



Comptroller of the Currency
Administrator of National Banks
US Department of the Treasury

RESCINDED

OCC 2005-42

Subject: Interim Final Rule
Date: December 6, 2005

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

Description: Assessment of Fees

~~On November 17, 2005, the Office of the Comptroller of the Currency (OCC) published in the Federal Register an interim final rule regarding the assessment of fees for the services provided by the OCC to national banks. This rescission does not change the status of the transmitted document. To determine the current status of the transmitted document, refer to the Code of Federal Regulations, www.occ.gov, or the original issuer of the document.~~

Under the interim rule, the OCC, rather than each national bank, will calculate the semiannual assessment based on the most recent Consolidated Reports of Condition and Income (call report). The assessment will be due by March 31 and September 30 of each year, which is two months later than under the current process. For example, in the coming year, payments that would have been due on January 31, 2006, will instead be due on March 31, 2006. The OCC will notify each national bank of the amount of its semiannual assessment and will deduct automatically that amount from each bank's designated bank account on the payment due date. The interim rule changes the assessment collection process only; it does not make changes to the method for calculating assessments due from national banks.

For further information, contact Bruce Halper, team leader—Revenue, Financial Management, at (202) 874-2199, or Jean Campbell, senior attorney, or Mitchell Plave, counsel, Legislative and Regulatory Activities Division, at (202) 874-5090.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

Related Links

- [70 FR 69641](http://www.federalregister.gov)

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Part 8****[Docket No. 05–20]****RIN 1557–AC96****Assessment of Fees****AGENCY:** Office of the Comptroller of the Currency, Treasury.**ACTION:** Interim final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing this interim final rule, with a request for comment, to amend its regulation at 12 CFR Part 8 concerning the timing of payments of OCC assessments. The interim final rule replaces the current process of assessment collection, which requires national banks to make the initial calculation of the amount due to the OCC. Under the revised assessment of fees process established by this interim rule, the OCC, rather than each national bank, will calculate the semiannual assessment fee based on the most recent Consolidated Reports of Condition and Income (Call Report). The fee will be due by March 31 and September 30 of each year, two months later than under the current process. Thus, payments that would have been due on January 31, 2006, will instead be due on March 31, 2006. The OCC will notify each national bank of the amount of its semiannual assessment and will automatically deduct that amount from each bank's designated bank account on the payment due date. The interim rule

changes the assessment collection process only; it does not make any changes to the method for calculating assessments due from national banks.

DATES: Effective Date: This rule is effective December 19, 2005.

Comment Date: Comments must be received by December 19, 2005.

ADDRESSES: Comments should be directed to:

You should include OCC and Docket Number—in your comment. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- OCC Web site: *http://www.occ.treas.gov*. Click on “Contact the OCC,” scroll down and click on “Comments on Proposed Regulations.”
- E-mail address: *regs.comments@occ.treas.gov*.
- Fax: (202) 874–4448.
- Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- Hand Delivery/Courier: 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: All submissions received must include the agency name (OCC) and docket number or Regulatory Information Number (RIN) for this interim final rule. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide. You may review comments and other related materials by any of the following methods:

- Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- Viewing Comments Electronically: You may request e-mail or CD-ROM copies of comments that the OCC has received by contacting the OCC's Public Information Room at *regs.comments@occ.treas.gov*.
- Docket: You may also request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Senior Attorney, or Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; or Bruce W. Halper, Team Leader—Revenue, Financial Management, (202) 874–2199, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:**I. Background**

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. 12 U.S.C. 482. Under this authority, the OCC collects semiannual assessments from national banks, as described in 12 CFR part 8 and in the Notice of Comptroller of the Currency Fees, which is published no later than the first business day of December each year.¹ Part 8 currently requires each national bank to compute the amount of its semiannual assessment fee and pay that amount to the OCC by January 31 and July 31 of each year. Banks base their assessments on the data each bank submits in the most recent Call Report.

The OCC currently reviews each assessment computation after receiving Call Report data from the Federal Deposit Insurance Corporation (FDIC) in March and September of each year. The OCC finds on average approximately 150 errors per assessment cycle through those reviews. When the OCC finds an overpayment or underpayment of a semiannual assessment, the OCC contacts the national bank, explains the error, and refunds (or collects, as the case may be) the funds electronically.

This assessment collection process is cumbersome and has become outdated, and the procedure for reviewing and correcting miscalculations is inefficient. For these reasons the interim rule will revise the assessment process as described below.

II. Description of the Interim Rule*Calculation of the Semiannual Assessment Fee*

The interim rule provides that the OCC will calculate the semiannual assessment fee due from each bank based on the most recent Call Report data. Under the new assessment process, the OCC will send each national bank an assessment collection notification no later than 7 business days prior to March 31 and September 30 of each year. The assessment will cover the six month period beginning on January 1 and July 1 before each payment date. The OCC will automatically deduct the assessed amount from the bank's designated bank account on March 31 and September 30. By delaying the assessment calculation

¹ 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 payment of assessments by Federal branches and Federal agencies.

date by two months, the OCC can collect assessments based on final Call Report data, and thus eliminate the cumbersome correction process currently required. This streamlining of our assessment collection process has the effect of reducing regulatory burden for national banks and is thus consistent with the objectives of section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996,² which calls for the periodic review of the OCC's regulation and the elimination of unnecessary burden.

Under the interim rule, a national bank will be able to notify the OCC of any errors in the calculation of semiannual assessments or errors in the electronic transfer process. The Comptroller will be obligated to respond to such notices within 30 days of receipt.

Technical and Conforming Amendments

The interim rule eliminates an erroneous sentence in section 8.7(a) regarding delinquent semiannual assessment payments. The sentence duplicates in part the two sentences that follow it, and our research indicates that it is likely the result of a clerical or typographical error.

The rule also makes conforming changes to section 8.7(b) to describe the new streamlined procedure to correct errors in the assessment process. The interim rule makes non-substantive changes to conform part 8 to the new assessment collection process and other minor technical changes. Finally, in § 8.6(a)(1), (2), and (4), and § 8.7(a), the interim rule eliminates references to "District of Columbia," "District of Columbia banks" and "each district bank" to reflect the provisions of the 2004 District of Columbia Omnibus Authorization Act, section 8, Public Law 108-386, 118 Stat. 2228 (2004), which shifted regulatory responsibility of District of Columbia banks from the OCC to the FDIC and Board of Governors of the Federal Reserve System.

Statement of Good Cause for Issuing an Interim Rule; Solicitation of Comments

Under 5 U.S.C. 553(b)(B), notice and comment rulemaking is not required if an agency, for good cause, finds that "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."³ This interim final rule makes only minor changes to the assessment collection

process. It does not change the method for calculating assessments due from national banks or affect the amount of assessment due from each national bank. Completion of notice and comment rulemaking procedures prior to the effective date of this rule are unnecessary because the changes made by the rule are non-substantive and do not affect the amount of a national bank's assessment or accelerate the assessment date. Making this interim final rule effective prior to the completion of notice and comment procedures is consistent with the public interest because the rule reduces regulatory burden for all national banks. Although notice and comment are not required prior to the effective date of the rule, we invite comments on all aspects of the rule. We will revise the rule if necessary or appropriate in light of the comments.

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.

Effective Date

This interim final rule takes effect 30 days after publication in the **Federal Register**. 5 U.S.C. 553(d). Under 12 U.S.C. 4802(b)(1), Federal banking agency regulations or amendments to regulations "which impose additional reporting, disclosure, or other requirements on insured depository institutions" must be effective on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form. As described above, this interim rule operates to reduce burden on national banks. Accordingly, the requirement to be effective on the first day of a calendar

² Pub. L. 104-208, section 2222, 110 Stat. 3009-414 to 3009-415 (Sept. 30, 1996).

³ 5 U.S.C. 553(b)(B).

quarter does not apply to this interim rule.

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).⁴ Because the OCC has determined for good cause that the Administrative Procedure Act does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the RFA does not apply to this interim final rule.

Executive Order 12866

The OCC has determined that this interim 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 1995⁵ (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. 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. Ch. 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.

List 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 is revised 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 8.1 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; and 15 U.S.C. 78c and 78l.

■ 3. Section 8.2 is revised by:

- a. Revising paragraph (a) introductory text and paragraphs (a)(2) and (a)(5); and
- b. Revising paragraphs (b)(1) and (b)(3).

The revisions 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:

* * * * *

(2) The second part is the calculation of assessments due on the remaining assets of the bank in excess of Column E. The excess is assessed at the marginal rate shown in Column D.

* * * * *

(5) The specific marginal rates and complete assessment schedule will be published in the "Notice of Comptroller of the Currency Fees," provided for at § 8.8 of this part. Each semiannual assessment is based upon the total assets shown in the national bank's most recent "Consolidated Reports of Condition and Income" (Call Report) preceding the payment date. Each bank subject to the jurisdiction of the Comptroller of the Currency on the date of the second or fourth quarterly Call Report required by the Office under 12 U.S.C. 161 is subject to the full assessment for the next six month period.

* * * * *

(b)(1) Each Federal branch and each Federal agency 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.

* * * * *

(3) Each semiannual assessment of each Federal branch or Federal agency is based upon the total assets shown in the Federal branch's Call Report most recently preceding the payment date. Each Federal branch or Federal agency subject to the jurisdiction of the OCC on the date of the second and fourth Call Reports is subject to the full assessment for the next six-month period.

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§ 8.6 [Amended]

■ 4. Revise § 8.6 by:

- a. Removing in paragraph (a)(1), the phrase "and District of Columbia";
 - b. Removing in paragraph (a)(2), the phrase ", District of Columbia banks,";
 - c. Removing in paragraph (a)(4), the phrase ", District of Columbia banks,"; and
 - d. Removing in paragraph (c)(1)(i), the word "currency" and adding in lieu thereof the word "Currency".
- 5. Revise § 8.7 by:
- a. Removing in the first sentence of paragraph (a) the phrase "each district bank,";
 - b. Removing in the first sentence of paragraph (a) the word "currency" and by adding in lieu thereof the word "Currency";
 - c. Removing the third sentence of paragraph (a);
 - d. Revising the first two sentences of paragraph (b) introductory text; and
 - e. Revising the first sentence of paragraph (b)(2).

The revisions read as follows:

§ 8.7 Payment of interest on delinquent assessments and examination and investigation fees.

* * * * *

(b) In the event that an entity that is required to make semiannual assessment payments or trust examination fee payments believes that the notice of assessments prepared by the Comptroller of the Currency contains an error of miscalculation, the entity may provide the Comptroller of the Currency with a written request for a revised assessment notice and a

⁴ 5 U.S.C. 601(2).

⁵ 2 U.S.C. 1532.

refund of any overpayments. Any such request for a revised notice and refund must be made after timely payment of the semiannual assessment under the dates specified in § 8.2. * * *

* * * * *

(2) Provide notice of its unwillingness to accept the request for a revised notice of assessments. * * *

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§ 8.8 [Amended]

■ 6. Revise § 8.8 by:

■ a. Removing in the heading of paragraph (b) the word “comptroller” and by adding in lieu thereof the word “Comptroller”; and

■ b. Removing in the first sentence of paragraph (b) the word “Office” and by adding in lieu thereof the word “OCC”.

Dated: November 10, 2005.

John C. Dugan,

Comptroller of the Currency.

[FR Doc. 05-22815 Filed 11-16-05; 8:45 am]

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