

were received in response to the request for comment on the interim final rule.

DATES: *Effective Date:* Effective September 10, 2008 the rule published on February 19, 2008 (73 FR 9012) and corrected at 73 FR 9625, Feb. 21, 2008 is adopted as final without change.

FOR FURTHER INFORMATION CONTACT: MaryAnn Nash, Counsel, Legislative and Regulatory Activities Division, (202) 874-5090; Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874-5090; or Colette Baylson, Accounting Operations Manager, Financial Management, (202) 874-4403, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The National Bank Act authorizes the OCC to fund the expenses of its operations through assessments on national banks.¹ Under this authority, the OCC collects semiannual assessments from national banks in accordance with part 8 of our regulations and with the OCC's Notice of the Comptroller of the Currency Fees (Notice of Fees).²

Part 8 establishes categories, or brackets, each of which comprises a range of size values for a national bank's total assets. Each national bank's assessment is the sum of a base amount, which is the same for every national bank in that asset-size bracket, plus a marginal amount, which is computed by applying a marginal assessment rate to the amount of total assets in excess of the lower boundary of the asset-size bracket.³ The marginal assessment rate declines as asset size increases, reflecting economies of scale in bank examination and supervision, which factor into the OCC's overall cost of operations. Both the base amounts and the marginal rates applicable to each asset-size bracket are published at least once a year in the OCC's Notice of Fees.⁴

Prior to the issuance of the interim final rule, the national bank assessments

were based on asset-size brackets that had been last updated in 1992⁵ and no longer reflected the structure and distribution of assets in the national banking system as a whole. For example, since 1992, there has been a significant increase not only in the amount of assets held by the largest banks, but also in the assets held by national banks in other asset-size brackets, resulting in a general upward shift in the distribution of the population of national banks on the asset-size bracket table in 12 CFR 8.2(a). The growth in the average assets held by national banks reflects the consolidation in the banking industry that has occurred since 1992.

Given these developments, the OCC has determined that it is appropriate to update the existing asset-size brackets to reflect the current structure of the national banking system. The interim final rule has enabled the OCC to adjust the assessment framework to better reflect industry structure and the OCC's corresponding expenses of operations.

Interim Final Rule and Comments

On February 19, 2008, the OCC published and requested comment on an interim final rule that expanded the number of asset-size assessment brackets in the table at 12 CFR 8.2(a) by revising the current top bracket, presently \$40 billion and above, to cover banks with assets between \$40 billion and \$250 billion.⁶ In addition, the interim final rule created a new top bracket that applies to banks with assets in excess of \$250 billion.

The OCC also made a conforming change to delete the word "ten" from the description of the asset-size brackets in § 8.2(a)(1) of the assessment rules since it no longer accurately described the number of brackets.

The OCC received no comments in response to the interim final rule and has determined that it is appropriate to adopt as final the interim final rule as originally published on February 19, 2008.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96-354, Sept. 19, 1980) (RFA) applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).⁷ Pursuant to the Administrative Procedure Act (APA), at 5 U.S.C. 553(b)(B), notice and an opportunity for public comment are not required prior to the issuance of a final rule if an

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. OCC-2008-0013]

RIN 1557-AD06

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 adopting as final and without change the interim final assessments rule issued on February 19, 2008. The interim final rule added two new asset-size categories to the table in 12 CFR 8.2(a) used to calculate each national bank's semiannual assessment. The addition of these categories is warranted to take account of significant structural changes in the national banking system since 1992, when the table was last revised, and has enabled the OCC to realign assessments to better reflect industry structure and OCC's corresponding expenses of operations. No comments

¹ 12 U.S.C. 482.

² Under part 8, the OCC also collects assessments from Federal branches and Federal agencies. The changes provided for in this final rule will also apply to assessments of Federal branches and Federal agencies.

³ See 12 CFR 8.2(a) (listing the asset-size brackets).

⁴ See, e.g., OCC Bulletin 2007-46, "Notice of the Comptroller of the Currency Fees for Year 2008" (December 1, 2007). The OCC's regulations provide for the annual publication of the Notice of Fees and also authorize the publication of interim, or amended, notices of fees "from time to time throughout the year as necessary." 12 CFR 8.8.

⁵ 57 FR 22413 (May 28, 1992).

⁶ 73 FR 9012 (February 19, 2008).

⁷ 5 U.S.C. 601(2).

agency, for good cause, finds that “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”⁸

As we have described, the asset brackets in the assessments table in 12 CFR 8.2(a) were last revised in 1992 and did not reflect the current structure of the national banking industry. The OCC adopted the changes to that framework in the form of an interim final rule because completion of notice and comment rulemaking procedures prior to issuing the interim final rule would have required delaying implementation of the new asset brackets beyond the next scheduled assessment date. Such a delay would have been contrary to the public interest since it would have resulted in national banks’ continued payment of assessments under a framework that the OCC has determined is no longer representative of current industry structure and the OCC’s corresponding expenses of operation. Issuance of the interim final rule also furthered the public interest and reduced regulatory burden because it allowed the OCC, as appropriate, to issue an amended Notice of Fees that better reflects the structure of the national banking system and allocates the OCC’s expenses of operation on that basis. For the same reasons, the OCC found good cause to publish the interim final rule with an immediate effective date. See 5 U.S.C. 553(d)(1), 553(d)(3).⁹

Because the OCC determined for good cause that the APA did not require public notice and comment on the interim final rule, we did not publish a general notice of proposed rulemaking. Thus, the RFA, pursuant to 5 U.S.C. 601(2), does not apply to this final rule because it is not a rule for which the OCC was required to publish a general notice of proposed rulemaking pursuant to section 553(b) of the APA.

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 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995¹⁰ (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 the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, in the aggregate, 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 the regulatory alternatives considered.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 appendix A.1), we have reviewed the final rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the final rule.

Lists of Subjects in 12 CFR Part 8

Assessment of fees.

PART 8—ASSESSMENT OF FEES

■ Accordingly under the authority at 12 U.S.C. 482 the interim rule amending 12 CFR part 8 which was published at 73 FR 9012 on February 19, 2008, and corrected at 73 FR 9012, Feb. 21, 2008 is adopted as final without change.

Dated: August 11, 2008.

John C. Dugan,

Comptroller of the Currency.

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⁸ 5 U.S.C. 553(b)(B).

⁹ Although notice and comment were not required prior to the effective date of the interim final rule, the OCC nonetheless invited comments on all aspects of this interim final rule and intended to revise the interim final rule if necessary or appropriate in light of the comments received. As explained above, however, the OCC received no comments on the interim final rule.

¹⁰ 2 U.S.C. 1532.