

warranted to take account of significant structural changes in the national banking system since 1992, when the table was last revised, and will enable the OCC to realign our assessments to better reflect industry structure and OCC's corresponding expenses of operations. The OCC is issuing this rule as an interim rule with a request for comment so that such a realignment can occur promptly.

**DATES:** *Effective Date:* This rule is effective on February 19, 2008.

*Comment Date:* Comments must be received by March 20, 2008.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Please use the title "Assessment of Fees" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—“Regulations.gov”:* Go to <http://www.regulations.gov>, under the "More Search Options" tab click next to the "Advanced Docket Search" option where indicated, select "Comptroller of the Currency" from the agency drop-down menu, then click "Submit." In the "Docket ID" column, select "OCC-2008-0001" to submit or view public comments and to view supporting and related materials for this interim final rule. The "How to Use This Site" link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- *E-mail:*

*regs.comments@occ.treas.gov.*

- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1-5, Washington, DC 20219.

- *Fax:* (202) 874-4448.

- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1-5, Washington, DC 20219.

*Instructions:* You must include "OCC" as the agency name and "Docket Number OCC-2008-0001" in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record

and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this interim final rule by any of the following methods:

- *Viewing Comments Electronically:* Go to <http://www.regulations.gov>, under the "More Search Options" tab click next to the "Advanced Document Search" option where indicated, select "Comptroller of the Currency" from the agency drop-down menu, then click "Submit." In the "Docket ID" column, select "OCC-2008-0001" to view public comments for this rulemaking action.

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

**FOR FURTHER INFORMATION CONTACT:** Mitchell Plave, 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.<sup>1</sup> 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).<sup>2</sup>

Part 8 currently establishes ten categories, or brackets, each of which

<sup>1</sup> 12 U.S.C. 482.

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

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## **DEPARTMENT OF THE TREASURY**

### **Comptroller of the Currency**

#### **12 CFR Part 8**

[Docket No. OCC-2008-0001]

RIN 1557-AD06

#### **Assessment of Fees**

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

**ACTION:** Interim final rule with request for comment.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending its assessment regulation to add 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

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.<sup>3</sup> 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.<sup>4</sup>

The current asset-size brackets, which were adopted in 1992<sup>5</sup> no longer reflect 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 reflect the consolidation in the banking industry that has occurred since 1992.

Given these developments, the existing asset-size brackets do not reflect the structure of the national banking system. Updating the asset-size brackets therefore enables the OCC to adjust the assessment framework to better reflect industry structure and the OCC's corresponding expenses of operations.

#### Description of the Interim Rule

For these reasons, the interim rule expands 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. In addition, the interim rule creates a new top bracket that will apply to banks with assets in excess of \$250 billion.

The OCC also is making 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 describes the number of brackets.

#### Effective Date; Solicitation of Comments

This interim rule will become effective immediately upon publication in the **Federal Register**. Pursuant to the Administrative Procedure Act, 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 agency, for good cause, finds that "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."<sup>6</sup> Similarly, there is good cause to publish a rule with an immediate effective date if the rule "grants or recognizes an exemption or relieves a restriction."<sup>5</sup> 5 U.S.C. 553(d)(1) 553(d)(3).

As we have described, the asset brackets in the assessments table in 12 CFR 8.2(a), which were last revised in 1992, do not reflect the structure of the national banking industry, and therefore the framework for assessing national banks for the expenses of OCC's operations is no longer current. Completion of notice and comment rulemaking procedures prior to issuing this interim rule would require delaying implementation of the new asset brackets beyond the next scheduled assessment date, which is March 31, 2008. Such a delay is inconsistent with the public interest since it would result 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 this interim rule furthers the public interest and reduces regulatory burden because it will allow 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 finds good cause to publish this rule with an immediate effective date. *See* 5 U.S.C. 553(d)(1), 553(d)(3).

Although notice and comment are not required prior to the effective date of this rule, the OCC invites comments on all aspects of this interim rule and intends to revise the interim rule if necessary or appropriate in light of the comments received.

#### Solicitation of Comments on Use of Plain Language

The OCC also requests comment on whether the interim rule is written clearly and is easy to understand. On

June 1, 1998, the President issued a memorandum directing each agency in the Executive branch to write its rules in plain language. This directive applies to all new proposed and interim rulemaking documents issued on or after January 1, 1999. In addition, Public Law 106-102 requires each Federal agency to use plain language in all proposed and interim rules published after January 1, 2000. The OCC invites comments on how to make this rule clearer. For example, you may wish to discuss:

- (1) Whether we have organized the material to suit your needs;
- (2) Whether the requirements of the rule are clear; or
- (3) Whether there is something else we could do to make the rule easier to understand.

#### 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).<sup>7</sup> Because the OCC has determined for good cause that the Administrative Procedure Act does not require public notice and comment on this interim rule, we are not publishing a general notice of proposed rulemaking. Thus, the RFA does not apply to this interim rule.

#### Executive Order 12866

The OCC has determined that this interim 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 1995<sup>8</sup> (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 interim 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.

<sup>3</sup> See 12 CFR 8.2(a) (listing the asset-size brackets).

<sup>4</sup> 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.

<sup>5</sup> 57 FR 22413 (May 28, 1992).

<sup>6</sup> 5 U.S.C. 553(b)(B).

<sup>7</sup> 5 U.S.C. 601(2).

<sup>8</sup> 2 U.S.C. 1532.

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 Part 1320 Appendix A.1), we have reviewed the interim rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the interim rule.

**Lists of Subjects in 12 CFR Part 8**

Assessment of fees.

**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; and 15 U.S.C. 78c and 78l.

■ 2. Section 8.2 is amended by:  
 ■ a. Revising paragraph (a) introductory text, including the table; and  
 ■ b. Removing the word “ten” in paragraph (a)(1) in the first sentence, to read as follows:

**§ 8.2 Semiannual assessment.**

(a) Each national bank shall pay to the Comptroller of the Currency a semiannual assessment fee, due by March 31 and September 30 of each year, for the six month period beginning on January 1 and July 1 before each payment date. The Comptroller of the Currency will calculate the amount due under this section and provide a notice of assessments to each national bank no later than 7 business days prior to March 31 and September 30 of each year. The semiannual assessment will be calculated as follows:

If the bank's total assets (consolidated domestic and foreign subsidiaries) are:		The semiannual assessment is:		
Over—	But not over—	This amount—base amount	Plus marginal rates	Of excess over—
Column A Million	Column B Million	Column E	Column C	Column D Million
\$0	\$2	\$X1	0	
2	20	X2	Y1	\$2
20	100	X3	Y2	20
100	200	X4	Y3	100
200	1,000	X5	Y4	200
1,000	2,000	X6	Y5	1,000
2,000	6,000	X7	Y6	2,000
6,000	20,000	X8	Y7	6,000
20,000	40,000	X9	Y8	20,000
40,000	250,000	X10	Y9	40,000
250,000	.....	X11	Y10	250,000

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 Dated: February 11, 2008.

**John C. Dugan,**  
 Comptroller of the Currency.  
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