Office of Thrift Supervision **August 14, 1998**

Department of the Treasury

Transmittal

TR–201

Federal Register, Vol.63, No.157, pp. 43642-43649 **Number: TR–201**

The Office of Thrift Supervision (OTS), in the attached notice of proposed rulemaking, would adopt a revised formula to bring the assessments on savings institutions under its supervision more in line with the actual cost of regulating them. The proposal would minimize the current situation in which some thrifts, in effect, subsidize the cost of regulating others.

In the aggregate, the proposed changes should initially result in lower assessments for healthy institutions that are not engaged in large amounts of off-balance sheet activities – the traditional thrifts. The agency would raise the assessment on most thrifts that have significant off-balance sheet activities, such as administering trusts and servicing loans for others. These activities do not now figure into the assessment base. The agency wants to keep rates as low as possible while providing the resources essential to effective supervision of a changing industry. Moreover, it wants to more closely tailor rates to the increase costs of supervision certain types of institutions. The agency's revenues in the future would increase or decrease as the size, activities and conditions of institutions under its supervision change. OTS anticipates having a revised assessment schedule in place for the first assessment of 1999.

The proposal would adopt an assessment schedule incorporating three components: the size of the institution, its condition, and the complexity of its operations.

Asset Size – OTS' current assessment is set up on a sliding formula in which rates decrease as an institution's assets increase. This reflects economies of scale in the examination process. This approach would remain as one component of the proposed plan, but would be adjusted to include certain fixed costs that are nearly the same for all institutions, such as the cost of drafting regulations and policies and the basic cost of conducting examinations. OTS is proposing to incorporate some of these fixed costs as a fixed charge in the assessment schedule. Existing small savings institutions that have never had assets over $100 million and that remain under this threshold would have the option of paying the lesser of assessments calculated under the new or old formulas. New institutions formed in the future would not get the same option. OTS requests comment on whether that option for existing small institutions should be phased out over time.

Condition – OTS rates institutions on a scale of one to five, with one being the best. The proposal would continue the current practice of charging 4- and 5-rated institutions a 50-percent premium over the asset-based assessment because they require more supervision. For the first time, the agency would impose a 25-percent premium on 3-rated thrifts, which also require additional supervision.

Complexity – OTS must examine and supervise activities involving off-balance sheet assets to ensure the safety and soundness of thrift institutions, but such off-balance sheet assets currently are not part of the assets that make up the assessment base. This can result in substantial costs to OTS that are now shared by all institutions. In effect, institutions with minimal or no off-balance sheet assets subsidize the cost of supervising these other institutions. Therefore, OTS is proposing to impose a higher assessment on thrifts that administer more than $1 billion in trust assets, or service more than $1 billion of loans for others, or have more than $1 billion of recourse obligations or direct credit substitutes. OTS is also looking at whether it should address the greater supervisory cost associated with commercial and non-residential mortgage loans.

Consolidation – The agency is asking for comments on how to treat fairly thrifts that own other thrifts. Since assessments are based on consolidated assets, a thrift that owns a subsidiary thrift would be charged on the basis of the combined assets of both.

Under the proposed regulation assessments would continue to be made semi-annually and thrifts that leave OTS jurisdiction could not get a refund.

The notice of proposed rulemaking was published in the August 14, 1998, edition of the Federal Register, Vol. 63, No. 157, pp. 43642-43649. Written comments must be received on or before October 13, 1998, and should be addressed to: Manager, Dissemination Branch, Records Management and Information Policy Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552. Comments may be mailed or hand-delivered, faxed to 202/906-7755 or e-mailed to: public.info@ots.treas.gov. All commenters should include their name and telephone number.

For further information contact:

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— Ellen Seidman
Director
Office of Thrift Supervision

Attachment

ADDRESSES: Written comments must be sent to Sharon Vassiliades, GIPSA, USDA, STOP 3649, 1400 Independence Avenue, SW, Washington, DC 20250–3649; FAX to (202) 720–4628; or e-mail svassili@fgisdc.usda.gov.

All comments received will be made available for public inspection in Room 0623, USDA South Building, 1400 Independence Avenue, SW, Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: John Giler, telephone (202) 720–0252.

SUPPLEMENTARY INFORMATION: GIPSA is conducting a review of the United States Standards for Sorghum in Subpart I of 7 CFR part 810 at sections 810.1401–810.1405.

During this review, GIPSA will assess the need for revisions on the various sections of the United States Standards for Sorghum, the potential for improvements, and language clarity.

GIPSA invites any comments and/or suggestions concerning these standards, including those addressing sorghum classification and/or definition of sorghum, definition of broken kernels and foreign material, and the definition for damaged kernels.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71, *et seq.*)

Dated: August 7, 1998.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 98–21904 Filed 8–13–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 502

[No. 98–74]

RIN 1550–AB20

Assessments and Fees

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to amend its regulations to more equitably impose assessments on savings associations. OTS's experience has shown that the current assessment structure may cause some savings associations to pay assessments over or under OTS's costs of supervising those savings associations. The proposal seeks to minimize these disparities. In particular, the proposal would increase assessments on most institutions with significant off-balance sheet activities. In the aggregate, the proposed changes should initially result in decreased assessments with respect to healthy institutions without significant off-balance sheet activities. The proposal would also clarify certain other matters involving assessments and other fees and would revise the entire assessment and fee regulation using a plain language format.

DATES: Comments must be received on or before October 13, 1998.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 98–74. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or by e-mail: public.info@ots.treas.gov. Comments will be available for inspection at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Christine Harrington, Counsel (Banking and Finance), (202) 906–7957, or Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office; or Eric Hirschhorn, Principal Financial Economist, (202) 906–7350, Research & Analysis; William Brady, Acting Director, Planning & Budget, (202) 906–7408, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

OTS is charged with the mission of examining, regulating, and providing for the safe and sound operation of savings associations.[1] Under 12 U.S.C. 1467, OTS funds these operations through assessments on savings associations and through other fees, as necessary and appropriate.

In the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Congress amended OTS's statutory assessment authority by removing a provision requiring OTS to assess the costs of examining savings associations and their affiliates in proportion to their assets or resources. Instead, Congress authorized the Director of OTS to assess examination costs against savings associations and their affiliates, and to recover the agency's direct and indirect expenses, as the Director deems necessary or appropriate. OTS's experience has shown that the current assessment structure can be improved to more equitably correlate assessments with OTS's costs. OTS proposes to exercise FDICIA's added flexibility to better apportion the costs of OTS regulation among savings associations. The agency has two primary goals: (1) establishing an assessment structure that keeps the assessment rates as low as possible while providing the agency the resources essential to effective supervision of a changing industry, and (2) more closely tailoring rates to the agency's increased costs in supervising certain types of institutions. In the aggregate, the proposed changes should initially result in decreased assessments for healthy institutions without significant off-balance sheet activities, that is, for traditional thrift institutions. In the future, OTS's revenue would increase or decrease as the size, activities, and condition of institutions it regulates, change.

II. Description of Proposal

Under the proposed rule, OTS will determine a savings association's assessment by adding together three components that reflect the size of the institution, its condition, and the complexity of its operations. As discussed more fully below, in the agency's experience, each of these factors substantially affects OTS's costs of supervising savings associations.

A. Asset Size

Under the current OTS regulation, assessments are based on the savings association's total assets, as reported in the consolidated Thrift Financial Report. OTS's current regulation uses decreasing marginal assessment rates for increasingly larger institutions. This method was intended to reflect economies of scale realized in supervising and regulating larger institutions. However, OTS's experience has shown that the current regulation uses marginal assessment rates that are no longer consistent with OTS's economies of scale. Further, it omits certain fixed costs that are the same or nearly the same for institutions of all sizes, such as costs of drafting regulations and policies, and basic costs of conducting examinations.

OTS derived information on the magnitude of economies of scale in thrift supervision and the relationship between other thrift institution attributes and supervisory expenses from a statistical analysis of the variation in total examiner hours among thrifts. Examiner hours are the main component of supervisory expenses that vary with the size, condition, or other

[1] 12 U.S.C. 1463(a).

attributes of thrift institutions. As such, they are a useful standard for evaluating the consistency between an assessment schedule and actual supervision costs.

An analysis of examiner hours at all OTS-supervised thrifts for 1996 and 1997 confirmed that there are substantial economies of scale in thrift examination and found that the percentage decline in the number of examiner hours per million dollars of assets is fairly steady as size increases. OTS used regression analyses to estimate the marginal increases in examiner hours for different size groups and how these marginal increases change with size. This analysis further confirmed the economies of scale in thrift examination and provided support for the rate of decline in the proposed marginal assessment rates.

The proposed regulation is designed to make OTS assessments more equitable for institutions of all sizes. First, as under the current regulation, the asset size component would impose marginal assessment rates that decline as asset size increases. Second, OTS would incorporate some of its fixed costs into the assessment rates schedule via an explicit fixed charge. The Office of the Comptroller of the Currency (OCC) has an analogous charge in its assessment schedule in the form of a very high rate on the first two million dollars of assets.

In analyzing the effects of various base assessment rates, OTS found that the proposed changes, while reflecting OTS's costs, could have a disproportionate impact on assessments for the smallest savings associations, those with less than $100 million in assets. OTS is concerned that such a change might impose undue burdens on those savings associations, which may not be in a position to readily absorb such increased costs. Therefore, OTS proposes to include an alternative size component calculation for such institutions. Under the proposal, a savings association that existed on the effective date of the regulation and never had more than $100 million in assets at the end of any quarter would be a ''qualifying savings association.'' Such an institution would lose its status as a qualifying institution if, following the effective date of the regulation, its assets exceeded $100 million at the end of any quarter. Savings associations formed after the regulation becomes effective would not be considered qualifying savings associations. The size component for a qualifying savings association would be the lesser of the amount that would be required under the proposed regulation, or the amount that would be required under the current OTS assessment structure. Because this alternative is designed to minimize the potential burden associated with changing to a new assessment structure, OTS specifically requests comment on whether this treatment should be phased out in the future and, if so, what phase-out method or period would be appropriate.

As proposed, the asset-based assessment would use a chart to identify base assessment amounts for total assets at a certain levels, and impose marginal rates on assets above those levels. This is similar to the treatment under existing part 502. However, unlike the existing regulation, proposed part 502 would not include specific base assessment amounts or marginal rates in the regulatory text. Rather, OTS proposes to publish the specific base assessment amounts and marginal rates in Thrift Bulletins.[2]

OTS currently publishes assessment rates in a Thrift Bulletin, under authority in current § 502.6 to set rates lower than those published in current § 502.1. Since the early 1990's, thrifts have been charged assessments that are different from those included in the regulation. Having outdated rates in the regulation has caused confusion. Publishing the rates solely in Thrift Bulletins is designed to eliminate this confusion. In addition to mailing Thrift Bulletins to every thrift, OTS puts its Thrift Bulletin on its website (http://www.ots.treas.gov/) for ready public access. OTS believes that including this information in Thrift Bulletins rather than in a regulation would also allow more flexibility to match assessments with costs when OTS's supervisory costs change. As the industry changes, OTS costs of supervision and examination will continue to fluctuate. OTS solicits comments on whether this approach is appropriate.

OTS is currently considering a size component initially containing the base amounts and marginal rates listed in the following chart:

If the amount of total assets is—		The size component is—		
Over	But not over	This amount	Plus	Of excess over
$0	$67 million	$1,250	.00015424	$0
67 million	215 million	11,584	.00010288	67 million.
215 milion	1 billion	26,810	.00008230	215 million.
1 billion	6.03 billion	91,416	.00006584	1 billion.
6.03 billion	18 billion	422,591	.00005267	6.03 billion.
18 billion	35 billion	1,053,051	.00004214	18 billion.
35 billion		1,769,431	.00003371	35 billion.

The actual rates contained in the Thrift Bulletin implementing a final regulation may differ from those in this chart. The chart reflects OTS's current costs and the assessment structure proposed today. Because OTS intends the proposed changes to its assessments regulation to decrease assessments, in the aggregate, for healthy institutions without significant off-balance sheet activities, and because OTS is proposing different options for assessment methods, OTS cannot yet determine with certainty the base assessment amounts and marginal rates that would be in the initial Thrift Bulletin. For example, if OTS were to decide against including a complexity component (discussed below), the agency would charge higher rates under the size component. The actual amounts and rates therefore may change depending on which options OTS selects, taking into account comments OTS receives. At the same time, OTS wants to be as informative as possible about potential base assessment amounts and marginal rates. Savings associations may find this chart useful in determining how this proposed regulation may affect them. As discussed above, OTS will not include specific rates in the final rule. The rates assessed under an implementing Thrift Bulletin will reflect the final regulation structure and OTS's anticipated costs at the time it issues the Thrift Bulletin.

OTS specifically seeks comment on how best to match assessments to OTS's costs of examining and supervising savings associations. While OTS has proposed to maintain a system of declining marginal assessment rates, it

[2] This approach is similar to the OCC's long-standing approach in its assessment regulations at 12 CFR part 8 (1998).

seeks comment on whether any other assessment method may also be appropriate. OTS also seeks comment on how best to cover fixed costs that are the same or nearly the same for institutions of all sizes. For example, should OTS incorporate fixed costs into the assessment rate schedule or use some other method to cover these costs? OTS also solicits comments on any aspects of the proposed cap for the size component for qualifying small institutions. Further, OTS seeks comments on whether asset-based assessments should be based on total assets, as under the current regulation, or whether it should be based on some other measure of assets.

B. Condition

OTS's current regulation includes a 50% premium on the asset-based assessment for institutions with a composite safety and soundness examination rating of 4 or 5 because such institutions require more supervision than higher-rated institutions. Institutions that are rated in the top three categories are not charged this condition-based premium. OTS's experience with this assessment structure since 1990 has shown that the premium rate reflects the higher costs associated with 4- or 5-rated institutions. However, OTS has also found that the current two-tiered premium structure does not fully reflect supervision costs for other institutions. Specifically, OTS used regression analyses of the variation in examiner hours across thrifts to estimate the percentage differences in examiner hours across thrifts grouped by safety and soundness examination rating. These analyses show that 3-rated associations generally require substantially more supervision than 1- and 2-rated institutions, but not as much as 4- and 5-rated institutions. Thus, under the current regulation, the higher supervisory costs for 3-rated institutions may be subsidized by thrifts with ratings other than 3 since 3-rated institutions pay no additional premium.

The proposed rule would amend OTS's current premium assessment to correlate the assessments more closely with OTS's costs. The statistical analysis of examiner hours found that the added burdens from 3-rated institutions are approximately half as great as those from 4- and 5-rated institutions. Accordingly, the proposal would impose a 25% premium on the size component of the asset-based assessment for 3-rated institutions. The proposal would continue to increase the size component of the asset-based assessment by 50% for 4- and 5-rated institutions, consistent with OTS's current practice.

OTS encourages comments on any aspects of the proposed condition component, including whether this component should be based on the examination ratings or some other factor. OTS further solicits comments on whether any condition component should be based on total assets, as under the current regulation, or whether it should be based on some other measure of assets.

C. Complexity

OTS's current asset-based assessment is based on total assets as reported on the consolidated Thrift Financial Report. Accordingly, the asset-based assessment does not reach off-balance sheet assets. OTS must, however, examine and supervise activities involving off-balance sheet assets, as well as other assets, to ensure the safety and soundness of thrift institutions. As a result, OTS incurs expenses relating to institutions with off-balance sheet assets, and these expenses can be substantial. Under the current system, these costs are not assessed directly against the institutions with off-balance sheet assets, but are shared by all savings associations. Thus, institutions with minimal or no off-balance sheet assets effectively subsidize the supervisory costs of institutions with extensive off-balance sheet assets.

OTS measured the supervisory expenses associated with certain off-balance sheet activities by extending the regression models of examiner hours discussed above to determine whether thrifts engaged in these activities absorb more examiner hours than would be expected based on asset size and examination ratings. The off-balance sheet activities included in these analyses were those that impose significant supervisory burden—trust assets administered by the thrift, loans serviced for others, and off-balance sheet assets for which the thrift holds recourse obligations or that are direct credit substitutes. These analyses found significantly greater supervisory expenses for institutions with substantial volumes of these activities.

To mitigate the inequities of assessments not matching costs of supervising complex assets, OTS proposes to amend the assessment regulation to include a new complexity component. By taking certain off-balance sheet assets into account, OTS's assessment rates can be more closely tailored to its expenses in examining institutions. The proposed complexity component would address trust assets administered by a savings association, loans serviced for others by a savings association (including both residential and non-residential loans), and off-balance sheet assets that are recourse obligations or direct credit substitutes, as described in the Thrift Financial Report.

OTS is considering whether the complexity component should also address commercial and non-residential mortgage loans. OTS analyses have found a high correlation between amounts of these types of loans and the number of examiner hours and the amount of supervisory expenses. Savings associations that concentrate on residential mortgage loans require substantially less examination and supervision than associations with less traditional loan portfolio concentrations. An asset-based assessment that treats all loans equally causes traditional mortgage lenders to subsidize OTS's extra supervisory workload for non-traditional thrifts. OTS, therefore, seeks comments on whether it should include commercial and non-residential mortgage loans in the complexity component.

As proposed, the complexity component would apply only to the extent that assets included in each category of complex assets (trust assets, loans serviced for others, and recourse obligations or direct credit substitutes) exceed a threshold of $1 billion. OTS's experience shows that the added supervisory workload for institutions with such complex assets does not become significant until the assets reach relatively high levels. Therefore, OTS proposes a minimum level of assets below which OTS would not consider complexity. OTS would compute the $1 billion threshold separately for each class of complex assets.

OTS currently expects that the assessment rate for complexity components would be 0.0015% of the amount of assets covered by each element of the complexity component over the $1 billion threshold, based on the proposed assessment provisions and OTS's costs. OTS would publish the assessment rate for the complexity component in a Thrift Bulletin, available on OTS's website, rather than in a regulation. This would allow OTS the flexibility to match assessments with fluctuating supervisory costs. Depending on the assessment structure of any final rule, the actual complexity component and the threshold may be different than the proposal.

OTS solicits comments on whether it is appropriate to consider off-balance sheet assets of any type, including the proposed types, for purposes of the assessment. OTS specifically requests

comments on how to treat off-balance sheet assets held by subsidiaries owned or controlled by the savings association. For example, where a savings association owns or controls a subsidiary that is a trust company, how should the trust assets administered by that trust company be considered under the complexity component? OTS also specifically seeks comments on whether, and if so, how best, to include commercial and non-residential mortgage loans or other on-balance sheet assets in any complexity component.

Further, OTS seeks comments on whether the complexity component should have a threshold below which complex assets should not be considered and, if so, whether the proposed $1 billion threshold is too high or too low. Additionally, OTS seeks comments on whether the threshold for any particular category should be expressed in dollar terms, as a percentage of assets (*e.g.* for commercial loans and non-residential real estate loans), or in any other terms. OTS also asks whether there should be any cap on the amount of the complexity component. Commenters who favor a cap should address how OTS should set the cap. OTS additionally seeks comments on whether the proposed assessment rate for any complexity component would be appropriate.

D. Consolidation

Under the current regulation, OTS assessments are based on the savings association's total assets, as reported in the consolidated Thrift Financial Report. OTS specifically requests comment on whether this continues to be the proper approach for subsidiaries that are other depository institutions or regulated entities. This issue affects all three proposed components of the assessment calculation. For example, if Savings Association A directly owns Savings Association B, looking at the size component by itself would usually make consolidation result in a lower assessment. However, if Savings Association A were rated ''1'' while Savings Association B were rated ''3'', the issue arises of what condition component should be assigned to the consolidated entity. For the complexity component, if Savings Association A had trust assets of $750 million and Savings Association B also had trust assets of $750 million, consolidation would result in the consolidated entity being assessed a complexity component, while neither thrift would be assessed that component if considered separately.

Therefore, OTS solicits comments on whether, when a savings association owns or controls another OTS-regulated savings association, the two should be considered one entity for assessment purposes. Would a discount be appropriate? The OCC recently amended its assessment regulation to give a discount to national banks that are in a holding company with other national banks but are not the ''lead bank'' in that structure.See 12 CFR 8.2(a)(6) (1998). Should the OTS consider a similar approach for savings associations that are in a savings and loan holding company structure with other OTS-regulated savings associations? What if the thrift owns or controls another depository institution, such as a state bank, that is not regulated by OTS? Similarly, where a savings association owns or controls a non-depository institution that is regulated by a non-bank regulator (*e.g.*, a state-supervised insurance company), should the assets of the subordinate organization be included in the assets of the parent savings association?

E. Other Matters

OTS seeks comment on other proposed amendments to the assessments regulation. First, the existing regulation provides for quarterly or semi-annual assessments. Under the proposed rule, all assessments would be semi-annual. OTS has found that semi-annual assessments impose less regulatory and administrative burden than quarterly assessments and therefore has imposed semi-annual assessments since January 1992.

The proposed rule would clarify the existing regulation and incorporate OTS's long-standing practice concerning requests for refunds or proration of assessments paid by institutions that cease to be savings associations. The proposed rule would explicitly state that assessments will not be prorated or refundable to institutions that cease to be savings associations. The proposal would also clarify an ambiguity in the existing regulation about the date as of which OTS determines assessments. Under the proposed rule, and consistent with current practice, an assessment would not change, either up or down, due to events that occur after the date of the Thrift Financial Report upon which the assessment is based.[3] Further, the proposed rule would clarify that the composite rating upon which an institution's condition component would be based would be the most recent composite rating of which the savings association has been notified in writing, as defined in 12 CFR part 516, before an assessment's due date.

The proposed rule also addresses several matters relating to the imposition of other fees (*e.g.*, application, examination, and investigation fees). Currently, the regulation includes a formula for calculating these fees, with the actual fees published annually in a Thrift Bulletin. The proposed rule, like the long-standing OCC regulation, would not include such a formula. Fees would continue to be announced in a Thrift Bulletin available on OTS's website.

The proposed regulation would also clarify that OTS may charge fees for extraordinary expenses relating to examining, regulating, or supervising savings associations and their affiliates. While OTS expects that any such fees would be unusual, they may be necessary or appropriate in some circumstances. Such extraordinary fees may be appropriate for recovering supervisory costs from institutions that pose extraordinary burdens, or of obtaining expert advice in areas beyond those that OTS normally encounters. Under the proposed rule, OTS would be able to adjust, add, waive, or eliminate fees in unusual circumstances.

Finally, OTS proposes to revise all of part 502 using the plain language format, consistent with the Vice President's National Performance Review Initiative and guidance in the **Federal Register** Document Drafting Handbook (April 1997 edition). This would not affect the substance of the regulation, but should help to make it easier to understand.

III. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

IV. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act of 1980,[4] OTS has evaluated the effects this proposed rulemaking would have on small businesses, small organizations, and small governmental jurisdictions. As required, OTS has prepared the following initial regulatory flexibility analysis.

OTS proposes this rulemaking to revise its current assessments system to match assessments more closely with

[3] Consistent with OTS's current practice, an assessment could be adjusted to reflect corrections to errors contained in the applicable Thrift Financial Report.

[4] 5 U.S.C. 605(b).

OTS's costs. The Director of OTS is authorized by statute to impose assessments.[5] As described in this preamble, OTS has found that under its current assessment system OTS's costs of supervising some institutions are higher or lower than those associations pay in assessments. Therefore, OTS is attempting, through this proposed rulemaking, to more closely associate its costs with assessments.

OTS has two primary objectives for this proposed rulemaking: (1) establishing an assessment structure that keeps the assessment rates as low as possible while providing the agency the resources essential to effective supervision of a changing industry, and (2) more closely tailoring rates to the agency's increased costs in supervising certain types of institutions.

The proposed rule could affect small savings associations through the proposed condition, size, or complexity components. The proposal would have no effect on small businesses or small organizations other than small savings associations and, indirectly, small holding companies, and would not affect small governmental jurisdictions. Small savings associations are generally defined, for Regulatory Flexibility Act purposes, as those with assets under $100 million.[6]

A. Impact of Proposed Condition Component.

The proposed condition component would affect small savings associations. As discussed earlier in this preamble, it would impose an assessment equal to 25% of an association's size component for each 3-rated association, regardless of its size. Currently, there are 44 savings associations that are 3-rated and that have assets under $100 million. If a small 3-rated association, for example, were to have $10 million in assets, its assessment would increase $864 annually due to the condition component (basing its size component on Thrift Bulletin 48–9, December 21, 1992). If its assets were $100 million and its rating were 3, its assessment would increase $5,462 annually due to the condition component. Other small, 3-rated savings associations would see their assessments increase depending on their size.

As discussed earlier, 3-rated savings associations require more supervisory attention than 1- or 2-rated associations. OTS therefore has three alternatives: impose extra assessments on all 3-rated associations; require institutions not rated 3 to subsidize the extra supervisory costs of 3-rated institutions; or, require some but not all 3-rated institutions to cover those costs. OTS believes it is most equitable to relate assessments to OTS's supervisory costs, and therefore proposes a condition component for 3-rated associations. Furthermore, OTS believes that requiring 3-rated institutions to pay for their extra supervisory costs would provide an incentive for those institutions to improve their condition and their ratings. OTS believes that the proposed condition component best accomplishes OTS's objective of closely tailoring assessment rates to OTS's increased costs in supervising 3-rated institutions while keeping assessment rates as low as possible.

B. Impact of Proposed Size Component.

OTS believes the proposed size component would not have a significant economic impact on a substantial number of small entities. OTS specifically designed the proposed rule to allow qualifying savings associations, generally those with assets under $100 million, to choose between calculating their size components under either the existing regulation or the proposed regulation. These institutions can therefore avoid any increases in their size component.

For an institution that increases above $100 million in assets then shrinks below $100 million, or a savings association that is formed after the rule's effective date, this choice would not be available. OTS cannot predict the number of savings associations that will exceed then shrink below $100 million in assets, and cannot predict the number of savings associations that will be formed in the future. OTS cannot predict the economic impact of the proposed regulation on such institutions because OTS's assessment rates, as proposed, will vary as OTS's supervisory costs change.

OTS has considered, as an alternative to the proposed size component with protection for small institutions, leaving its assessment system as it is. OTS believes this alternative would not meet OTS's objective of more closely tailoring assessment rates to OTS's increased supervisory costs, while minimizing significant economic impacts on small savings associations.

C. Impact of Proposed Complexity Component.

The proposed complexity component would apply only to savings associations that have more than $1 billion in certain off balance sheet assets. For Regulatory Flexibility Act purposes, a small savings association is generally defined as one having less than $100 million in assets on its balance sheet. There are currently only four savings associations that have less than $100 million in balance sheet assets that would be subject to the proposed complexity component. OTS believes that four savings associations is not a substantial number of small savings associations. For purposes of this initial regulatory flexibility analysis regarding the proposed complexity component, OTS defines small savings association as one with less than $100 million in assets including off-balance sheet assets.[7] The Regulatory Flexibility Act is designed to protect the interests of small businesses, while the proposed complexity component would only affect savings associations that own or administer assets in excess of $1 billion. OTS does not believe that institutions that own or administer assets exceeding $1 billion need any special protection from the proposed complexity component.

In any event, OTS has considered alternatives to the proposed complexity component. OTS has considered using no such component, or including different complex assets in the component, such as commercial and non-residential mortgage loans. As discussed earlier, OTS is seeking comment on all aspects of the proposed complexity component. OTS tentatively believes the component, as proposed, best accomplishes OTS's objective of tailoring assessments to better match OTS's supervisory costs, while minimizing significant economic impacts on small savings associations.

D. Other Matters

The proposed rule would streamline the existing regulation and put it in a plain language format. It would state that the Director's statutory authority to charge fees for appropriate expenses would be used only for extraordinary expenses. OTS believes these changes would have no significant impact on small savings associations. Under the proposed rule, assessments would continue to be based on Thrift Financial Reports that savings associations are otherwise required to file with OTS, and OTS would continue to collect assessments by its current procedures. Therefore, the proposed rule would impose no new or additional reporting, recordkeeping, or compliance requirements.

[5] 12 U.S.C. 1462a, 1463, 1467, 1467a.

[6] 13 CFR 121.201, Division H (1998).

[7] OTS has established this definition of small savings association for the sole purpose of this regulatory flexibility analysis, after consultation with the Small Business Administration's Office of Advocacy.

Finally, there are no federal rules that duplicate, overlap, or conflict with this proposed rule.

OTS encourages comments on all aspects of this initial regulatory flexibility analysis, including any significant economic impacts the proposed rule would have on small entities.

V. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in 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. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VI. Paperwork Reduction Act

This proposed rule contains no new information collection requirements. The information collection requirements in proposed § 502.70 are the same as those in the current assessments regulation, 12 CFR 502.3 (1998), which the Office of Management and Budget has previously received and approved in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB Control No. 1550–0053.

List of Subjects in 12 CFR Part 502

Assessments, Federal home loan banks, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision proposes to amend chapter V, title 12, Code of Federal Regulations by revising part 502 to read as follows:

PART 502—ASSESSMENTS AND FEES

Sec.
502.5 Who must pay assessments and fees?

Subpart A—Assessments

502.10 How does OTS calculate my assessment?
502.15 How does OTS determine my size component?
502.20 How does OTS determine my condition component?
502.25 How does OTS determine my complexity component?
502.30 When must I pay my assessment?
502.35 How must I pay my assessment?
502.40 Can I get a refund or proration of my assessment?
502.45 What if I do not pay my assessment on time?

Subpart B—Fees

502.50 What fees does OTS charge?
502.55 Where can I find OTS's fee schedule?
502.60 When will OTS adjust, add, waive, or eliminate a fee?
502.65 When is an application fee due?
502.70 How must I pay an application fee?
502.75 What if I do not pay my fees on time?

Authority: 12 U.S.C. 1462a, 1463, 1467, 1467a.

§ 502.5 Who must pay assessments and fees?

(a) *Authority.* Section 9 of the HOLA, 12 U.S.C. 1467, authorizes the Director to charge assessments to recover the costs of examining savings associations and their affiliates, to charge fees to recover the costs of processing applications and other filings, and to charge fees to cover OTS's direct and indirect expenses in regulating savings associations and their affiliates.

(b) *Assessments.* If you are a savings association that OTS regulates on the last day of January or on the last day of July of each year, you must pay a semi-annual assessment due on that day. Subpart A of this part describes OTS's assessment procedures and requirements.

(c) *Fees.* Whether or not you are a savings association, if you make any filings with OTS or use OTS services, the Director may require you to pay a fee to cover the costs of processing your submission or providing those services. The filings for which the Director may charge a fee include notices, applications, and securities filings. Among the services for which the Director may charge a fee are publications, seminars, certifications for official copies of agency documents, and records or services requested by other agencies. The Director also assesses fees for examining and investigating affiliates of savings associations. If you are a savings association and you or any of your affiliates cause OTS to incur extraordinary expenses related to your examination, investigation, regulation, or supervision, the Director may charge you a fee to fund those expenses. Subpart B of this part describes OTS's fee procedures and requirements.

Subpart A—Assessments

§ 502.10 How does OTS calculate my assessment?

OTS determines your semi-annual assessment by totaling three components: your size, your condition, and the complexity of your business. For the size and complexity components, OTS uses the September 30 Thrift Financial Report to determine amounts due at the January 31 assessment; and the March 31 Thrift Financial Report to determine amounts due at the July 31 assessment. For purposes of this subpart, total assets are your total assets as reported on Thrift Financial Reports filed with OTS. For the condition component, OTS uses the most recent composite rating, as defined in 12 CFR part 516 of this chapter, of which you have been notified in writing before an assessment's due date.

§ 502.15 How does OTS determine my size component?

(a) *General.* (1) Unless you are a qualifying savings association under paragraph (b) of this section, OTS uses the following chart to calculate your size component:

If your total assets are:—		Your size component is—		
Over—	But not over—	This amount—Base assessment amount	Plus—Marginal rate	Of assets over—Class floor
Column A	Column B	Column C	Column D	Column E
0	$67 million	C1	D1	0
$67 million	215 million	C2	D2	$67 million.
215 million	1 billion	C3	D3	215 million.
1 billion	6.03 billion	C4	D4	1 billion.
6.03 billion	18 billion	C5	D5	6.03 billion.

If your total assets are:—		Your size component is—		
Over—	But not over—	This amount—Base assessment amount	Plus—Marginal rate	Of assets over—Class floor
Column A	Column B	Column C	Column D	Column E
18 billion	35 billion	C6	D6	18 billion.
35 billion		C7	D7	35 billion.

(2) To calculate your size component, find the row in Columns A and B that describes your total assets. Reading across in that same row, find your base assessment amount in Column C, your marginal rate in Column D, and your class floor in Column E. Calculate how much your total assets exceed your Column E class floor. Multiply this number by your Column D marginal rate. Add this number to your Column C base assessment amount. The total is your size component. OTS will establish the base assessment amounts and the marginal rates in columns C and D in a Thrift Bulletin.

(b) *Special size component calculation for qualifying savings associations.* If you meet all of the criteria set forth in paragraph (b)(1) of this section, you are a qualifying savings association and OTS will calculate your size component in accordance with paragraph (b)(2) of this section.

(1) *Criteria for qualifying savings association status.* (i) You were a savings association as of [effective date of final rule].

(ii) Your total assets have never exceeded $100 million at the end of any quarter.

(2) *Size component for qualifying savings associations.* If you are a qualifying savings association, your size component is the lesser of:

(i) Your size component calculated under paragraph (a) of this section; or

(ii) Your assessment calculated using the general assessment table at 12 CFR 502.1(c) as contained in the 12 CFR, parts 500 to 599, edition revised as of January 1, 1998, as implemented in Thrift Bulletin 48–9, dated December 21, 1992.

§ 502.20 How does OTS determine my condition component?

OTS uses the following chart to determine your condition component:

If your composite rating is—	Then your condition component is—
1 or 2	zero.
3	25 percent of your size component.
4 or 5	50 percent of your size component.

§ 502.25 How does OTS determine my complexity component?

If your portfolio exceeds any of the thresholds set forth in paragraph (a) of this section, OTS will calculate your complexity component as set forth in paragraph (b) of this section. If your portfolio does not exceed any of the thresholds set forth in paragraph (a) of this section, your complexity component is zero.

(a) *Thresholds for complexity component.* (1) You administer trust assets valued at over $1 billion.

(2) You service loans for others and the total amount of the loans exceeds $1 billion.

(3) You have off-balance sheet assets that are recourse obligations or direct credit substitutes, as described in the Thrift Financial Report, and the total amount of these off-balance sheet assets exceeds $1 billion.

(b) *Calculation of complexity component.* OTS calculates your complexity component by separately determining the amount(s) by which you exceed each of the thresholds under paragraph (a) of this section, adding these excess amounts together, and multiplying this total by a percentage published in a Thrift Bulletin.

§ 502.30 When must I pay my assessment?

OTS will bill you semiannually for your assessments. Assessments are due January 31 and July 31 of each year. At least seven days before your assessment is due, the Director will mail you a notice that indicates the amount of your assessment, explains how OTS calculated the amount, and specifies when payment is due.

§ 502.35 How must I pay my assessment?

(a) *Debit at Federal Home Loan Banks.* If you are a member of a Federal Home Loan Bank, you must maintain a demand deposit account at your Federal Home Loan Bank with sufficient funds to pay your assessment when due. OTS will notify your Federal Home Loan Bank of the amount of your assessment. OTS will debit your account for your assessments.

(b) *Direct billing.* If you are not a member of a Federal Home Loan Bank, OTS will directly debit an account you must maintain at your association.

§ 502.40 Can I get a refund or proration of my assessment?

OTS will not refund or prorate your assessment, even if you cease to be a savings association. If you are a savings association for whom a conservator or receiver has been appointed, you must continue to pay assessments in accordance with this part. OTS will not increase or decrease your assessment based on events that occur after the date of the Thrift Financial Report upon which your assessment is based.

§ 502.45 What if I do not pay my assessment on time?

The Director will charge interest on delinquent assessments. Interest will accrue at a rate (that OTS will determine quarterly) equal to 150 percent of the average of the bond-equivalent rates of 13-week Treasury bills auctioned during the preceding calendar quarter. Assessments under this subpart A are delinquent if you do not pay them when required by § 502.30.

Subpart B—Fees

§ 502.50 What fees does OTS charge?

(a) The Director assesses fees for examining or investigating savings association affiliates. ''Affiliate'' has the meaning in 12 U.S.C. 1462(9), except that, for this part only, ''affiliate'' does not include any entity that is consolidated with a savings association on the Consolidated Statement of the Thrift Financial Report.

(b) The Director assesses fees for processing notices, applications, securities filings, and requests, and for providing other services.

§ 502.55 Where can I find OTS's fee schedule?

OTS will periodically publish a schedule of its fees in a Thrift Bulletin. OTS will publish these fees at least thirty days before they are effective.

§ 502.60 When will OTS adjust, add, waive, or eliminate a fee?

Under unusual circumstances, the Director may deem it necessary or appropriate to adjust, add, waive, or eliminate a fee. For example, the Director may:

(a) Reduce any fee to adjust for any inequities, efficiencies, or changed procedures that OTS projects will reduce its applications processing costs but that OTS did not consider in determining its fees;

(b) Reduce or waive any fee if OTS determines that the fee would unduly or unjustifiably discourage particular types of applications or applications for particular categories of transactions;

(c) Add a fee for a new type of application;

(d) Increase a fee for an application that presents unusual or particularly complex issues of law or policy or otherwise causes the agency to incur unusually high processing costs; or

(e) Charge a fee to recover extraordinary expenses related to examination, investigation, regulation, or supervision of savings associations or their affiliates.

§ 502.65 When is an application fee due?

(a) You must pay the application fee when you file an application. OTS will not process your application if you do not include the required fee.

(b) If OTS cannot complete its review of your application because the application is materially deficient and it refuses to accept your application for processing, you must pay a new application fee upon filing a revised application.

(c) If a transaction involves multiple applications, you must pay the appropriate fee for each application, unless OTS specifies otherwise by Thrift Bulletin.

§ 502.70 How must I pay an application fee?

You must pay an application fee to the Office of Thrift Supervision. You must include a statement of the fee and how you calculated the fee.

§ 502.75 What if I do not pay my fees on time?

(a) *Interest.* An examination or investigation fee is delinquent if OTS does not receive the fee within 30 days of the date specified in a bill. The Director will charge interest on a delinquent examination or investigation fee. Interest will accrue at a rate (that OTS will determine quarterly) equal to 150 percent of the average of the bond-equivalent rates of 13-week Treasury bills auctioned during the preceding calendar quarter.

(b) *Failure to pay.* If your holding company, affiliate, or subsidiary fails to pay any examination or investigation fee within 60 days of the date specified in a bill, the Director may assess that fee, with interest, against you and collect it from you. If any such entity is a holding company, affiliate, or subsidiary of more than one savings association, the Director may assess the fee against and collect it from each savings association as the Director may prescribe.

Dated: August 7, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–21866 Filed 8–13–98; 8:45 am]

BILLING CODE 6720–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–49–AD]

RIN 2120–AA64

Airworthiness Directives; Rolladen Schneider Flugzeugbau GmbH Models LS 3–A, LS 4, and LS 4a Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Rolladen Schneider Flugzeugbau GmbH (Rolladen Schneider) Models LS 3–A, LS 4, and LS 4a sailplanes. The proposed AD would require repetitively inspecting the forward elevator mounting bracket on the vertical tail fin for looseness, and, if any loose bracket is found, modifying the area and installing a new forward elevator mounting bracket. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to detect and correct loose forward elevator mounting brackets, which could result in these brackets separating from the sailplane with consequent loss of control of the sailplane.

DATES: Comments must be received on or before September 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–49–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Rolladen-Schneider Flugzeugbau GmbH, Muhlstrasse 10, D–63329 Egelsbach, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–49–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the