

For the Nuclear Regulatory Commission.

**Theresa V. Clark,**

*Deputy Director, Division of Rulemaking,  
Office of Nuclear Material Safety and  
Safeguards.*

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 8

[Docket No. OCC-2018-0039]

RIN 1557-AE58

#### Assessment of Fees

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) proposes to revise its assessment rules to provide partial assessment refunds to national banks, Federal savings associations, and Federal branches and agencies of foreign banks (collectively, banks under OCC jurisdiction) that exit OCC jurisdiction within the first half of each six-month period beginning the day after the date of the second or fourth quarterly Consolidated Report of Condition and Income (Call Report). The proposed rule would not change the current dates of collection for assessments nor would it change the way in which assessments are calculated for banks that remain under the OCC's supervision. The proposed rule would also make technical changes to the assessments rules.

**DATES:** Comments must be received by April 19, 2019.

**ADDRESSES:** You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through 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 [www.regulations.gov](http://www.regulations.gov). Enter "Docket ID OCC-2018-0039" in the Search Box and click "Search." Click on "Comment Now" to submit public comments. Click on the "Help" tab on the [Regulations.gov](http://Regulations.gov) home page to get information on using [Regulations.gov](http://Regulations.gov), including instructions for submitting public comments.

- **Email:** [regs.comments@occ.treas.gov](mailto: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, Washington, DC 20219.

- **Hand Delivery/Courier:** 400 7th Street SW, Suite 3E-218, Washington, DC 20219.

- **Fax:** (571) 465-4326.

**Instructions:** You must include "OCC" as the agency name and "Docket ID OCC-2018-0039" in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the [Regulations.gov](http://Regulations.gov) website 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 include 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 [www.regulations.gov](http://www.regulations.gov). Enter "Docket ID OCC-2018-0039" in the Search box and click "Search." Click on "Open Docket Folder" on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on "View all documents and comments in this docket" and then using the filtering tools on the left side of the screen. Click on the "Help" tab on the [Regulations.gov](http://Regulations.gov) home page to get information on using [Regulations.gov](http://Regulations.gov). The docket may be viewed after the close of the comment period in the same manner as during the comment period.

- **Viewing Comments Personally:** You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

**FOR FURTHER INFORMATION CONTACT:** Deborah Thomas, AT Team Lead, Financial Management, (202) 649-5540; or Mitchell Plave, Special Counsel, Office of the Chief Counsel, (202) 649-

5490; or for persons who are deaf or hearing impaired, TTY, (202) 649-5597, 400 7th Street SW, Washington, DC 20219.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The National Bank Act<sup>1</sup> and the Home Owners' Loan Act<sup>2</sup> authorize the Comptroller to fund the OCC's operations through assessments, fees, and other charges on banks.<sup>3</sup> 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 factor the Comptroller determines is appropriate.<sup>4</sup>

The OCC collects assessments from banks in accordance with 12 CFR part 8. Under part 8, the base assessment for banks 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 is the sum of a base amount, which is the same for every bank 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.<sup>5</sup> The marginal assessment rate declines as asset size increases, reflecting economies of scale in bank examination and supervision.

The OCC's annual Notice of Office of the Comptroller of the Currency Fees and Assessments (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. Under part 8, the OCC may adjust the marginal rates to account for inflation through the annual Notice of Fees.<sup>6</sup> The OCC also has the discretion under part 8 to adjust marginal rates by amounts other than inflation.<sup>7</sup> The OCC may issue an interim or amended Notice of Fees if the Comptroller determines that it is

<sup>1</sup> Revised Statutes of the United States, Title LXII, 12 U.S.C. 1 *et seq.*

<sup>2</sup> The Home Owners' Loan Act, 12 U.S.C. 1461 *et seq.*

<sup>3</sup> 12 U.S.C. 16, 481, 482, 1467.

<sup>4</sup> 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 Federal savings associations "as the Comptroller deems necessary or appropriate").

<sup>5</sup> 12 CFR 8.2(a). Only the total domestic assets of Federal branches and agencies are subject to assessment. 12 CFR 8.2(b)(2).

<sup>6</sup> 12 CFR 8.2(a)(4).

<sup>7</sup> *Id.*

necessary to revise assessments to meet the OCC's supervisory obligations.<sup>8</sup>

Under 12 CFR 8.2, the OCC collects assessments on a semiannual basis, with fees 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.<sup>9</sup> Under this schedule, banks pay half of the semiannual assessment prospectively and half retrospectively. This schedule for collection of assessments was adopted in 2005, when the OCC issued a rule to streamline the assessments billing process.<sup>10</sup> Between 1976, when the OCC adopted the marginal assessments structure, and 2005, the OCC collected assessments prospectively for five months and retrospectively for one month.<sup>11</sup>

Under 12 CFR 8.2(a)(5) and (b)(3), each bank subject to the jurisdiction of the OCC on the date of the second or fourth quarterly Call Report is subject to the full assessment for the next six-month period. As noted in the Notice of Fees for 2018,<sup>12</sup> only those institutions leaving OCC jurisdiction before the close of business on those dates avoid paying the semiannual assessment for the period beginning January 1 or July 1, as applicable.

## II. Proposed Changes

### Assessment Refunds

Under the current assessments structure, banks that are subject to the jurisdiction of the OCC on the last day of the six-month period ending on December 31 or June 30 are subject to the full assessment for the next six-month period beginning January 1 or July 1, with payment due March 31 or September 30, as appropriate.<sup>13</sup> Under the proposed rule, banks that leave OCC jurisdiction by the appropriate payment due date would receive a refund of assessments for the second three months of the semiannual assessment period. For example, a bank that was subject to the jurisdiction of the OCC as of December 31 would receive a refund of assessments for the second three months of the semiannual assessment period beginning January 1 if it leaves OCC jurisdiction by March 31.

The proposed rule is intended to eliminate the requirement that banks prospectively pay for one half of each assessment period after they no longer are subject to the jurisdiction of the OCC

by setting the refund equal to the prospective portion of the assessment. Under the current rule, the payment due date effectively divides each six-month period into two three-month periods, and a bank subject to the jurisdiction of the OCC on the date of the applicable Call Report (December 31 or June 30) must pay the full assessment on the payment due date of the semiannual assessment (March 31 and September 30) even if it has left OCC jurisdiction by that date. This structure can result in banks prospectively paying assessment fees for three-month periods during which they are not subject to the jurisdiction of the OCC at any time. The proposed rule would maintain semiannual payments, but provide refunds equal to the prospective half of the assessment to banks that leave the jurisdiction of the OCC between the date of the applicable Call Report and the date of collection. In doing so, the proposed rule would assess a bank to cover only any three-month period during which it was subject to the jurisdiction of the OCC.

### Technical and Conforming Amendments

The proposed rule also includes technical and conforming amendments. These are intended to reduce ambiguity and further consistent terminology throughout 12 CFR part 8. The first change would amend §§ 8.5(d) and 8.6(c)(1)(iii) concerning the condition surcharge to replace the phrase “at its most recent examination” with the phrase “prior to December 31 or June 30, as appropriate.” This change would clarify that the condition surcharge is calculated in tandem with the OCC's calculation of other assessment components based on Call Report information as of December 31 and June 30 of each year.<sup>14</sup> This amendment to the rule would not change the OCC's current practice of calculating a bank's surcharge as of its most recent ratings prior to December 31 and June 30, as appropriate. Under this policy, surcharges are neither raised nor lowered between December 31 and June 30, as appropriate, and the collection dates of March 31 and September 30, as appropriate.

The second change would make several revisions to 12 CFR 8.7 concerning interest on delinquent assessments and fees and refunds in the case of an error or miscalculation of assessments or fees. First, it would add the prefatory clause, “Within 30

calendar days of receipt of such notice, the OCC shall either—” at § 8.7(b)(1). This clause was originally included at § 8.7(b) as introductory text and was inadvertently deleted in connection with a prior rulemaking. Restoring it would clarify the OCC's obligations under § 8.7(b). This change would also redesignate the current § 8.7(b)(1) and (2) as § 8.7(b)(1)(i) and (ii), respectively. In addition, the proposed rule would redesignate the current § 8.7(b) concluding text as § 8.7(b)(2). Finally, the proposed rule would simplify the language used in § 8.7(a) and (b) and clarify that provisions dealing with special examination or investigation fees apply to any institution subject to such an exam or investigation. These amendments would not change the OCC's current policy of considering assessment payments delinquent if received after the time for payment specified in 12 CFR 8.2; considering special examination and investigation fees delinquent if not received within 30 calendar days of the invoice date; requiring interest on delinquent payments and fees; and providing either a refund or notice of its unwillingness to accept a refund request within 30 calendar days of receipt of a request.

The proposed rule would also conform all references to the “Office of the Comptroller of the Currency,” “Comptroller of the Currency,” or “Office” to “OCC,” except with respect to references to the Notice of Fees; conform all references to “Notice of Comptroller of the Currency Fees” or “Notice of Comptroller of the Currency of Fees” to “Notice of Office of the Comptroller of the Currency Fees and Assessments”; add hyphens to all compound modifiers where a hyphen is not currently used; remove references to “Thrift Financial Reports,” which are no longer used; remove a duplicate reference to “Uniform Financial Institutions Rating System” in 12 CFR 8.6(c)(1)(iii); remove a duplicate and unnecessary citation to authority in 12 CFR 8.6(a); replace an incorrect reference to “each national bank” with a reference to “each Federal branch and agency” in 12 CFR 8.2(b)(1); add the modifier “national” to references to banks and terms, such as “independent credit card banks,” as appropriate; add the term “independent trust” before references to banks and Federal savings associations in 12 CFR 8.6(c)(1)(iii) and add a reference to independent trust Federal savings associations where the provision currently only refers to banks; and add conforming references to Federal branches and agencies, as necessary.

<sup>8</sup> 12 CFR 8.8(b).

<sup>9</sup> 12 CFR 8.2(a) and 8.2(b).

<sup>10</sup> 70 FR 69641 (Nov. 17, 2005).

<sup>11</sup> 41 FR 3285 (Jan. 22, 1976).

<sup>12</sup> See OCC Bulletin 2017–60 (Office the Comptroller of the Currency Fees and Assessments).

<sup>13</sup> 12 CFR 8.2(a) and 8.2(b).

<sup>14</sup> See OCC Bulletin 2017–60 (Office the Comptroller of the Currency Fees and Assessments) (describing the process for calculating assessments).

## Regulatory Analysis

### *Paperwork Reduction Act of 1995*

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) the OCC may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the information collection displays a currently valid Office of Management and Budget (OMB) control number. This notice of proposed rulemaking does not contain a collection of information under the PRA.

### *Regulatory Flexibility Act*

In general, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires that in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities. Under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a brief explanatory statement in the **Federal Register** along with its rule.

The OCC currently supervises approximately 886 small entities.<sup>15</sup> Although the number of OCC-supervised small banks affected will vary each year, the OCC does not expect that the proposed rule, if adopted as final, would affect a substantial number (generally defined as five percent or more of OCC-supervised small entities) in any given year, based on the OCC's experience with departures from the charters in recent years. For example, had the proposed rule applied in 2018, the OCC would have refunded assessments totaling \$579,000 to 22 banks, 19 of which were small banks (approximately two percent of OCC-supervised small entities). Similarly, if the proposed rule had applied in 2017, the OCC would have refunded assessments totaling \$663,000 to 16 banks, 12 of which were small banks; in 2016, the OCC would have refunded assessments totaling \$392,000 to 26

<sup>15</sup> The OCC bases its estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are \$550 million and \$38.5 million, respectively. Consistent with the General Principles of Affiliation in 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2017, to represent size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards*.

banks, all of which were small banks; and in 2015, the OCC would have refunded assessments totaling \$555,000 to 29 banks, 27 of which were small banks. In each of these years, the number of institutions that would have been affected by the proposed rule was less than five percent of OCC-supervised small entities. Therefore, the proposed rule would not have affected a substantial number of small entities during these years.

The OCC also considered whether the proposed rule would result in a significant economic impact on small entities. In general, the OCC classifies the economic impact of expected cost (or benefit) to comply with a rule on an individual bank as significant if the total estimated monetized costs (or benefits) in one year are greater than 5 percent of the bank's total annual salaries and benefits or 2.5 percent of the bank's total annual non-interest expense. Based on the above criteria, and the refund amounts for the years 2015 through 2018 outlined above, the OCC estimates that impact of the proposed rule, had it been in place for 2015–2018, would not have had a significant economic impact at any of the affected institutions.

Based on the data and experience of the OCC in recent years with departures from the charters, the OCC certifies that the proposed rule, if adopted as final, would not have a significant economic impact on a substantial number of small entities.

### *Unfunded Mandates Reform Act of 1995*

The OCC analyzed the proposed rule under the factors set forth 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 for inflation). The OCC has determined that the proposed rule, if adopted as final, would not impose new mandates and, therefore, would not result in the expenditure of \$100 million or more annually by state, local, and tribal governments, or by the private sector.

### *Riegle Community Development and Regulatory Improvement Act of 1994*

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other

requirements on insured depository institutions (IDIs), consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.<sup>16</sup> In addition, new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.<sup>17</sup>

Because the proposal would not impose additional reporting, disclosure, or other requirements on banks, section 302 of the RCDRIA does not apply. Nevertheless, the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the OCC invites comments that will inform the OCC's consideration of RCDRIA.

### *Plain Language*

Section 722 of the Gramm-Leach-Bliley Act requires the OCC to use plain language in all proposed and final rules published after January 1, 2000. The OCC invites comment on how to make this proposed rule easier to understand.

For example:

- Has the OCC organized the material to inform your needs? If not, how could the OCC present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposal be more clearly stated?
- Does the proposed regulation contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the OCC incorporate to make the proposed regulation easier to understand?

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

Assessments, Federal branches and agencies, National banks, Reporting and recordkeeping requirements, Savings associations.

<sup>16</sup> 12 U.S.C. 4802(a).

<sup>17</sup> 12 U.S.C. 4802(b).

**Authority and Issuance**

For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 8—ASSESSMENT OF FEES**

■ 1. The authority 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)(2)(B); and 15 U.S.C. 78c and 78l.

■ 2. Section 8.2 is amended by:

- a. Removing “non-lead bank” wherever it appears and adding “non-lead national bank” in its place;
- b. Removing “lead bank” wherever it appears and adding “lead national bank” in its place;
- c. Removing “independent credit card bank” wherever it appears and adding “independent credit card national bank” in its place;
- d. Removing “independent credit card banks” wherever it appears and adding “independent credit card national banks” in its place;
- e. Removing “the bank’s” and by adding “the national bank’s” in its place in paragraphs (a) introductory text, (a)(3), (c)(3)(iii), and (c)(3)(viii);
- f. Removing “A bank’s” and adding “A national bank” in its place in paragraph (a)(1);
- g. Removing “the bank” and adding “the national bank” in its place in paragraphs (a)(1) through (3) and (c)(1) and (2);
- h. Removing “Comptroller of the Currency” and adding “OCC” in its place in paragraphs (a) introductory text and (b)(1);
- i. Removing “Notice of Comptroller of the Currency Fees” and adding “Notice of Office of the Comptroller of the Currency Fees and Assessments” in its place in paragraphs (a)(6)(i) and (b)(4)(i);
- j. Removing “Federal branch or agency” and adding “Federal branch and agency” in its place in paragraph (b)(4)(i);
- k. Removing “each bank’s” and adding “each national bank’s” in its place in paragraph (a)(6)(ii)(A);
- l. Removing “or Thrift Financial Report, as appropriate,” in paragraph (a)(6)(ii)(A);
- m. Removing “six month” and adding “six-month” in its place in paragraph (b)(1);
- n. Removing “national bank” and adding “Federal branch and agency” in its place in paragraph (b)(1);
- o. Removing “Notice of Comptroller of the Currency of Fees” and adding “Notice of Office of the Comptroller of the Currency Fees and Assessments” in its place in paragraph (c)(1);

■ p. Removing “full service” and adding “full-service” in its place in paragraph (c)(2);

■ q. Removing “or a bank” and adding “or a national bank” in its place in paragraph (c)(3)(iii); and

■ r. Revising paragraphs (a)(5), (b)(3), and (d).

The revisions read as follows:

**§ 8.2 Semiannual assessment.**

(a) \* \* \*

(5) The specific marginal rates and complete assessment schedule will be published in the “Notice of Office of the Comptroller of the Currency Fees and Assessments,” provided for at § 8.8. Each semiannual assessment is based upon the total assets shown in the national bank’s or Federal savings association’s most recent “Consolidated Reports of Condition and Income” (Call Report) preceding the payment date. Each national bank or Federal savings association subject to the jurisdiction of the OCC on the date of the second or fourth quarterly Call Report as appropriate, required by the OCC under 12 U.S.C. 161 and 12 U.S.C. 1464(v), is subject to the full assessment for the next six-month period. National banks and Federal savings associations that are no longer subject to the jurisdiction of the OCC as of the date of the second or fourth quarterly Call Report, as appropriate, will receive a refund of assessments for the second three months of the semiannual assessment period.

\* \* \* \* \*

(b) \* \* \*

(3) Each semiannual assessment of each Federal branch and each agency is based upon the total assets shown in the Federal branch’s or agency’s Call Report most recently preceding the payment date. Each Federal branch or agency subject to the jurisdiction of the OCC on the date of the second and fourth Call Reports is subject to the full assessment for the next six-month period. Federal branches and agencies that are no longer subject to the jurisdiction of the OCC as of the date of the second or fourth quarterly Call Report, as appropriate, will receive a refund of assessments for the second three months of the semiannual assessment period.

\* \* \* \* \*

(d) *Surcharge based on the condition of the national bank, Federal savings association, or Federal branch or agency.* Subject to any limit that the OCC prescribes in the “Notice of Office of the Comptroller of the Currency Fees and Assessments,” the OCC shall apply a surcharge to the semiannual assessment computed in accordance with paragraphs (a) through (c) of this

section. This surcharge will be determined by multiplying the semiannual assessment computed in accordance with paragraphs (a) through (c) of this section by—

(1) 1.5, in the case of any national bank or Federal savings association that receives a composite rating of 3 under the Uniform Financial Institutions Rating System (UFIRS) and any Federal branch or agency that receives a composite rating of 3 under the ROCA rating system (which rates risk management, operational controls, compliance, and asset quality) at its most recent examination prior to December 31 or June 30, as appropriate; and

(2) 2.0, in the case of any national bank or Federal savings association that receives a composite UFIRS rating of 4 or 5 and any Federal branch or agency that receives a composite rating of 4 or 5 under the ROCA rating system at its most recent examination prior to December 31 or June 30, as appropriate.

■ 3. Section 8.6 is amended by:

- a. Removing “Notice of Comptroller of the Currency Fees” and adding “Notice of Office of the Comptroller of the Currency Fees and Assessments” in its place in paragraphs (b), (c)(1)(i) and (ii), and (c)(3)(vii);
- b. Removing “independent trust banks” wherever it appears and adding “independent trust national banks” in its place;
- c. Removing “independent trust bank” wherever it appears and adding “Independent trust national bank” in its place;
- d. Removing “trust bank” wherever it appears and adding “trust national bank” in its place;
- e. Removing “trust banks” wherever it appears and adding “trust national banks” in its place;
- f. Removing “the bank” and adding “the national bank” in its place in paragraph (c)(2); and
- g. Revising paragraphs (a) introductory text, (a)(1) and (3), and (c)(1)(iii).

The revisions read as follows:

**§ 8.6 Fees for special examinations and investigations.**

(a) *Fees.* The OCC may assess a fee for:

(1) Examining the fiduciary activities of national banks, Federal branches of foreign banks, and Federal savings associations and related entities;

\* \* \* \* \*

(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 national bank, Federal branch or agency of a foreign bank, or Federal savings association because of the high risk or unusual nature of the activities performed; the significance to the national bank's, Federal branch's or agency's, or Federal saving association's operations and income of the activities performed; or the extent to which the national bank, Federal branch or agency, or Federal savings association has sufficient systems, controls, and personnel to adequately monitor, measure, and control risks arising from such activities;

\* \* \* \* \*  
(c) \* \* \* (1) \* \* \*

(iii) *Surcharge based on the condition of the independent trust national bank or of the independent trust Federal savings association.* Subject to any limit that the OCC prescribes in the "Notice of Office of the Comptroller of the Currency Fees and Assessments," the OCC shall adjust the semiannual assessment computed in accordance with paragraphs (c)(1)(i) and (ii) of this section by multiplying that figure by 1.5 for each independent trust national bank and independent trust Federal savings association that receives a composite UFIRS rating of 3 at its most recent examination prior to December 31 or June 30, as appropriate, and by 2.0 for each independent trust national bank and independent trust Federal savings association that receives a composite UFIRS rating of 4 or 5 at such examination.

\* \* \* \* \*

■ 4. Section 8.7 is amended by revising paragraphs (a) and (b) to read as follows:

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

(a) Each national bank, Federal savings association, Federal branch, and Federal agency shall pay to the OCC interest on its delinquent payments of semiannual assessments. In addition, each institution subject to a special examination or investigation fee shall pay to the OCC interest on its delinquent payments of special examination and investigation fees. Semiannual assessment payments will be considered delinquent if they are received after the time for payment specified in § 8.2. Special examination and investigation fees will be considered delinquent if not received by the OCC within 30 calendar days of the invoice date.

(b) In the event that an institution believes that the notice of assessments or special examination and investigation

fees contains an error or miscalculation, the institution may provide the OCC with a written request for a revised notice and a refund of any overpayments. Any such request for a revised notice and refund must be made after timely payment of the semiannual assessment under the dates specified in § 8.2 or timely payment of the special examination and investigation fee within 30 calendar days of the invoice date.

(1) Within 30 calendar days of receipt of such notice, the OCC shall either—

(i) Refund the amount of the overpayment; or

(ii) Provide notice of its unwillingness to accept the request for a revised notice of assessments. In the latter instance, the OCC and the entity claiming the overpayment shall thereafter attempt to reach agreement on the amount, if any, to be refunded; the OCC shall refund this amount within 30 calendar days of such agreement.

(2) The OCC shall be considered delinquent if it fails to return an overpayment in accordance with the time limitations specified in this paragraph (b). The OCC shall pay interest on any such delinquent payments.

\* \* \* \* \*

■ 5. Section 8.8 is amended by revising the section heading and paragraph (b) to read as follows:

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

\* \* \* \* \*

(b) *Interim and amended notice of fees.* The OCC may issue a "Notice of Interim Office of the Comptroller of the Currency Fees and Assessments" or a "Notice of 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: March 13, 2019.

**Joseph M. Otting,**

*Comptroller of the Currency.*

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 301**

[REG-104352-18]

RIN 1545-BO53

**Rules Regarding Certain Hybrid Arrangements; Hearing Cancellation**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document cancels a public hearing on proposed regulations to implement sections of the Internal Revenue Code regarding hybrid dividends and certain amounts paid or accrued in hybrid transactions or with hybrid entities, and to provide rules under the Code to prevent the same deduction from being claimed under the tax laws of both the United States and a foreign country.

**DATES:** The public hearing, originally scheduled for March 20, 2019 at 10 a.m. is cancelled.

**ADDRESSES:** The cancelled hearing was originally scheduled to be held at the Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Regina Johnson, Publications and Regulations Specialist at (202) 317-6901 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Friday, March 8, 2019 (8 FR 8488) announced that a public hearing was scheduled March 20, 2019 at 10 a.m. in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC. The subject of the public hearing is under sections 245, 267, 1503, and 7701 of the Internal Revenue Code.

This document cancels a public hearing on proposed regulations to implement sections 245A(e) and 267A of the Internal Revenue Code (Code) rules regarding hybrid dividends and certain amounts paid or accrued in hybrid transactions or with hybrid entities, and to provide rules under sections 1503(d) and 7701 of the Code to prevent the same deduction from being claimed under the tax laws of both the United States and a foreign country. The public comment period for these regulations expired on March 15, 2019.

The notice of proposed rulemaking and notice of hearing instructed those