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March 26, 2004

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552

Attention: Regulation Comments, Chief Counsel's Office, No. 2004-06

Re: Assessments and Fees
69 FR 6201 (February 10, 2004)

Dear Sir or Madam:

America's Community Bankers ("ACB")¹ is pleased to comment on the proposal by the Office of Thrift Supervision ("OTS") to revise the way the agency calculates the assessments and fees for savings and loan holding companies ("SLHC") and savings associations.²

Under the proposal, the OTS would substantially revise the way it calculates annual assessments for SLHCs. Currently, SLHCs pay assessments based on the time spent on on-site examinations and off-site examination-related work. The proposal would replace this scheme with a basic fixed, semi-annual assessment, supplemented by additional amounts based on the size and complexity of the SLHC. Some SLHCs will pay less or the same amount of assessments under the proposal, but others may pay substantially more.

The OTS also is proposing to eliminate the alternative calculation for assessments against small "qualifying savings associations."

ACB Position

ACB supports the efforts of OTS to establish a process for determining assessments for SLHCs. The wide range of structures and the diversity of organizational forms of SLHCs make this task difficult. We are very concerned about the impact of this proposal on several groups of SLHCs.

¹ ACB represents the nation's community banks. ACB members, whose aggregate assets total more than \$1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

² 69 Fed. Reg. 6201 (February 10, 2004).

We believe that the proposal to calculate assessments based in part on the total consolidated assets creates an unfair financial burden on those SLHC structures that are organized to include a number of companies and affiliates but have a relatively small savings association subsidiary. We are concerned that imposing the new fee structure on a complex organization with a small savings association will result in very large increased assessments and will harm the very SLHCs that have specifically chosen to be OTS SLHCs. We urge the OTS to reconsider the proposed methods of calculating the assessments. ACB would be happy to work with the OTS to develop a more equitable manner of determining assessments that will meet the goals of the OTS while not imposing substantial burdens on the SLHCs. At a minimum, we urge the OTS to reconsider whether it will base assessments on the top tier holding company or whether it will look at a mid tier holding company when calculating the assessments. We strongly urge the agency to review the comments received on this proposal and to issue an amended proposal that responds to the concerns highlighted.

We do not believe that this proposal meets the goals established by the agency of (i) keeping charges as low as possible while providing the agency with the resources essential to effectively supervise a changing industry; (ii) tailoring its charges to more accurately reflect the agency's costs of supervising institutions and their affiliates; and (iii) providing institutions and their affiliates with consistent and predictable assessments to facilitate planning.³ ACB believes that these are appropriate goals for the agency to have.

The option of charter choice that is valuable requires management and the board of each institution to look at its organizational form to ensure that it is the best charter to meet its business objectives and strategic goals. These goals and objectives include service to community and provision of products and services that respond to customer needs while operating in a safe and sound manner. An important factor for management of these institutions is the cost of operating and that includes the cost of supervision. With freedom to change charter comes the ability to weigh costs and determine the relative benefits of making particular choices. We are concerned that if adopted as proposed this fee schedule could have the unintended outcome of charter changes.

Many members of ACB are SLHCs or "qualifying savings associations" and will be directly affected by this proposal. We recognize that the nature of the institutions supervised by the OTS and the way institutions are supervised has changed over the years. We also understand the importance of having a strong and financially sound agency supervising the savings association industry. It seems eminently reasonable to try and align assessments more directly with the time spent on supervision. The proposal, however, does not seem to do that in all cases. For instance, large and complex organizations may end up paying assessments that do not have any reasonable connection to the time spent on supervision because of their large amount of consolidated assets. Further, a number of SHLCS are subject to extensive supervision by insurance or securities regulators, so information about their condition should be readily available from an independent source. It would seem more fair and reasonable to base assessments on hours spent during the on-site and off-site examination process and to establish a system of assessments that recognizes

³ Id at 6202

that for some types of SHLCs it may mean that OTS staff will have to track hours more carefully much like other professional firms.

Under the proposal assessments for SLHCs that do not engage in any activities other than owning a savings association subsidiary are not reasonable. The assessments on these organizations, even if primarily based on a fixed, semi-annual amount, do not appear to have any reasonable connection to the time spent during the examination process. We suggest that any final rule provide a reduced adjustment under the organizational form component for these organizations. A downward adjustment also should be made for SLHCs with savings associations that engage only in trust activities.

With regard to the organizational form component increase for SLHCs that own state-chartered banks, we believe that a 50 percent automatic increase in the assessment amount is not justified. SLHCs that currently own a state bank should be grandfathered and exempt from any increase. Going forward, new SHLCs that own state-chartered banks should see a differential increase of 15 to 20 percent.

We understand the reasoning behind the proposal to eliminate the alternative calculation for small "qualifying savings associations." The change may be justified as being more fair to savings associations that do not qualify for the adjustment. However, these small institutions with limited resources generally carry a heavy regulatory burden to comply with all of the same rules and regulations that their larger competitors contend with using greater resources. If the alternative calculation is eliminated, we believe that an increase in assessments should be phased-in over time to lessen the burden that a one-time increase would entail. Also, the alternative calculation should continue to apply to "qualifying savings associations" that engage only in trust activities since the trust activities already are covered by a separate assessment.

Background of Proposal

As a result of changes in the types of institutions supervised by the OTS, coupled with an effort to move more of the examination process off-site, the OTS is proposing to revise significantly the calculation of assessments for SLHCs. Under the proposal, the top-tier SHLC would pay a fixed, semi-annual assessment each year. That fixed amount initially would be set at \$3,000. The fixed amount would be supplemented by the following:

- A risk and complexity component that would be based on a combination of the total consolidated asset size of the SLHC (both financial and non-financial assets) and the risk category assigned to the organization.
- An organizational form component that would be assessed in situations where the OTS feels the organizational form of an SLHC requires additional supervision and examination time. The OTS currently is planning to add an additional assessment under this component only for those holding companies that own a state-chartered savings bank that is treated like a savings association under section 10(l) of the Home Owners' Loan

Act.⁴ For these SLHCs, the OTS would increase the base assessment and any risk and complexity component by 50 percent. The OTS would continue to assess organizational structures and could apply the component to other types of structures in the future.

- Condition component that would add an additional amount if the most recent examination rating for the SLHC was unsatisfactory. The additional charge would be 100 percent of the sum of the base assessment, any risk and complexity component and any organizational form component.

The OTS also proposes to establish a separate assessment process for a limited, select number of large and particularly complex enterprises that it currently supervises as conglomerates under section 940 of the OTS Holding Company Handbook. The OTS has solicited comments on the appropriate assessment process for these organizations.

The proposal would eliminate the alternative assessment computation for savings associations that existed on January 1, 1999 and have assets of less than \$100 million. Assessments for these institutions generally have been frozen at 1998 rates. The OTS believes that this is no longer appropriate considering its attempt to tailor charges more closely to the cost of supervision.

SLHC Assessments

ACB believes that it is in the thrift industry's best interest to have a strong and financially sound regulator supervising savings associations and SLHCs. As a result of changes in the industry, it is a good time to revise the assessment process. A process that leads to less on-site examination time and more predictable annual assessments would be beneficial. Aligning the assessment amount more closely to the cost of supervision also would be prudent. However, the proposal does not meet this goal in all cases and many organizations will see significant increases in assessments that are hard to justify. These additional costs will have to be absorbed by the organization or passed on to customers in some way through increased costs for products and services or through changes in services. As an example, one ACB member is facing a \$50,000 increase in assessments. This amount is equivalent to an additional internal audit person, administrative staff or service representative. At a minimum, If the OTS adopts a version of this proposal that has significant cost increases for some organizations, those increases should be phased in over time.

The OTS should also consider adding additional flexibility to the risk and complexity component. The proposal provides only two categories to address the complexity of an SHLC. All organizations that fall within a category, no matter how complex, will be charged the same fee. A more refined breakdown based on the factors that the OTS uses when assigning an SLHC to a category would be appropriate. Also, there may be other factors that could impact the time needed to supervise an SHLC and that could be incorporated into this component, or additional adjustments could be made in the organizational structure component. These other factors include whether the SHLC is a public, private or mutual organization; previous examination

⁴ 12 U.S.C. § 1467a(l).

ratings; and whether there is information available from other regulators on which the OTS can rely.

Large and Diversified SLHCs. Many large and diversified SLHCs would end up with significantly higher assessments mostly as a result of the consolidated assets at the top-tier level. For example, an ACB member that is a diversified SLHC would see assessments increase from approximately \$3,500 to about \$50,000, more than 14 times what it pays today, even though the savings association subsidiary assets represent much less than one percent of total consolidated assets. Another will see an increase from approximately \$4,000 to \$11,000 and another will see a 278 percent increase. We believe that other SLHCs in this situation will see similar increases in assessments. These increases appear to be primarily a function of the asset size of the organizations, rather than representative of a foreseeable increase in the time that must be expended by the OTS during the examination process.

Some SLHCs that will see a significant increase in assessments are diversified financial companies supervised by insurance and securities regulators. A great deal of information is already available to the OTS about these organizations, and it is hard to see how so much more time would be needed during the examination process unless OTS examiners were planning to duplicate the efforts of these other regulators. The OTS has access to regulatory reports and other public documents provided by SLHCs engaged in securities activities to the Securities and Exchange Commission. The OTS has entered into an information sharing agreement with all or substantially all of the state insurance regulators and should have access to information regarding the financial solvency and activities of an SHLC active in the insurance industry. As discussed below, one of the tenets of the Gramm-Leach-Bliley Act was to stress the importance of functional regulation and encourage cooperation among the different types of regulators.

In fact, there is some fear that the new assessment process may lead to unproductive and unnecessary staff work. The proposal states that with fixed assessments, staff will not feel undue pressure to expand or restrict on-site examination time due to concerns about the potential examination charges.⁵ We think, however, that there may be a tendency to spend more time than needed during the examination process because there will not be the oversight and monitoring provided by time records. Currently, the OTS can charge for the time and effort spent on the examination and much of that time is transparent to the organization. There is no incentive for examiners to focus on areas in these diversified organizations that are not relevant to the safety and soundness of the savings association or the SLHC and are covered by other regulators. If there is some budgetary restraint on the examiners, they are more likely to use time judiciously. By basing assessments on total assets without a connection to supervisory efforts, examiners may not use their time as judiciously and will create unnecessary burden for the SLHCs.

For all of these reasons, we believe that the OTS should base assessments for the larger, diversified organizations on the actual time spent during the examination process, both for on-site and off-site work. The OTS has stated that the administrative burden of collecting and

⁵ 69 Fed. Reg. 6202.

billing off-site hours outweighs the cost-recovery benefit.⁶ However, there are many professions where fees are based on hours expended and others have not found the tracking of hours to be overly burdensome. Also, by limiting the tracking of hours to the larger, diversified organizations where an asset size-based assessment is unreasonable, the burden of tracking off-site hours will not be as great. By charging the same hourly fee for on-site and off-site work, the OTS can meet its goal of encouraging more off-site work by examiners to lessen the burden of the examination process on supervised organizations.

If tracking the hours spent by staff examining larger diversified companies is unworkable, ACB suggest that the agency develop a formula that can be applied to the work similar to that used by manufacturing and other companies companies for specified tasks.

SLHCs Engaged in Limited Activities. We have similar concerns about the application of the proposal to SLHCs that have no activity other than owning a savings association. Because these are primarily shell holding companies, we believe that even an assessment based on a fixed, semi-annual amount may not have a reasonable relationship to the time expended for the examination. We believe that in these cases, the organization should get the benefit of a negative adjustment under the organizational form component to more closely align assessments with the actual cost of supervision. Under the proposal, two ACB member SLHCs that engage in no activity other than holding the savings association would see their assessments increase from approximately \$2,000 over an 18 month period to \$6,000 a year. Another would see an increase from \$3,875 to \$11,000. Two other ACB members would see an increase in assessments of 250 percent. Again, we believe that other SLHCs will see similar increases in assessments. These types of increases do not seem justified and some adjustment should be made to avoid this result.

Complex Conglomerates. The proposal does not establish an assessment process for complex conglomerates nor is it clear which SLHCs would fall within this designation. The OTS discusses several alternatives for determining assessments for this group and asks for input on this issue. Similar to our comments above with regard to diversified SLHCs, we believe that assessments for complex conglomerates should be based primarily on the time spent on examination in order to better tailor charges to the costs of supervision. An adjustment based on certain risk factors, such as whether an organization has financial activities in the European Union, also would be appropriate. We do not think that the assessment should be based on assets because consolidated assets are a poor proxy for determining the cost of supervision. Once the OTS has looked at the comments and made a decision about how assessments for complex conglomerates should be calculated, that determination should be published for additional public comment to give affected SLHCs the ability to make further recommendations or suggestions. The OTS also should more clearly define the types of SLHCs that will fall within this category and explain how they differ from category II SLHCs.

Again, ACB would be glad to work with the OTS on developing an equitable process. We are concerned that the very SHLCs for which OTS is working to develop a fair examination and

⁶ Id.

assessment process will become frustrated with the significantly higher fees and divest the institutions or otherwise change their form of organization.

SLHCs owned by Trusts. The OTS asks whether it should assess the intermediate SLHC, rather than the top-tier SHLC, when the top-tier is a trust. We believe that it is more appropriate to assess the intermediate tier in these cases because that is the organization that receives almost all of the attention during the examination process.

Organizational Form Component

With regard to the organizational form component, the OTS proposes applying this component only to section 10(l) holding companies. Those are organizations where the depository institution subsidiary is a state-chartered bank subject to supervision by a state regulator and the Federal Deposit Insurance Corporation ("FDIC"). ACB questions the implication that the examination of a section 10(l) holding company is much more burdensome. The FDIC and state regulators examine these institutions on a regular basis. These regulators can, and we understand do, provide a great deal of information about the institution to the OTS.

One of the cornerstones of the Gramm-Leach-Bliley Act⁷ was to reduce the burden of the supervisory process. Although that law's provisions addressing bank holding company supervision did not directly impact the OTS, the principles are still pertinent to the supervision of SHLCs. In that statute, Congress specifically required the Federal Reserve to rely to the extent possible on the work of other functional regulators, including federal and state banking supervisors, when reviewing the activities of bank holding companies and their subsidiaries.⁸ If the OTS follows this principle, it is unclear how it could take 50 percent more time to supervise a section 10(l) holding company. If there is to be some adjustment for the additional time and effort needed to discuss issues with other regulators and confirm compliance with certain OTS regulations, the adjustment should be a more reasonable increase of 15 or 20 percent. SLHCs that currently own section 10(l) savings banks should be grandfathered and exempt from any organizational form component adjustment. Potential holding companies can take the higher section 10(l) assessment into account when determining how to structure their operations.

SLHCs that own savings associations engaged only in trust activities should receive a downward adjustment to their assessment rate. Basing an assessment primarily on asset size will overstate the amount of time and effort needed to examine these SLHCs. Most SLHCs in this situation are large, diversified financial institutions. They have substantial assets on a consolidated basis, but the limited activities of their savings association subsidiary and the limited risk that they pose to the federal deposit insurance fund make them relatively simple to examine.

The proposal would permit the OTS to impose an organizational form adjustment to other types of ownership structures through release of a Thrift Bulletin. We believe the application of this component to other SLHCs should be subject to public notice and comment. Organizations that

⁷ Pub. L. 106-102 (1999).

⁸ See Streamlining Supervision of Bank Holding Companies, Title I, Subtitle B of Pub. L. 106-102.

may be subject to the application of the component should have the opportunity to determine the impact on their assessments and provide comments to the OTS if they do not feel that an adjustment in assessments is appropriate.

Savings Association Assessments

ACB agrees that the special calculation of assessments for small "qualifying savings associations," which have assets of \$100 million or less, may be unfair to other savings associations that may be just a little larger, but have significantly higher assessment rates. It may be time to eliminate this benefit that puts an unfair burden on other institutions. However, the OTS should acknowledge the limited resources of these very small institutions that already bear a heavy burden in trying to comply with a large and growing number of regulations. We suggest that any increase in assessments resulting from the elimination of this special assessment rate for the smallest institutions be phased-in over time to lessen the burden of the increase. Also, the alternative calculation should continue to be available to small "qualifying savings associations" that engage only in trust activities. These associations already are subject to a separate assessment for their trust activities, so they are already paying their fair share of the cost of examination.

Conclusion

We support the effort to more closely align SLHC assessments with the costs of supervision. As proposed, the methodology does not achieve the stated goals of the OTS. For larger diversified and complex organizations, assessments should be based on hours spent by staff during the examination process. An asset size-based assessment for these organizations would not be appropriate. Also, shell holding companies and SLHCs with savings associations that engage only in trust activities should receive a negative adjustment under the organizational form component to take into account the limited activities of these SLHCs. Any significant increase in assessments for an SHLC should be phased-in over time. Also, any elimination of the alternative calculation for "qualifying savings associations" should be phased-in to reduce burden and should not apply to institutions that engage only in trust activities.

ACB stands ready to work with the OTS and to provide input on a revised assessment schedule for SLHCs that is fair to the OTS and to the industry. ACB appreciates the opportunity to comment on this important matter. If you have any questions, please contact the undersigned at (202) 857-3121 or via e-mail at cbahin@acbankers.org, or Diane Koonjy at (202) 857-3144 or via e-mail at dkoonjy@acbankers.org.

Sincerely,



Charlotte M. Bahin
Senior Vice President, Regulatory Affairs