

## DEPARTMENT OF THE TREASURY

## Office of the Comptroller of the Currency

## 12 CFR Part 8

[Docket No. 97-21]

RIN 1557-AB60

## Assessment of Fees; National Banks; District of Columbia Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

**SUMMARY:** The OCC is finalizing, with slight modifications, changes made by two previous interim rules with request for comments. The first interim rule removed the specific calculation of fees for examinations of fiduciary activities, special examinations and investigations, examinations of affiliates, and examinations and investigations of corporate activities (collectively, trust and other examinations and investigations). The second interim rule authorized the OCC to reduce assessments on national banks that are not the largest national bank in a bank holding company (referred to as non-lead banks). These changes have resulted in assessment revenue that more accurately reflects the expenses incurred by the OCC as it supervises banks according to the OCC's Supervision by Risk Program.

EFFECTIVE DATE: October 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** Roy Madsen, Deputy Chief Financial Officer, Financial Review, Policy and Analysis, (202) 874-5130; 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:

Interim Rules and Comments Received<sup>1</sup>

## 1994 Interim Rule Regarding Fees for Trust and Other Examinations and Investigations

The OCC issued an interim rule on November 18, 1994 (59 FR 59640) (1994 Interim Rule) that removed specific fees for trust and other examinations and

investigations. That rule was adopted in response to changes to 12 U.S.C. 482 made by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) which, among other things, removed the specific requirement for a fee adequate to recover expenses of examinations of fiduciary activities. In place of that requirement, FDICIA authorized the OCC to impose and collect assessments, fees, and other charges as necessary or appropriate to carry out its responsibilities, and gave the agency increased flexibility to set the assessments, fees, and charges to meet its expenses.

The OCC exercised this flexibility by removing the specific formula for calculating fees that formerly appeared in 12 CFR 8.6. As noted in the preamble to the 1994 Interim Rule, the specific fee structure reflected an outdated view of fiduciary activities as special and separate from other bank operations. The OCC stated in revised § 8.6 that it would assess a fee for examining fiduciary activities and for conducting special examinations and investigations, and that it would publish a fee schedule for these examinations and investigations in the Notice of Comptroller of the Currency Fees described in § 8.8. These changes were immediately effective, but the OCC also sought the views of interested parties.

The OCC received two comments in response to this request for comments. Both commenters supported the interim rule, noting that the changes will result in substantial savings for national banks. One of the commenters requested that the OCC seek additional comments when and if the agency intends to increase fees for fiduciary examinations and investigations or intends to impose a separate trust assessment.

In light of the comments received, the OCC is issuing this final rule that adopts the changes set out in the 1994 Interim Rule. In response to the commenter concerned about the possibility of future increases or separate assessments for trust examinations, the OCC notes that it will seek comment before it changes the manner in which it imposes fees for fiduciary examinations and investigations. While the specific amount of assessments may change from one assessment to the next as reflected in the Notice of Comptroller of the Currency Fees, the OCC will continue to calculate the assessment according to the method provided in part 8.

## 1996 Interim Rule Regarding Discounts for Non-Lead Banks

On December 2, 1996, the OCC published another interim rule with request for comments (61 FR 64000)

(1996 Interim Rule). The 1996 Interim Rule amended part 8 by adding § 8.2(a)(6), which provides that the OCC will reduce the assessments for non-lead banks by a percentage that is to be specified in the Notice of Comptroller of the Currency Fees. In that rule, the OCC defined a "non-lead bank" as a national bank that is not the lead bank in a bank holding company that owns more than one national bank, and defined "lead bank" as the largest national bank controlled by a bank holding company, based on a comparison of total assets held by each national bank as reported in each bank's Consolidated Report of Condition and Income filed for the quarter immediately preceding the payment of a semiannual assessment. The OCC defined "bank holding company" by adopting the definition of that term used in section 2 of the Bank Holding Company Act of 1956 (BHC Act) (12 U.S.C. 1841(a)(1)).

The 1996 Interim Rule also removed the provisions in part 8 prohibiting the proration of assessments. Prior to adoption of that rule, part 8 provided that each bank and Federal branch or agency 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." See former 12 CFR 8.2 (a)(5) and (b). This prohibition is inconsistent with a reduction in non-lead banks' assessments, because the reduction is effectively a proration of these banks' assessments. Accordingly, the OCC removed the prohibition against prorations.

The OCC received two comments in response to the 1996 Interim Rule, both of which supported the changes. However, one commenter expressed its concern that the discount could unfairly benefit larger banks, which, in the commenter's view, tend to be structured in multi-bank holding companies more often than are smaller banks. The OCC notes that the discount applies equally to all banks, regardless of size, that are non-lead banks in a bank holding company, and, in fact, many community banks have benefitted from the Interim Rule.

The other commenter, which owns several national banks that are credit card banks, suggested that the rule be further amended to cover institutions that are chartered and supervised by the OCC as national banks but that are excluded from the definition of "bank" under section 2(c)(2)(F) of the BHC Act (12 U.S.C. 1841(c)(2)(F)). This commenter noted that the 1996 Interim Rule, by adopting the definition of "bank holding company" used in the BHC Act, technically precludes non-

<sup>1</sup> Elsewhere in this issue of the **Federal Register** the OCC is soliciting comments on, among other things, a proposed change to part 8 that would impose a 25 percent surcharge on national banks that receive a rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System (the CAMELS rating) and on Federal branches and agencies of foreign banks that receive a rating of 3, 4, or 5 under the ROCA rating system (which rates risk management, operational controls, compliance, and asset quality).

lead banks from receiving an assessment reduction if the institutions are not "banks" under the BHC Act, because their holding companies then are not "bank holding companies" under the BHC Act. The commenter opined that the same economies of scale are realized when supervising non-lead credit card banks, and requested that the OCC clarify that the assessment reduction applies to all non-lead national banks, regardless of whether the parent is a "bank holding company" under the BHC Act.<sup>2</sup>

The OCC agrees with this commenter. The same economies realized when supervising non-lead banks owned by bank holding companies are available when supervising non-lead banks that would qualify for the reduction but for the fact that the parent is not a "bank holding company" under the BHC Act. This conclusion also applies to non-lead Federal branches and agencies of foreign banks, whose level of supervision, enforcement, and licensing are increasingly tied to the condition of the foreign bank. Consistent with this conclusion, the OCC has issued letters in which the OCC applied the assessment reduction to (a) non-lead banks owned by a company that is not a "bank holding company" under the BHC Act and (b) non-lead Federal branches and agencies of a foreign bank.

In light of the comments received, the OCC is adopting in final form the changes contained in the 1996 Interim Rule, as amended to reflect the interpretations noted above. Consistent with these interpretations, the OCC is amending § 8.2(a)(6)(ii) (A)–(C) so that "non-lead bank" includes a national bank that is not the largest national bank controlled by a company (as opposed to a bank holding company) and is adopting a new § 8.2(b)(4) to apply the assessment reduction to non-lead Federal branches and agencies of foreign banks. Finally, the OCC also has adopted a technical change to § 8.2(b)(3) to use the term "Call Report" (in lieu of "Report of Condition") that is used elsewhere in part 8.

#### Immediately Effective Rule

This final rule is effective upon publication in the **Federal Register**. The OCC has determined that the rule may be immediately effective pursuant to 5 U.S.C. 553(d) (1) and (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 entities. 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 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 and Federal branches and agencies. The OCC will continue to provide a semiannual Assessment Notice to each institution, and each national bank and Federal branch or agency will continue to have at least 30 days following receipt of a semiannual assessment notice in which to pay the assessment.

#### Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the regulatory flexibility analysis otherwise required under section 604 of the RFA (5 U.S.C. 604) is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule does not impose any new reporting or recordkeeping requirement. Moreover, to the extent that it has any impact on national banks, the impact will be to lower assessments for non-lead national banks and non-lead Federal branches and agencies of foreign banks and to eliminate a separate assessment for trust and other examinations and investigations. Accordingly, a regulatory flexibility analysis under section 604 of the RFA is not required.

#### Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

#### Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (2 U.S.C. 1532) (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 final 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 final rule has the effect of reducing the assessments and fees paid by national banks.

#### 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 follows:

#### 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, 3102, and 3108; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

2. The interim rule amending 12 CFR part 8 that was published at 59 FR 59640 on November 18, 1994 is adopted as a final rule without change.

3. Section 8.2 is amended by revising paragraphs (a)(6) and (b)(3) and adding paragraph (b)(4) to read as follows:

#### § 8.2 Semiannual assessment.

(a) \* \* \*

(6)(i) Notwithstanding any other provision of this part, the OCC may reduce the semiannual assessment for each non-lead bank by a percentage that it will specify in the Notice of Comptroller of the Currency Fees described in § 8.8.

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

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

(B) *Non-lead bank* means a national bank that is not the lead bank controlled by a company that controls two or more national banks.

(C) *Control* and *company* have the same meanings as these terms have in

<sup>2</sup>The OCC received a similar request in connection with Federal branches and agencies of foreign banks, although the request was not submitted in a comment to the 1996 interim rule.

sections 2(a)(2) and 2(b), respectively, of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 (a)(2) and (b)).

(b) \* \* \*

(3) Each semiannual assessment of each Federal branch or Federal agency is based upon the total assets shown in the Call Report most recently preceding the payment date. The assessment shall be computed in the manner and on the form provided by the OCC. Each Federal branch or Federal agency subject to the jurisdiction of the OCC on the date of the second and fourth Call Reports is

subject to the full assessment for the next six month period.

(4)(i) Notwithstanding any other provision of this part, the OCC may reduce the semiannual assessment for each non-lead Federal branch or agency by an amount that it will specify in the Notice of Comptroller of the Currency Fees described in § 8.8.

(ii) For purposes of this paragraph (b)(4):

(A) *Lead Federal branch or agency* means the largest Federal branch or agency of a foreign bank, based on a comparison of the total assets held by each Federal branch or agency of that

foreign bank as reported in each Federal branch's or agency's Call Report filed for the quarter immediately preceding the payment of a semiannual assessment.

(B) *Non-lead Federal branch or agency* means a Federal branch or Federal agency that is not the lead Federal branch or agency of a foreign bank that controls two or more Federal branches or agencies.

Dated: October 15, 1997.

**Eugene A. Ludwig,**

*Comptroller of the Currency.*

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