



RESCINDED

OCC 2000-10

**Subject: Assessment of Fees for National
Banks and District of Columbia Banks**
Date: March 29, 2000

**To: Chief Executive Officers and Compliance
Officers of All National Banks, Department and
Division Heads, and All Examining Personnel**

Description: Proposed Rule

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of supervising national trust banks that are not affiliated with a full service national bank (independent trust banks). Under the proposal, an independent trust bank with less than \$1 billion in trust assets under management would pay a flat fee in addition to the assessment computed based on the institution's book assets. An independent trust bank with \$1 billion or more in such assets would multiply its assets under management by a rate provided by the OCC and add the product to the assessment computed on book assets. Both the amount of the flat fee and the rate to be applied by trust banks with over \$1 billion in assets under management would be published in the annual Notice of Comptroller of the Currency Fees. The attached notice invites comments on all aspects of the proposed rule.

For further information, please contact Mitchell E.F. Plave, senior attorney, Legislative and Regulatory Activities Division, (202) 874-5090, or Karen McCluskey, national bank examiner, Bank Supervision Policy, (202) 874-7276.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

Related Links

- [Proposed Rule 65 FR 15111](#)

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Proposed Rules

Federal Register

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. 00-09]
RIN 1557-AB72

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) proposes to amend the assessment formula it uses to assess independent trust banks. A trust bank is considered independent for purposes of this proposal if it specializes in trust activities and is not affiliated with a full service national bank. Under the revised rate structure, all trust banks would continue to be assessed based on balance sheet assets. However, independent trust banks with over \$1 billion in trust assets would pay an additional assessment to reflect the supervision required of these banks' off-balance sheet activities, while smaller independent trust banks would pay a flat fee.

DATES: Comments must be received by April 20, 2000.

ADDRESSES: Comments should be directed to, and may be inspected and copied at: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 00-09. In addition, comments may be sent via facsimile at (202) 874-5274 or via Internet at regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: Mitchell E.F. Plave, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874-5090; or Karen McCluskey, National Bank Examiner (Trust Banks), (202) 874-7276.

SUPPLEMENTARY INFORMATION:

I. Background

The OCC charters, regulates, and supervises approximately 2400 national banks and 58 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 it undertakes to carry out this mission through assessments on national banks. The National Bank Act authorizes the OCC to collect assessments, fees, or other charges as necessary or appropriate to carry out the responsibilities of the Office of the Comptroller. 12 U.S.C. 482 (Supp. 1999). The statute requires that our charges be set to meet the Comptroller's expenses in carrying out authorized activities. Id. The OCC, under part 8, currently assesses national banks and Federal branches and agencies according to a formula based on factors that affect the cost of our supervision, including a bank's size, condition, and whether it is the "lead" bank or "non-lead" bank among national banks in a holding company.¹ The regulation also authorizes the OCC to assess a fee for certain special examinations and for examining the fiduciary activities of national banks. 12 CFR 8.6(a). In recent years, however, the OCC stopped separately charging national banks for the cost of examining and supervising fiduciary activities.

¹ A "lead bank" is the largest national bank controlled by a company, based on a comparison of the total assets held by each national bank controlled by that company as reported in each bank's most recent Consolidated Report of Condition (Including Domestic and Foreign Subsidiaries) (Call Report). 12 CFR 8.2(a)(6)(ii)(A).

Since the OCC eliminated those separate fees, the number, size, and complexity of the activities of independent trust banks have increased and their balance sheet assets increasingly do not reflect the ongoing scope or complexity of their activity, nor the extent of the OCC's supervisory responsibilities with respect to them. For example, although trust assets managed by a bank are not shown on the bank's balance sheet, the bank's fiduciary activities are subject to extensive regulatory standards under 12 CFR part 9 as well as under state laws

that are made applicable to national bank fiduciary activities by 12 U.S.C. 92a. The OCC evaluates the bank's adherence to those standards as part of our supervision and examination of the bank.

This proposal would amend the OCC's assessment regulation to revise the formula for independent trust banks to better align our assessment structure for these banks with the extent of the OCC's supervisory responsibilities. We invite comment on any aspect of this proposal.

The OCC notes that, while not covered by this proposed rulemaking, independent credit card banks raise many of the same issues that are raised by independent trust banks. Accordingly, the OCC anticipates that it soon will be publishing a proposed rule seeking comment on changes to the assessment structure for independent credit card banks.

II. Discussion of the Proposal and Request for Comment

The proposal would amend 12 CFR 8.6 by adding a new paragraph (c) that provides the OCC with the flexibility to increase assessments on independent trust banks by applying either a managed assets component or a flat fee, depending on the amount of assets a particular bank has under management. The proposal defines an ``independent trust bank'' as a national bank that has trust powers, does not primarily offer full service banking, and is not affiliated with a full service national bank.\2\ The managed assets component and flat fee would be assessed, as appropriate, on independent trust banks in addition to the assessment calculated on book assets under 12 CFR 8.2.

\2\ See Charters, Corporate Manual, Office of the Comptroller of the Currency at 19-20 (1998) (describing trust banks).

Banks with at least \$1 billion in managed assets. Independent trust banks with at least \$1 billion in assets under management would pay a managed assets component that would be calculated by multiplying the amount of assets under management by a factor to be supplied by the OCC in the annual Notice of Comptroller of the Currency Fees (Notice of Fees) pursuant to 12 CFR 8.8. ``Assets under management'' are those assets reported by national banks on Schedule A, Line 18 of the Annual Report of Trust Assets (FFIEC Form

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001). This figure aggregates assets over which the bank has investment discretion (discretionary assets) with those that it holds without investment discretion (non-discretionary assets), for example, in a custodial capacity.\3\ We invite comment on the feasibility of distinguishing discretionary from non-discretionary assets for assessment purposes by requiring banks to report these two types of assets separately.

\3\ The Office of Thrift Supervision (OTS) recently revised its trust assessment structure to distinguish ``fiduciary'' from ``nonfiduciary'' trust assets. See Thrift Bulletin TB 48-16 (January

18, 2000). The OCC's rules do not make this distinction, but do distinguish assets that are held with investment discretion from those that are not. See 12 CFR 9.2(i) (definition of investment discretion in the OCC's rules governing fiduciary activities).

The OCC proposes to use a declining marginal rate to calculate the managed assets component, with the rates declining at \$1 billion and again at \$10 billion of assets under management. While the actual rate will be provided in the Notice of Fees and may change as the OCC's experience in supervising independent trust banks changes over time, the OCC anticipates that a bank, in calculating each of its semiannual assessments, initially will multiply the first \$1 billion in assets under management by 0.0000150, assets under management over \$1 billion up to \$10 billion by 0.0000030, and all assets under management over \$10 billion by 0.0000005. The bank then would add the product to the semiannual assessment as otherwise calculated under current Part 8.\4\

\4\ This approach is similar to the approach recently adopted by the OTS. See Assessments and Fees, 63 FR 65663 (Nov. 30 1998) (final rule; codified at 12 CFR part 502). The OCC's statutory assessment authority is similar in certain key respects to the OTS's statutory assessment authority. Both agencies are authorized to fund their expenses through such assessments as each agency finds necessary or appropriate. Compare 12 U.S.C. 482 with 12 U.S.C. 1467(k) (OTS authority to impose fees for examinations and supervisory activities).

Banks with under \$1 billion in managed assets. The OCC incurs a minimum cost in supervising any independent trust bank, regardless of size. To reflect this, the OCC proposes to require independent trust banks having less than \$1 billion in assets under management to pay a flat fee in addition to the assessment the bank would pay based on the bank's balance sheet assets. While the actual amount of the minimum fee would be stated in the Notice of Fees and would be subject to change depending on the OCC's experience in supervising small trust banks, the OCC anticipates that this fee would be approximately \$12,500 per semiannual assessment.\5\

\5\ We note that the OTS's assessment rule in 12 CFR part 502 uses a billable hours approach to assessing thrifts with total assets under management of \$1 billion or less. We invite comment on both approaches.

III. Comment Solicitation

The OCC requests comment on all aspects of this proposal. In addition, the OCC seeks comment on the impact of this proposal on

community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comment on the impact of the proposal on community banks' current resources, and whether the goals of the proposal could be achieved, for community banks, through an alternative approach.

Finally, the OCC requests comment on whether the proposal 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 final 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 final rules published after January 1, 2000. The OCC invites comment 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.

IV. 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 proposed rule would have on small independent trust banks. Based on that review, the OCC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The basis for this conclusion is that the proposed rule will apply to a very small portion of national banks. For purposes of this Regulatory Flexibility Analysis and regulation, the OCC defines ``small independent trust banks'' to be those banks with less than \$100 million in total assets, including managed assets. \6\ Using this definition, the proposed rule will affect only seven small entities, representing less than 1% of all national banks. The OCC does not believe this to be a substantial number of small entities.

\6\ The OCC is using this definition for the sole purpose of this preliminary regulatory flexibility analysis after consulting with the Small Business Administration's Office of Advocacy. The OTS, in its assessment regulation, also consulted with the Office of Advocacy and defined ``small savings associations'' as those with less than \$100 million in total assets, including off-balance sheet assets. See Assessments and Fees, 63 FR 43642, 43646 (1998).

V. Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

VI. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 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, this rulemaking requires no further analysis under the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 8

National banks.

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend chapter I, Part 8 of title 12 of the Code of Federal Regulations 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:

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Authority: 12 U.S.C. 93a, 481, 482, and 3102 and 3108; 15 U.S.C. 78c and 781; and 26 D.C. Code 102.

2. In Sec. 8.6, the section heading is revised and a new paragraph (c) is added to read as follows:

Sec. 8.6 Fees and assessments for examinations and investigations; independent trust banks.

* * * * *

(c) Additional assessments for independent trust banks. The assessment of independent trust banks will include a component in addition to the assessment calculated according to Sec. 8.2. For purposes of this part, an ``independent trust bank'' is a national bank that has trust powers, does not primarily offer full service banking, and is not affiliated with a full service national bank.

(1) Managed assets component. Independent trust banks having at least \$1 billion in trust assets as reported on Schedule A, Line 18 of the Annual Report of Trust Assets (FFIEC Form 001) shall pay an

assessment that is calculated by multiplying the amount of those trust assets by a rate or rates provided by the OCC in the Notice of Fees.

(2) Flat fee. Independent trust banks having less than \$1 billion in trust assets as reported on Schedule A, Line 18 of FFIEC Form 001 will pay a flat fee in an amount to be provided in Notice of Comptroller of the Currency Fees (Notice of Fees) published as stated in Sec. 8.8.

Dated: March 14, 2000.

John D. Hawke, Jr.,
Comptroller of the Currency.

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