§ 1779.96 Termination of Loan Note Guarantee.

The Loan Note Guarantee under this part will terminate automatically:

(a) Upon full payment of the guaranteed loan; or

(b) Upon full payment of any loss obligation or negotiated loss settlement except for future recovery provisions; or

(c) Upon written request from the lender to the Agency, provided that the lender holds all of the guaranteed portion and the original Loan Note Guarantee is returned to the Agency.

§§ 1779.97–1779.99 [Reserved]

§ 1779.100 OMB control number.

The reporting and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget and have been assigned OMB control number 0572–0122.

PART 1780—WATER AND WASTE LOANS AND GRANTS

2. The authority citation for part 1780 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—General Policies and Requirements

3. Amend § 1780.10(b)(4) by removing the reference ''subpart I of part 1980 of this title'' and adding in its place ''7 CFR part 1779.''

Chapter XVIII—Rural Housing Service, Rural Business—Cooperative Services, Rural Utilities Service, and Farm Service Agency, Department of Agriculture

PART 1980—GENERAL

4. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—[Removed and Reserved]

5. Remove and reserve subpart A, consisting of §§ 1980.1 through 1980.100 and Appendices A through C.

Subpart I—[Removed and Reserved]

6. Remove and reserve Subpart I, consisting of §§ 1980.801 through 1980.900.

Dated: April 23, 2001.

Dawn Riley,

Acting Deputy Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 01–11366 Filed 5–7–01; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. 01–08]

RIN 1557–AB90

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 amending its assessment regulation to clarify that the OCC has authority to charge a national bank when the OCC conducts a special examination of a third party that provides services to the bank. The rule applies in the same way to Federal branches and agencies and District of Columbia banks.

EFFECTIVE DATE: June 7, 2001.

FOR FURTHER INFORMATION CONTACT: Mitchell E. Plave, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

The OCC charters, regulates, and supervises more than 2,200 national banks, accounting for nearly 60 percent of the nation's banking assets, as well as 58 Federal branches and agencies of foreign banks in the United States. 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 and fees charged to the banks it supervises. 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.* Under part 8 of our regulations, the OCC currently assesses national banks and Federal branches and agencies according to a formula based on factors that include a bank's asset size, its condition, and whether it is the ''lead'' bank or ''non-lead'' bank [1] among national banks in a holding company.[2] The OCC also has the authority to assess a fee for special examinations and investigations of these banks. 12 CFR 8.6(a).

In its current form, section 8.6(a) refers only to fees for a special examination of a national bank or its affiliate.[3] It does not reflect the OCC's authority to assess a national bank in connection with special examinations of any of the bank's service providers. The Bank Service Company Act provides that performance of services for national banks (or for other entities supervised by the OCC, including subsidiaries subject to examination by the OCC) ''shall be subject to regulation and examination by [the OCC] to the same extent as if such services were being performed by the bank itself on its own premises.'' [4]

Banks historically have used third parties to perform certain activities—payment processing, for example. Some banks, however, have recently entered new lines of business or introduced novel, and potentially high-risk, products, relying substantially on third party service providers to enable the bank to participate in or to conduct those activities. These include, for instance, certain types of credit card programs, sub-prime lending, check cashing, and other specialized types of lending. In many instances, the service provider's interest in, and connection with, these transactions are significantly greater than that of the bank. The bank may nonetheless be exposed to higher than normal levels of risk. This increased reliance on service providers will result in an increased need for the OCC to examine or investigate third party service providers in order to evaluate the effect that third-party activities and relationships have on the safety and soundness of the bank.[5]

On December 1, 2000,[6] we proposed to amend 12 CFR 8.6 to make clear our authority to assess banks for our

[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 Call Report. 12 CFR 8.2(a)(6)(ii)(A).

[2] Independent trust banks are also assessed based on the amount of trust assets those banks manage. *See* 65 FR 75859 (December 5, 2000).

[3] 12 CFR 8.6(a) also permits the OCC to assess a fee for fiduciary examinations and examinations made pursuant to 12 CFR part 5.

[4] 12 U.S.C. 1867(c). Thus, as would be the case if the activity were performed by the bank itself, the OCC's authority to examine the activity does not lapse if the activity is not being conducted at the same time the OCC undertakes an examination.

[5] The OCC has recently noted the risks that may be associated with using service providers in a recent Advisory Letter and urged national banks to focus on conducting proper due diligence before entering into third party arrangements and on maintaining effective oversight and controls during the third party relationship. *See* OCC Advisory Letter No. 2000–9, ''Third Party Risk,'' August 29, 2000.

[6] 65 FR 75196 (December 1, 2000).

supervision of third party servicers. We also proposed to clarify our authority to charge Federal branches and agencies a fee for conducting special examinations. For the reasons described in the following discussion, we adopt the rule substantially as proposed, with a clarification suggested by one commenter.

Proposed Rule and Comments Received

The proposal stated that the OCC may charge a special examination or investigation fee to national banks when examination or investigation of the activities of a third party service provider is warranted by the high risk or unusual nature of the activities conducted by the service provider for the bank, or when the OCC believes that the bank has insufficient systems, controls, or personnel to adequately monitor, measure, and control the risks associated with the activity. The proposed rule also applied to Federal branches and agencies. In addition, the proposal permitted the OCC to impose the assessment if we examine or investigate third party providers of services to subsidiaries subject to examination by the OCC.

The OCC received two comments on this proposal. The first, from a trade association for community banks, suggested that the OCC identify in advance, in the final rule, those instances in which OCC would conduct special examinations and investigations. The commenter suggested that this approach would provide more predictability as to when the OCC would charge the fee that was proposed.

The circumstances under which the OCC will conduct special examinations or investigations of third parties may differ. Accordingly, the OCC is unable to identify in advance every situation that may warrant use of this authority or imposition of a fee on the bank. The final rule addresses this issue highlighted by the commenter, however, by describing the factors the OCC will consider in determining whether to impose fees for examination of a bank's third party service providers. In addition, the OCC will provide banks with notice before we begin a special examination of a service provider for which the fee will be imposed.[7]

The second commenter, a trade association for check cashing centers, suggested that the proposal might discourage relationships between their members and national banks. The commenter noted that check cashing organizations serve local communities by making funds available to consumers quickly. This rulemaking does not address the merits of the check cashing business. We note that the Bank Service Company Act provides pre-existing authority for the OCC to examine check cashers that have entered into particular relationships with national banks. The final rule does not alter the nature or extent of that oversight. Rather, it clarifies the OCC's authority to assess banks for OCC's examination of third parties so that the cost associated with examining them is borne principally by the banks with whom they have relationships, rather than by the national banking system as a whole.

Final Rule

The final rule amends section 8.6(a) to state that the OCC may assess a national bank or a Federal branch or agency a fee for the examination or investigation of an entity that performs services for the institution or its subsidiary and that is subject to OCC examination and regulation pursuant to the Bank Service Company Act (12 U.S.C. 1867(c)). The fees for special exams and investigations will be based on an hourly rate, with the hourly rate provided each year by the OCC in its Notice of Comptroller of the Currency Fees (Notice of Fees).[8] The final rule also states that the factors the OCC will consider in determining whether imposition of a fee for examination of a bank's third party service providers is warranted are (1) the high risk or unusual nature of the activities conducted by the service provider for the banks; (2) the significance to the bank's operations and income of the activities conducted by the service provider for the banks; and (3) the extent to which the bank has sufficient systems, controls, and personnel to adequately monitor, measure, and control risks arising from activities conducted by the service provider for the bank.

The final rule also amends section 8.6(a) to clarify that the OCC may charge a fee for conducting special examinations and investigations of Federal branches and agencies of foreign banks or their affiliates. Federal branches and agencies are subject to the same ''duties, restrictions, penalties, liabilities, conditions, and limitations'' that apply national banks, except as otherwise specifically provided by statute.[9] Current section 8.6 does not address the assessment of a fee for the special examination or investigation of Federal branches and agencies or their affiliates. The final rule amends section 8.6 to make our authority to assess such a fee explicit. The OCC will state the amount of these fees in the Notice of Fees.

The final rule amends the title of part 8 to more accurately reflect the scope of the regulation. While part 8 includes Federal branches and agencies within the scope of the rule, only national banks and District of Columbia banks are listed in the title. The final rule removes from the title references to the types of regulated entities covered by the regulation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires federal agencies to certify that a final rule will not have a significant impact on a substantial number of small entities. *See* 5 U.S.C. 603, 605. On the basis of the information currently available, the OCC is of the opinion that this final rule is unlikely to have a significant impact on a substantial number of small entities, within the meaning of those terms as used in the RFA. As previously noted, a national bank would be assessed a fee for the examination or investigation of its service provider when the examination or investigation is warranted by the level of risk or unusual or novel nature of the activities conducted by the service provider for the bank, or when the OCC believes that the bank has insufficient systems, controls, or personnel to adequately monitor, measure, and control the risks associated with the activity. As a result, the OCC believes that the fees will not be imposed on a substantial number of small entities.

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

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 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

[7] Banks may indemnify themselves against this cost by including in their contractual arrangements with service providers terms that obligate the service provider to reimburse the bank in the event the OCC conducts an examination or investigation of the service provider and charges the bank the fee described here.

[8] *See* 12 CFR 8.8.

[9] 12 U.S.C. 3102(b).

consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the final 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 is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 8

National banks.

Authority and Issuance

For reasons set forth in the preamble, the OCC amends part 8 of Chapter I of title 12 of the Code of Federal Regulations 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; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

2. The heading of part 8 is revised to read as set forth above.

3. Section 8.6 is amended by revising the section heading and paragraph (a) to read as follows:

§ 8.6 Fees for special examinations and investigations.

(a) *Fees.* Pursuant to the authority contained in 12 U.S.C. 481 and 482, the Office of the Comptroller of the Currency assesses a fee for:

(1) Examining the fiduciary activities of national and District of Columbia banks and related entities;

(2) Conducting special examinations and investigations of national banks, District of Columbia banks, and Federal branches or Federal agencies of foreign banks;

(3) Conducting special examinations and investigations of an entity with respect to its performance of activities described in section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)), if the OCC determines that assessment of the fee is warranted with regard to a particular bank because of the high risk or unusual nature of the activities performed; the significance to the bank's operations and income of the activities performed; or the extent to which the bank has sufficient systems, controls, and personnel to adequately monitor, measure, and control risks arising from such activities;

(4) Conducting special examinations and investigations of affiliates of national banks, District of Columbia banks, and Federal branches or Federal agencies of foreign banks; and

(5) Conducting examinations and investigations made pursuant to 12 CFR part 5, Rules, Policies, and Procedures for Corporate Activities.

* * * * *

Dated: April 26, 2001.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 01–11572 Filed 5–7–01; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 552

[No. 2001–34]

RIN 1550–AB46

Conversion From Stock Form Depository Institution to Federal Stock Association

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Direct final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulation on conversions from stock from depository institutions to federal stock savings associations. This direct final rule clarifies that the resulting federal stock savings association in such transactions succeeds to all the rights, property, and obligations of the converting institution. This amendment merely codifies OTS's interpretation of its existing regulation.

DATES: The direct final rule is effective July 9, 2001, without further notice, unless OTS receives significant adverse comments by June 7, 2001. If OTS receives such comments, it will publish a timely withdrawal informing the public that this rule will not take effect.

ADDRESSES: *Mail:* Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2001–34.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention Regulation Comments, Chief Counsel's Office, Docket No. 2001–34.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–6518, Attention Docket No. 2001–34.

E-Mail: Send e-mails to *regs.comments@ots.treas.gov*, Attention Docket No. 2001–34, and include your name and telephone number.

Public Inspection: Comments and the related index will be posted on the OTS Internet Site at *www.ots.treas.gov*. In addition, you may inspect comments at the Public Reading Room, 1700 G St. NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) Appointments will be scheduled on business days between 10:00 a.m. and 4:00 p.m. In most cases, appointments will be available the next business day following the date a request is received.

FOR FURTHER INFORMATION CONTACT: Aaron B. Kahn, (202) 906–6263, Special Counsel, or Kevin A. Corcoran, (202) 906–6962, Assistant Chief Counsel, Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION:

Background

OTS's regulations at 12 CFR 552.2–6 provides that, with OTS approval, any stock depository institution that is, or is eligible to become, a member of a Federal Home Loan Bank may convert to a federal stock savings association if the converting institution has deposits insured by the Federal Deposit Insurance Corporation (FDIC) at the time of conversion, and complies with all applicable statutes and regulations, including section 5(d) of the Federal Deposit Insurance Act.[1] This regulation does not explicitly address the succession of the federal association resulting from such a conversion to the rights, obligations and property of the converting institution. However, as a matter of practice OTS treats federal stock associations that have resulted from direct conversions pursuant to 12 CFR 552.2–6 as the corporate successors of the converting institutions.

OTS regulations addressing similar transactions explicitly provide that the resulting federal association succeeds to the rights, obligations, and property of a converted or disappearing entity. This is true, for example, for conversions of mutual depository institutions to federal mutual savings associations[2] and the merger or consolidation of stock institutions that result in a federal stock association.[3]

To clarify the legal consequences of direct conversions under 12 CFR 552.2–6, OTS is amending that regulation to provide explicitly that a converted

[1] 12 U.S.C. 1815(d).

[2] 12 CFR 543.14 (2000).

[3] *See* 12 CFR 552.13(l) (2000).