

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

[Docket No. 97-20]

RIN 1557-AB60

Assessment of Fees; National Banks; District of Columbia Banks**AGENCY:** Office of the Comptroller of the Currency, Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), in order to more accurately reflect the OCC's costs of supervising banks, is proposing to amend its assessment regulation to impose a surcharge on banks that receive a rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System (UFIRS) (also referred to as 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). This amendment will enable the OCC to distribute more equitably the costs it incurs when supervising institutions that are experiencing significant problems. The OCC also is soliciting comments on the appropriate method of computing assessments for those banks that own other banks.

DATES: Comments must be received by November 20, 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. 97-20. In addition, comments may be sent via FAX, at (202) 874-5274, or via Internet at regs.comments@occ.treas.gov.

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.

SUPPLEMENTARY INFORMATION:**Background**

The OCC charters, regulates, and supervises approximately 2,700 national banks and 64 Federal branches and agencies of foreign banks in the United States, accounting for nearly 60 percent of 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 banks within its jurisdiction, as necessary and appropriate to meet the OCC's expenses, pursuant to 12 U.S.C. 482.

The OCC charges each national bank and Federal branch and agency a semiannual assessment according to a formula that is described in 12 CFR 8.2. In general, the OCC calculates the semiannual assessment by using a marginal rate that declines as an institution's asset size grows. The OCC also reduces assessments charged to a "non-lead bank" (which, generally speaking, refers to a national bank that is not the largest national bank owned by the same company¹) by a percentage determined in accordance with each assessment. For example, the OCC reduced the assessment for non-lead national banks that was due January 31, 1997, by 12 percent.²

The marginal rate structure (which applies a declining marginal rate as bank asset size grows) and the assessment reduction for non-lead national banks reflect the OCC's cost savings resulting from the economies of scale realized in the examination and supervision of large institutions and non-lead banks. However, the current assessment regulation does not reflect the increased costs that the OCC incurs when supervising a bank whose condition requires special attention. As a result, healthy banks subsidize banks that are experiencing significant problems. The proposed imposition of a surcharge on banks requiring additional OCC resources, discussed in the section that follows, addresses this concern.

Discussion of the Proposal and Request for Comment**Surcharge**

The proposal adds new paragraphs (a)(7) and (b)(5) to § 8.2,³ which provide that the OCC will impose a surcharge

¹ In a final rule published elsewhere in this issue of the *Federal Register*, the OCC has amended the definition of "non-lead bank" to include a national bank that is not the largest national bank controlled by a company (as opposed to a bank holding company).

² The OCC made this reduction pursuant to an interim rule published on December 2, 1996 (61 FR 64000). In the final rule referred to in footnote 1 of this document, the OCC is adopting the changes set forth in that interim rule. The final rule also adopts the changes set forth in an interim rule published in 1994 (59 FR 59640) concerning fees for examinations of fiduciary activities, special examinations and investigations, examinations of affiliates, and examinations and investigations of corporate activities.

³ In the final rule referred to in footnote 1, the OCC added a new paragraph (b)(4) to § 8.2.

equal to 25 percent of the amount of the assessment that otherwise would be due from (a) national banks that receive a UFIRS rating (also referred to as a CAMELS rating⁴) of 3, 4, or 5 and (b) Federal branches and agencies of foreign banks that receive a ROCA rating of 3, 4, or 5. OCC cost data show that there is a significant increase in supervision costs once an institution's rating moves from 2 to 3 and that these increased costs continue while the bank is rated 3, 4, or 5. To reflect this increase in costs of supervising a bank rated 3 or worse, the proposal uses a UFIRS or ROCA rating (as appropriate) of 3 as the threshold for applying the surcharge. Using the most recently available data at the time this proposed rule was prepared, the surcharge would affect a total of approximately 85 national banks and Federal branches and agencies of foreign banks, resulting in an aggregate annual increase in assessments for these banks of approximately \$0.7 million.

By linking assessments with the condition of the banks supervised, the proposal ensures that a greater proportion of increased OCC costs attributable to banks whose condition requires additional supervisory resources is funded by those banks rather than by the national banking system as a whole. If more banks were rated 3, 4, or 5, the OCC would need additional and/or more specialized staff to monitor the efforts of those banks to improve their condition. The proposal expands or contracts assessment revenue automatically in a way that responds to the changing demands on the OCC.

The OCC considered the alternative of imposing a 50-percent surcharge on banks that are rated 4 or 5.⁵ However, a 50-percent surcharge on UFIRS or ROCA 4-and 5-rated institutions would not cover the increased costs of supervising all institutions rated 3, 4, or 5. As a result, institutions rated 3 would be subsidized both by healthier banks (who would, under the alternative approach, be paying assessments at the same rate as 3-rated institutions even though the healthier banks require less supervision) and by banks in worse condition (who would be paying the assessment surcharge).

The OCC seeks comment on the approach set out in proposed paragraphs (a)(7) and (b)(5) of § 8.2. The OCC also seeks comment on whether the ROCA rating is the appropriate

⁴ CAMELS is an acronym that stands for capital, assets, management, earnings, liquidity, and sensitivity to market risk.

⁵ This is the approach taken by the Office of Thrift Supervision in assessing savings institutions. See 12 CFR 502.1.

rating to use in imposing an assessment surcharge on Federal branches and agencies, and, if not, whether some other rating or set of criteria would be more appropriate.

Assessments of a Bank That Owns Another Bank

An issue has arisen concerning the proper method of calculating the assessments of national banks that own other banks. This issue stems from a recent change in the Call Report instructions⁶ pursuant to which the assets of a subsidiary bank are reported on a consolidated basis in the Call Report of its parent bank. Given that the subsidiary bank also is required to file a Call Report, the current assessment regulation, which bases assessments on assets reported in a bank's Call Report, has the unintended effect of double-counting at least some of the assets of the subsidiary bank.

The OCC seeks comment on methods that commenters believe would be appropriate for calculating, for assessment purposes, the assets of a national bank that owns another bank.

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 603 of the RFA (5 U.S.C. 603) 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 the agency publishes that certification and a short, explanatory statement in the **Federal Register** along with its notice of proposed rulemaking.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. The proposed rule does not impose any new reporting or recordkeeping requirement. While the proposal would require national

banks, Federal branches, and Federal agencies of all sizes that receive a UFIRS or ROCA rating of 3, 4, or 5 to pay an assessment surcharge, this will not create a significant or disparate impact on small institutions. The assessments for the 58 national banks, Federal branches, and Federal agencies with total assets of under \$100 million that currently are rated 3, 4, or 5 would increase, in the aggregate, by approximately \$287,204 per year, or approximately \$4,952 per institution. Accordingly, a regulatory flexibility analysis under 603 of the RFA is not required.

Executive Order 12866

The OCC has determined that this proposal 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 proposed 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 proposal, while increasing the annual assessments for institutions receiving a UFIRS or ROCA rating of 3, 4, or 5, will, in the current banking environment, increase

assessments in the aggregate only by approximately \$0.7 million.

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 proposed to be amended as follows:

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

1. The authority citation for part 8 continues 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. Section 8.2 is amended by adding new paragraphs (a)(7) and (b)(5) to read as follows:

§ 8.2 Semiannual assessment.

(a) * * *

(7) The OCC shall adjust the semiannual assessment computed in accordance with paragraphs (a)(1) through (a)(6) of this section by multiplying that figure by 1.25 for each bank that receives a rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System at its most recent examination.

(b) * * *

(5) The OCC shall adjust the semiannual assessment computed in accordance with paragraphs (b)(1) through (b)(4) of this section by multiplying that figure by 1.25 for each Federal branch or Federal agency that receives a ROCA rating (which rates risk management, operational controls, compliance, and asset quality) of 3, 4, or 5 at its most recent examination.

Dated: October 15, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 97-27829 Filed 10-20-97; 8:45 am]

BILLING CODE 4810-33-P

⁶ See 62 FR 8078 (February 21, 1997).