows:

#### **§ 8.2 Semiannual assessment.**

(a) \* \* \*

(6)(i) Notwithstanding any other provision of this part, the OCC shall charge each non-lead bank a semiannual assessment that is less than the amount of the semiannual assessment that the bank otherwise would be required to pay under the Notice of Comptroller of the Currency Fees described in § 8.8. The OCC will specify the percentage of the reduction of assessments for non-lead banks in the Notice of Comptroller of the Currency Fees.

(ii) For purposes of this paragraph (a)(6):

(A) *Non-lead bank* means a national bank that is not the lead bank in a bank holding company that controls two or more national banks;

(B) *Lead bank* means the largest national bank controlled by a bank holding company, based on a comparison of the total assets held by each national bank owned by that bank holding company as reported in each bank's Call Report filed for the quarter immediately preceding the payment of a semiannual assessment; and

(C) *Bank holding company and control* have the same meanings as these terms have in sections 2(a)(1) and 2(a)(2), respectively, of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 (a)(1) and (a)(2)).

\* \* \* \* \*

Dated: November 27, 1996.

Eugene A. Ludwig,

*Comptroller of the Currency.*

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