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**DEPARTMENT OF THE TREASURY**
**Office of the Comptroller of the  
Currency**
**12 CFR Part 8**
**[Docket No. 02-08]**
**RIN 1557-AC07**
**Assessment of Fees**
**AGENCY:** Office of the Comptroller of the  
Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending its regulation that addresses assessments for independent trust banks. The final rule updates the regulation to reference the appropriate portion of new forms issued by the Federal Financial Institutions Examination Council (FFIEC), which replace the FFIEC form currently referenced in the regulation.

**EFFECTIVE DATE:** June 1, 2002.

**FOR FURTHER INFORMATION CONTACT:**  
Andra Shuster, Counsel, Legislative and  
Regulatory Activities Division, (202)  
874-5090.

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

On April 25, 2002, the OCC published a notice of proposed rulemaking in the **Federal Register** (67 FR 20466) to amend the OCC's assessment regulation for independent trust banks. The comment period ended on May 17, 2002. We received no comments on the proposal, and are therefore adopting it without change except for the addition of a minor technical amendment.

**Description of Rule**

Section 8.6(c) of the OCC's regulations provides that assessments for independent trust banks will include a "managed asset component" in addition to the assessments calculated under § 8.2. Under § 8.6(c)(1)(i), all independent trust banks must pay a minimum fee. In addition, under § 8.6(c)(1)(ii), independent trust banks

with "managed assets" in excess of \$1 billion must pay an additional amount. Currently, the regulation defines the asset base upon which the additional assessment is applied by reference to Schedule A, Line 18 of the Annual Report of Trust Assets (FFIEC Form 001). FFIEC Form 001 was replaced effective December 31, 2001 by FFIEC Forms 031 and 041, Schedule RC-T—Fiduciary and Related Assets.

The proposal amended the definition of "Trust assets" in § 8.6(c)(3)(iv). The defined term was changed to "Fiduciary and related assets" to reflect the terminology used in Schedule RC-T of FFIEC Forms 031 and 041. The proposal also replaced the reference to FFIEC Form 001 with a reference to assets reported on Schedule RC-T of FFIEC Forms 031 and 041, any successor form issued by the FFIEC, and any other fiduciary and related assets defined in the Notice of Comptroller of the Currency Fees. "Fiduciary and related assets" reported on Schedule RC-T reflect the types of assets, managed in a trust or fiduciary-related capacity, covered by the now-outdated cross-reference in the current rule, plus certain other similarly managed assets (corporate trust and agency accounts) not reported on the previous FFIEC form due to imprecisions in the instructions to the form.

The proposal also removed references in §§ 8.6(c)(1) and (c)(1)(ii) to "managed assets" and "trust assets under management," and replaced them with the new term "fiduciary and related assets," which is used in Schedule RC-T of FFIEC Forms 031 and 041.

The final rule adopts all of these amendments to part 8 without change.

The proposal also made a technical correction to § 8.1, correcting the reference to "12 U.S.C. 93A" to "12 U.S.C. 93a." The final rule adopts this amendment and also corrects § 8.1 by adding 12 U.S.C. 1867 and 3108 to the list of authorities.

**Effective Date**

Any new regulation that imposes "additional reporting, disclosure, or other requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form," unless certain exceptions apply. Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325, sec. 302(b) (September 23, 1994). This rulemaking imposes no such additional reporting, disclosure, or other requirements. Accordingly, the requirement to delay the effective date until the first day of

the next calendar quarter does not apply. Further, pursuant to 5 U.S.C. 553(d), the publication of a substantive rule generally shall not be made less than 30 days before its effective date unless certain exceptions apply. One such exception contained in 5 U.S.C. 553(d)(3) permits an agency to publish a rule that is immediately effective if the agency finds good cause to do so and publishes its reasoning with the issuance of the rule. It is necessary for this final rule to become effective on June 1, 2002 in order to avoid inconsistency between the current OCC regulation and the form independent trust banks are required to use to calculate the next semi-annual assessment. Notice of the assessment will be given on June 1, 2002 and the assessment will be due by July 31, 2002.

#### Regulatory Flexibility Act

An agency must prepare a Regulatory Flexibility Analysis if a rule it proposes will have a "significant economic impact" on a "substantial number of small entities." 5 U.S.C. 603, 605. If, after an analysis of a rule, an agency determines that the rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) provides that the head of the agency may so certify.

The OCC has reviewed the impact this final rule will have on small national banks. For purposes of this Regulatory Flexibility Analysis and final regulation, the OCC defines "small national banks" to be those banks with less than \$100 million in total assets. Based on that review, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The basis for this conclusion is that only 10 trust banks with total assets of less than \$100 million will likely be affected. The OCC believes, as a result, that the rulemaking will not have an impact on a substantial number of small institutions.

#### 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, this rulemaking requires no further analysis under the Unfunded Mandates Act.

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

National banks, Reporting and recordkeeping requirements.

#### 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

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

**Authority:** 12 U.S.C. 93a, 481, 482, 1867, 3102, and 3108; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

2. Section 8.1 is revised to read as follows:

##### § 8.1 Scope and application.

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 93a, 481, 482, 1867, 3102, and 3108; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

3. In § 8.6:

A. Paragraph (c)(1) is amended by removing the term "managed" and adding in its place "fiduciary and related"; and

B. Paragraphs (c)(1)(ii) and (c)(3)(iv) are revised to read as follows:

##### § 8.6 Fees for special examinations and investigations.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) *Additional amount for independent trust banks with fiduciary and related assets in excess of \$1 billion.* Independent trust banks with fiduciary and related assets in excess of \$1 billion will pay an amount that exceeds the minimum fee. The amount to be paid will be calculated by multiplying the amount of fiduciary and related assets by a rate or rates provided by the OCC in the Notice of Comptroller of the Currency Fees.

\* \* \* \* \*

(3) \* \* \*

(iv) *Fiduciary and related assets* are those assets reported on Schedule RC-T of FFIEC Forms 031 and 041, Line 9 (columns A and B) and Line 10 (column B), any successor form issued by the FFIEC, and any other fiduciary and related assets defined in the Notice of Comptroller of the Currency Fees.

Dated: May 24, 2002.

**John D. Hawke, Jr.,**

*Comptroller of the Currency.*

[FR Doc. 02-13556 Filed 5-29-02; 8:45 am]

**BILLING CODE 4810-33-P**