RESCINDED

Office of the Comptroller of the Currency
U.S. Department of the Treasury

OCC BULLETIN 2014-21

**Subject: Assessment of Fees**
**Date: May 16, 2014**

Transmittal Letter - See OCC 2014-39.

**To: Chief Executive Officers of National Banks and Federal Savings Associations, All Department and Division Heads, All Examining Personnel, and Other Interested Parties**

**Description: Proposed Rule**

## Summary


The Office of the Comptroller of the Currency (OCC) has issued a proposed rule that would increase the amount of the OCC's semiannual assessment on national banks and federal savings associations (FSA) with more than $40 billion in assets. The proposal would not change the assessment amounts for banks and FSAs with less than $40 billion in assets. The proposal was published in the *Federal Register* on April 28, 2014.

The proposal would raise the marginal assessment rates on assets in excess of $40 billion by 14.5 percent. The total increase in the assessment amount for an individual bank or FSA would depend on its total assets, with increases ranging from between 0.32 percent and 14 percent. The increase in assessments would be effective for the assessment due on September 30, 2014.

The proposed increase in assessments for these larger institutions results from the need to fund new or enhanced OCC activities necessary to supervise implementation of post-crisis financial reforms, primarily by large banks and FSAs.

The proposal would make a conforming amendment to 12 CFR 8 to make it consistent with the proposed increase in assessments. The proposal also would amend 12 CFR 8 to add a reference to section 318 of the Dodd–Frank Wall Street Reform and Consumer Protection Act, which reaffirms the Comptroller of the Currency's broad discretion to set assessments and to determine the assessment methodology. The proposal also would update 12 CFR 8.8 to reflect the current title of "Notice of Fees and Assessments."

The comment period for the proposed rule ends on June 12, 2014.


## Highlights

The proposed rule would

- increase the marginal assessment rates on asset amounts in excess of $40 billion by 14.5 percent.
- amend 12 CFR 8 to clarify, consistent with section 318 of the Dodd-Frank Act, that the Comptroller may increase marginal assessment rates for reasons other than inflationary indexing.

**Note for Community Banks**

The proposed rule will not increase assessments for community banks.

## Further Information

Direct questions or comments to Gary Crane, Deputy Chief Financial Officer, Financial Management, (202) 649-5540; or Mitchell Plave, Special Counsel, Legislative and Regulatory Activities Division, (202) 649−5490.

Amy S. Friend
Senior Deputy Comptroller and Chief Counsel

**Related Link**

- Proposed Rule: Assessment of Fees (PDF)

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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 ID. OCC–2014–0009]**

**RIN 1557–AD82**

### Assessment of Fees

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

**ACTION:** Proposed rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) proposes to increase assessments for certain national banks and Federal savings associations (FSAs). Under the proposal, assessment increases for banks and FSAs with assets of more than $40 billion would range between 0.32 percent and approximately 14 percent, depending on the total assets of the institution as reflected in its June 30, 2014, Consolidated Report of Condition and Income (Call Report). The proposal would not increase assessments for banks or FSAs with $40 billion or less in total assets. In conjunction with the proposed increase in assessments, the OCC proposes to update its assessment rules to conform with section 318 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), which reaffirmed the authority of the Comptroller of the Currency (the Comptroller) to set the amount of, and methodology for, assessments. The proposed rule would also revise the assessment rules to update references to the annual Notice of Comptroller of the Currency Fees (Notice of Fees). If adopted as final, the OCC will implement the increase in assessments by issuing an amended Notice of Fees. This amended Notice of Fees would become effective as of the semiannual assessment due on September 30, 2014.

**DATES:** Comments must be received on or before June 12, 2014.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, 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.* Enter ''Docket ID OCC–2014–0009'' in the Search Box and click ''Search.'' Results can be filtered using the filtering tools on the left side of the screen. Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.

*Instructions:* You must include ''OCC'' as the agency name and ''Docket ID OCC–2014–0009'' in your comment. In general, the OCC will enter all comments received into the docket and publish those comments on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email 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 rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2014–0009'' in the Search box and click ''Search.'' Comments can be filtered by Agency using the filtering tools on the left side of the screen.
- Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th 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) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to 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:** Gary Crane, Deputy Chief Financial Officer, Financial Management, (202) 649–5540, or Mitchell Plave, Special Counsel, or Henry Barkhausen, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The National Bank Act [1] and the Home Owners' Loan Act [2] authorize the Comptroller to fund the OCC's operations through assessments, fees, and other charges on national banks and FSAs.[3] The Comptroller sets assessments, fees, and other charges to meet the OCC's expenses in carrying out its supervisory activities.[4] In setting assessments, the Comptroller has broad authority to consider variations among institutions, including the nature and scope of the activities of the entity, the amount and type of assets that the entity holds, the financial and managerial condition of the entity, and any other

[1] Revised Statutes of the United States, Title LXII, 12 U.S.C. 1 *et seq.*

[2] The Home Owners' Loan Act, 12 U.S.C. 1461 *et seq.*

[3] 12 U.S.C. 16, 481, 482, 1467.

[4] 12 U.S.C. 16, 482.

factor the Comptroller determines is appropriate.[5]

The OCC collects assessments from national banks and FSAs in accordance with 12 CFR part 8. Under part 8, the base assessment for banks and FSAs is calculated using a table with eleven categories, or brackets, each of which comprises a range of asset-size values. The assessment for each bank and FSA is the sum of a base amount, which is the same for every national bank and FSA in its asset-size bracket, plus a marginal amount, which is computed by applying a marginal assessment rate to the amount in excess of the lower boundary of the asset-size bracket.[6] The marginal assessment rate declines as asset size increases, reflecting economies of scale in bank examination and supervision.

The OCC's annual Notice of Fees sets forth the marginal assessment rates applicable to each asset-size bracket for each year, as well as other assessment components and fees.[7] Under part 8, the OCC may adjust the marginal rates to account for inflation.[8] The OCC may issue an interim or amended Notice of Fees if the Comptroller determines that it is necessary to meet the OCC's supervisory obligations.[9]

In recent years, marginal assessment rates for most national banks were relatively stable, which in part reflected a stable regulatory landscape. Since the enactment of the Dodd-Frank Act,[10] the OCC's responsibilities have expanded and changed in several important ways. These include taking on responsibility for the supervision of FSAs and the need to devote appropriate resources to the implementation of the Dodd-Frank Act and supervising compliance with its requirements. The Dodd-Frank Act and other post-crisis reforms have increased the level and complexity of OCC supervisory activities, especially with respect to large institutions. The marginal rates on the assets of large banks and FSAs in excess of $40 billion were not increased between 1995 and 2013.[11] We have recently reviewed those rates and believe that an adjustment beyond an increase for inflation is appropriate in light of our increased supervisory responsibilities.

## II. Description of the Proposed Rule

### *A. Increase to Marginal Rates*

Under the proposal, marginal assessment rates for national banks and FSAs with assets of more than $40 billion would increase by 14.5 percent and would be effective for the assessment due on September 30, 2014. Marginal rates for banks and FSAs with $40 billion or less in assets would remain the same as set out in the 2014 Notice of Fees, published on December 12, 2013. The actual projected assessment increase for banks with more than $40 billion in assets would range between 0.32 percent and 14 percent, depending on each institution's total assets, with an average projected increase of 12 percent. This range is based on year-end 2013 bank and FSA assets. On an annual basis, this 12 percent increase represents .0008 percent of return on assets (ROA) for those banks and FSAs. Accordingly, we expect the effect on the twenty-five institutions with more than $40 billion in total assets to be nominal. Most banks and FSAs (1,134 national banks and 494 FSAs, or approximately 99 percent of entities supervised by the OCC) have assets of $40 billion or less and would not be affected by the increase.

The proposal would continue the OCC's present assessment methodology and would not change the asset bracket table in 12 CFR 8.2(a). The proposal would increase total OCC assessment revenue by an amount ranging between 7 percent and 7.5 percent. The proposed marginal rates for national banks and FSAs with over $40 billion in assets are reflected in the following table:

PROPOSED GENERAL ASSESSMENT FEE SCHEDULE

| If the amount of total balance-sheet assets (consolidated domestic and foreign subsidiaries) is (millions) | | The semiannual assessment will be | | |
|---|---|---|---|---|
| Over | But not over | This amount | Plus | Of excess over (millions) |
| $0 | $2 | $5,997 | 0.000000000 | $0 |
| 2 | 20 | 5,997 | 0.000236725 | 2 |
| 20 | 100 | 10,258 | 0.000189379 | 20 |
| 100 | 200 | 25,408 | 0.000123092 | 100 |
| 200 | 1,000 | 37,717 | 0.000104156 | 200 |
| 1,000 | 2,000 | 121,041 | 0.000085218 | 1,000 |
| 2,000 | 6,000 | 206,259 | 0.000075749 | 2,000 |
| 6,000 | 20,000 | 509,255 | 0.000064454 | 6,000 |
| 20,000 | 40,000 | 1,411,611 | 0.000048553 | 20,000 |
| 40,000 | 250,000 | 2,382,671 | 0.000037936 | 40,000 |
| 250,000 | | 10,349,260 | 0.000037556 | 250,000 |

The following is a table that shows examples of how the increase in assessments would affect national banks and FSAs:

[5] 12 U.S.C. 16. *See also* 12 U.S.C. 1467 (providing that the Comptroller has the authority to recover costs of examination of FSAs "as the Comptroller deems necessary or appropriate.").

[6] 12 CFR 8.2(a).

[7] *See* 12 CFR 8.8(a) (providing for the Notice of Fees). Under part 8, the OCC also collects assessments from Federal branches and Federal agencies. The changes in the proposed amended Notice of Fees would also apply to assessments of Federal branches and Federal agencies.

[8] 12 CFR 8.2(a)(4).

[9] 12 CFR 8.8(b).

[10] Public Law 111–203, 124 Stat. 1376 (2010).

[11] In the 1994 Notice of Fees, the OCC increased the marginal rates for all asset brackets, including the bracket that applied to assets above $40 billion. From 1995 through 2013, the marginal rate for that asset bracket did not increase; moreover, it was lowered in 2008, when the OCC added a new bracket that applied to assets in excess of $250 billion and lowered the marginal rates for all asset brackets. (*See* OCC Bulletin 2008–3, Notice of Comptroller of the Currency Fees for Year 2008 (February 19, 2008); 73 FR 9012 (February 19, 2008)). In the Notice of Fees for 2014, published on December 12, 2013, the OCC removed the $20 billion assets cap on inflation adjustments. (*See* OCC Bulletin 2013–37, Office of the Comptroller of the Currency Fees and Assessments.) The OCC first assessed FSAs in 2011, after the functions of the Office of Thrift Supervision (OTS) were assigned to the OCC under the Dodd-Frank Act. Since September 2012, the OCC has applied the same assessment schedule to national banks and FSAs. Therefore, where the OCC implemented full inflation indexation in 2014, that adjustment applied to FSAs.

PROPOSED ASSESSMENT INCREASES FOR SELECTED ASSET SIZES

| Total assets (billions) | $41 | $50 | $100 | $200 | $500 | $1,000 | $2,000 |
|---|---|---|---|---|---|---|---|
| Semi-annual assessment: | | | | | | | |
| Proposed | $2,420,607 | $2,762,032 | $4,658,831 | $8,452,431 | $19,738,260 | $38,516,260 | $76,072,260 |
| Current | 2,415,803 | 2,713,991 | 4,370,591 | 7,683,791 | 17,540,391 | 33,940,391 | 66,740,391 |
| Change | 4,804 | 48,041 | 288,240 | 768,640 | 2,197,869 | 4,575,869 | 9,331,869 |
| Increase (percent) | 0.20% | 1.77% | 6.59% | 10.00% | 12.53% | 13.48% | 13.98% |

The proposed increase in marginal assessment rates primarily reflects changes in the OCC's supervisory responsibilities. Among those changes were expenses resulting from the integration of the OTS staff into the OCC and other associated costs. For example, under the Dodd-Frank Act, the OCC succeeded by operation of law to the OTS's assessment structure, which was different from the OCC's assessment system. The OCC concluded that it would be inefficient and inequitable to maintain two separate assessment structures and eliminated the OTS's assessment system. Therefore, FSAs are assessed under the same structure (part 8) as national banks. This integration resulted in lower overall assessment revenues for the OCC than the OCC would have collected had it continued the OTS system for assessing FSAs. At the same time, the OCC incurred expenses associated with geographically aligning its integrated workforce with the institutions we supervise and ensuring the continuation of the statutorily protected salary levels and benefits that had been provided by the OTS.

The OCC recognizes the ongoing need to improve efficiencies and contain costs and is taking steps to do so. For example, the OCC currently is implementing an enterprise-wide self-assessment process to identify how to make OCC processes more efficient and effective. We are undertaking this effort pursuant to a strategic initiative designed to address how we can more effectively utilize existing resources, and limit the increase in the agency's costs.

The OCC proposes to raise assessments specifically for banks and FSAs with more than $40 billion in assets for a number of reasons. First, the proposed increase in assessments reflects new supervisory and regulatory obligations for the OCC created by the Dodd-Frank Act. Many of these new obligations require additional resources, with most of those resources allotted for large bank supervision and regulation. For example, section 165(i) of the Dodd-Frank Act requires financial companies with more than $10 billion in assets, including national banks and FSAs, to conduct annual stress tests and submit results to their regulators. The OCC has devoted considerable resources to developing the regulation, guidance, and reporting templates necessary to implement this statutory requirement, and the OCC must allocate a substantial number of supervisory personnel to review each year's stress testing submissions. Other provisions of the Dodd-Frank Act similarly require the OCC to participate in interagency rulemakings and to supervise the compliance of national banks and FSAs with major financial reform initiatives.[12] Supervising compliance with these significant new regulations requires a substantial commitment of resources on an ongoing basis.

Second, the increase for large banks and FSAs reflects the fact the OCC did not raise marginal rates on the assets of large banks and FSAs in excess of $40 billion between 1995 and 2013;[13] moreover, the OCC lowered those marginal rates in 2008 when the bracket for assets in excess of $250 billion was added. Third, the proposal reflects the relatively modest effect the increase would have on the ROA of banks and FSAs with over $40 billion in total assets.

By contrast, a rate increase would strain the limited resources of community banks and FSAs and would be unwarranted for these smaller institutions, in light of the fact that the bulk of the OCC's new responsibilities are directed toward large institutions. For these reasons, the OCC has determined that it is not appropriate to raise marginal assessments for community banks and FSAs.

[12] *See, e.g.,* section 619, 124 Stat. at 1620 (prohibitions on proprietary trading and on investing in, sponsoring, or having certain relationships with a hedge fund or a private equity fund); section 941(b), 124 Stat. at 1890 (credit risk retention requirements).

[13] The OCC did not increase the marginal rates for FSAs after the OCC became the supervisor of those entities on July 21, 2011, although the actual assessment rates for particular FSAs may have increased or decreased when the OCC applied the OCC's assessment structure to FSAs.

*B. Proposed Revisions to Part 8*

The proposed rule would amend 12 CFR part 8 to make it consistent with the proposal to increase the marginal assessment rates. Specifically, we propose to revise 12 CFR 8.2(a)(4) to recognize that the OCC may increase the marginal rates in amounts that exceed the rate of inflation, as under the current proposal. In addition, the proposed rule would revise 12 CFR 8.1 to reflect section 318 of the Dodd-Frank Act, which reaffirmed the Comptroller's broad discretion to set assessments and to determine the assessment methodology. The proposed rule would also update 12 CFR 8.8 to reflect the new title the OCC uses for the annual notice of fees and assessments. The new title is the ''Office of the Comptroller of the Currency Notice of Fees and Assessments.''

## III. Request for Comment

The OCC requests comment on all aspects of the proposed revised marginal rates for assessments due on September 30, 2014 and the proposed changes to part 8.

## IV. Regulatory Analysis

*Paperwork Reduction Act*

Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. This notice of proposed rulemaking amends part 8, which has an approved information collection under the PRA (OMB Control No. 1557–0223). The amendments proposed today do not introduce any new collections of information, nor do they amend part 8 in a way that modifies the collection of information that OMB has approved. Therefore, no PRA submission to OMB is required.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires generally that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. However, the regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration (SBA) to include banking organizations with total assets of less than or equal to $500 million) and publishes its certification and a brief explanatory statement in the **Federal Register** together with the rule.

As of December 31, 2013, the OCC supervised 1,760 banks (1,153 commercial banks, 62 trust companies, 497 Federal savings associations, and 48 branches or agencies of foreign banks). Approximately 1,195 of OCC-supervised banks are small entities based on the SBA's definition of small entities for RFA purposes. As discussed in the SUPPLEMENTARY INFORMATION above, the proposed increase in assessments will only affect institutions with more than $40 billion in total assets. As such, pursuant to section 605(b) of the RFA, the OCC certifies that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required.

*Unfunded Mandates Reform Act*

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes 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 (adjusted annually for inflation). The OCC has determined that this proposed rule will not result in expenditures by State, local, and tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, this proposal is not subject to section 202 of the Unfunded Mandates Act.

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

Assessments, National banks, Savings associations, Reporting and recordkeeping requirements.

**Department of the Treasury**

*Office of the Comptroller of the Currency*

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend 12 CFR part 8 as follows:

## PART 8—ASSESSMENT OF FEES

■ 1. The authority citation for part 8 continues to read as follows:

**Authority:** 12 U.S.C. 16, 93a, 481, 482, 1467, 1831c, 1867, 3102, 3108, and 5412(b)(1)(B); and 15 U.S.C. 78c and 78*l*.

■ 2. Section 8.2 is amended by revising paragraphs (a) introductory text and (a)(4) to read as follows:

### § 8.2 Semiannual assessment.

(a) Each national bank and each Federal savings association 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 and each Federal savings association no later than 7 business days prior to collection on March 31 and September 30 of each year. In setting assessments, the Comptroller of the Currency may take into account the nature and scope of the activities of a national bank or Federal savings association, the amount and type of assets that the entity holds, the financial and managerial condition of the entity, and any other factor the Comptroller of the Currency determines is appropriate, as provided by 12 U.S.C. 16. The semiannual assessment will be calculated as follows:

* * * * *

(4) Each year, the OCC may index the marginal rates in Column D to adjust for the percent change in the level of prices, as measured by changes in the Gross Domestic Product Implicit Price Deflator (GDPIPD) for each June-to-June period. The OCC may at its discretion adjust marginal rates by amounts other than the percentage change in the GDPIPD. The OCC will also adjust the amounts in Column C to reflect any change made to the marginal rate.

■ 3. Section 8.8 is revised to read as follows:

### § 8.8 Notice of Office of the Comptroller of the Currency fees and assessments.

(a) *December notice of fees and assessments.* A notice of ''Office of the Comptroller of the Currency Fees and Assessments'' shall be published no later than the first business day in December of each year for fees to be charged by the Office during the upcoming year. These fees will be effective January 1 of that upcoming year.

(b) *Interim notice of fees and assessments.* The OCC may issue an ''Interim Office of the Comptroller of the Currency Fees and Assessments'' or an ''Amended Office of the Comptroller of the Currency Fees and Assessments'' from time to time throughout the year as necessary. Interim or amended notices will be effective 30 days after issuance.

Dated: April 18, 2014.

**Thomas J. Curry,**

*Comptroller of the Currency.*

[FR Doc. 2014–09296 Filed 4–25–14; 8:45 am]

BILLING CODE 4810–33–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 77

**[Docket No. FAA–2014–0134]**

**RIN 2120–AF90**

## Proposal To Consider the Impact of One Engine Inoperative Procedures in Obstruction Evaluation Aeronautical Studies

**AGENCY:** Federal Aviation Administration, Department of Transportation.

**ACTION:** Notice of proposed policy; request for comment.

**SUMMARY:** This action proposes to establish a new policy that would consider the impact of one engine out procedures in the aeronautical study process conducted under existing 14 CFR part 77 criteria when the airport operations potentially affected by a determination of no hazard are able to use a dedicated one engine out flight path. Additionally, this proposed policy statement notes that the FAA has the authority to consider the cumulative effects of construction in concentrated areas when evaluating the potential for a hazard to navigation.

**DATES:** Send your comments on or before June 27, 2014.

**ADDRESSES:** You may send comments [identified by Docket Number FAA–2014–0134] using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Operations, U.S. Department of Transportation, West