

§ 7.5009

such as a server or automated loan center, in that state, or because the bank's products or services are accessed through electronic means by customers located in the state.

§ 7.5009 Location under 12 U.S.C. 85 of national banks operating exclusively through the Internet.

For purposes of 12 U.S.C. 85, the main office of a national bank that operates exclusively through the Internet is the office identified by the bank under 12 U.S.C. 22(Second) or as relocated under 12 U.S.C. 30 or other appropriate authority.

§ 7.5010 Shared electronic space.

National banks that share electronic space, including a co-branded web site, with a bank subsidiary, affiliate, or another third-party must take reasonable steps to clearly, conspicuously, and understandably distinguish between products and services offered by the bank and those offered by the bank's subsidiary, affiliate, or the third-party.

PART 8—ASSESSMENT OF FEES

Sec.

- 8.1 Scope and application.
- 8.2 Semiannual assessment.
- 8.6 Fees for special examinations and investigations.

12 CFR Ch. I (1–1–12 Edition)

- 8.7 Payment of interest on delinquent assessments and examination and investigation fees.
- 8.8 Notice of Comptroller of the Currency fees.

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

§ 8.1 Scope and application.

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 16, 93a, 481, 482, 1467, 1831c, 1867, 3102, and 3108; and 15 U.S.C. 78c and 78l.

[76 FR 43566, July 21, 2011]

§ 8.2 Semiannual assessment.

(a) Each national bank and each Federal savings association shall pay to the Comptroller of the Currency a semiannual assessment fee, due by March 31 and September 30 of each year, for the six month period beginning on January 1 and July 1 before each payment date. The Comptroller of the Currency will calculate the amount due under this section and provide a notice of assessments to each national bank and each Federal savings association no later than 7 business days prior to March 31 and September 30 of each year. The semiannual assessment will be calculated as follows:

If the bank's or Federal savings association's total assets (consolidated domestic and foreign subsidiaries) are:		The semiannual assessment is:		
Over—	But not over—	This amount—base amount	Plus marginal rates	Of excess over—
Column A	Column B	Column C	Column D	Column E
Million (dollars)	Million (dollars)	(dollars)		Million (dollars)
0	2	X1	0	
2	20	X2	Y1	2
20	100	X3	Y2	20
100	200	X4	Y3	100
200	1,000	X5	Y4	200
1,000	2,000	X6	Y5	1,000
2,000	6,000	X7	Y6	2,000
6,000	20,000	X8	Y7	6,000
20,000	40,000	X9	Y8	20,000
40,000	250,000	X10	Y9	40,000
250,000	X11	Y10	250,000

(1) Every national bank and every Federal savings association falls into one of the asset-size brackets denoted by Columns A and B. A bank's or Fed-

eral savings association's semiannual assessment is composed of two parts. The first part is the calculation of a base amount of the assessment, which

Comptroller of the Currency, Treasury

§ 8.2

is computed on the assets of the bank or Federal savings association up to the lower endpoint (Column A) of the bracket in which it falls. This base amount of the assessment is calculated by the OCC in Column C.

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

(3) The total semiannual assessment is the amount in Column C, plus the amount of the bank's or Federal savings association's assets in excess of Column E times the marginal rate in Column D:

$$\text{Assessments} = C + [(\text{Assets} - E) \times D].$$

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

(5) The specific marginal rates and complete assessment schedule will be published in the "Notice of Comptroller of the Currency Fees," provided for at § 8.8 of this part. Each semiannual assessment is based upon the total assets shown in the national bank's or Federal savings association's most recent "Consolidated Reports of Condition and Income" (Call Report) or "Thrift Financial Report," as appropriate, preceding the payment date. Each bank or Federal savings association subject to the jurisdiction of the Comptroller of the Currency on the date of the second or fourth quarterly Call Report or Thrift Financial Report, as appropriate, required by the Office 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.

(6)(i) Notwithstanding any other provision of this part, the OCC may reduce the semiannual assessment for each non-lead bank or non-lead Federal savings association by a percentage that it

will specify in the "Notice of Comptroller of the Currency Fees" described in § 8.8.

(ii) For purposes of this paragraph (a)(6):

(A) *Lead bank* or *lead Federal savings association* means the largest national bank or Federal savings association controlled by a company, based on a comparison of the total assets held by each national bank or Federal savings association controlled by that company as reported in each bank's or Federal savings association's Call Report or Thrift Financial Report, as appropriate, filed for the quarter immediately preceding the payment of a semiannual assessment.

(B) *Non-lead bank* or *non-lead Federal savings association* means a national bank or Federal savings association that is not the lead bank or lead Federal savings association controlled by a company that controls two or more national banks or Federal savings associations.

(C) *Control* and *company* with respect to national banks have the same meanings as these terms have in sections 2(a)(2) and 2(b), respectively, of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(2) and (b)).

(D) *Control* and *company* with respect to Federal savings associations have the same meanings as these terms have in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).

(b)(1) Each Federal branch and each Federal agency shall pay to the Comptroller of the Currency a semiannual assessment fee, due by March 31 and September 30 of each year, for the six month period beginning on January 1 and July 1 before each payment date. The Comptroller of the Currency will calculate the amount due under this section and provide a notice of assessments to each national bank no later than 7 business days prior to March 31 and September 30 of each year.

(2) The amount of the semiannual assessment paid by each Federal branch and Federal agency shall be computed at the same rate as provided in the Table in 12 CFR 8.2(a); however, only the total domestic assets of the Federal branch or agency shall be subject to assessment.

(3) Each semiannual assessment of each Federal branch or 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.

(4)(i) Notwithstanding any other provision of this part, the OCC may reduce the semiannual assessment for each non-lead Federal branch or agency by an amount that it will specify in the "Notice of Comptroller of the Currency Fees" described in § 8.8.

(ii) For purposes of this paragraph (b)(4):

(A) *Lead Federal branch or agency* means the largest Federal branch or agency of a foreign bank, based on a comparison of the total assets held by each Federal branch or agency of that foreign bank as reported in each Federal branch's or agency's Call Report filed for the quarter immediately preceding the payment of a semiannual assessment.

(B) *Non-lead Federal branch or agency* means a Federal branch or agency that is not the lead Federal branch or agency of a foreign bank that controls two or more Federal branches or agencies.

(c) *Additional assessment for independent credit card banks and independent credit card Federal savings associations*—(1) *General rule*. In addition to the assessment calculated according to paragraph (a) of this section, each independent credit card bank and independent credit card Federal savings association will pay an assessment based on receivables attributable to credit card accounts owned by the bank or Federal savings association. This assessment will be computed by adding to its asset-based assessment an additional amount determined by its level of receivables attributable. The dollar amount of the additional assessment will be published in the "Notice of Comptroller of the Currency of Fees," described at § 8.8.

(2) *Independent credit card banks and independent credit card Federal savings associations affiliated with full-service national banks or Federal savings asso-*

ciations. The OCC will assess an independent credit card bank and an independent credit card Federal savings association in accordance with paragraph (c)(1) of this section, notwithstanding that the bank or Federal savings association is affiliated with a full-service national bank or full service Federal savings association, if the OCC concludes that the affiliation is intended to evade this part.

(3) *Definitions*. For purposes of this paragraph (c), the following definitions apply:

(i) *Affiliate*, with respect to national banks, has the same meaning as this term has in 12 U.S.C. 221a(b).

(ii) *Affiliate*, with respect to Federal savings associations, has the same meaning as in 12 U.S.C. 1462(9).

(iii) *Engaged primarily in card operations* means a bank described in section 2(c)(2)(F) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(F)) or a bank or a Federal savings association whose ratio of total gross receivables attributable to the bank's or Federal savings association's balance sheet assets exceeds 50%.

(iv) *Full-service national bank* is a national bank that generates more than 50% of its interest and non-interest income from activities other than credit card operations or trust activities and is authorized according to its charter to engage in all types of permissible banking activities.

(v) *Full-service Federal savings association* is a Federal savings association that generates more than 50% of its interest and non-interest income from activities other than credit card operations or trust activities and is authorized according to its charter to engage in all types of activities permissible for Federal savings associations.

(vi) *Independent credit card bank* is a national bank that engages primarily in credit card operations and is not affiliated with a full-service national bank.

(vii) *Independent credit card Federal savings association* is a Federal savings association that engages primarily in credit card operations and is not affiliated with a full-service Federal savings association.

(viii) *Receivables attributable* is the total amount of outstanding balances

due on credit card accounts owned by an independent credit card bank or an independent credit card Federal savings association (the receivables attributable to those accounts) on the last day of the assessment period, minus receivables retained on the bank's or Federal savings association's balance sheet as of that day.

(4) *Reports of receivables attributable.* Independent credit card banks and independent credit card Federal savings associations will report receivables attributable data to the OCC semiannually at a time specified by the OCC.

(d) *Surcharge based on the condition of the bank or Federal savings association.* Subject to any limit that the OCC prescribes in the "Notice of Comptroller of the Currency Fees," 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 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; and

(2) 2.0, in the case of any 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.

[76 FR 43566, July 21, 2011]

§ 8.6 Fees for special examinations and investigations.

(a) *Fees.* Pursuant to the authority contained in 12 U.S.C. 16, 481, 482, 1467, and 1831c, the Office of the Comptroller of the Currency may assess a fee for:

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

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

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

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

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

(6) Conducting examinations of depository-institution permissible activities of nondepository institution subsidiaries of depository institution holding companies pursuant to section 605(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1831c).

(b) *Notice of Comptroller of the Currency fees.* The OCC publishes the fee schedule for fiduciary activities, special examinations and investigations, examinations of affiliates and examinations related to corporate activities in the "Notice of Comptroller of the Currency Fees" described in § 8.8.

(c) *Additional assessments on trust banks and trust Federal savings associations—(1) Independent trust banks and independent trust Federal savings associations.* The assessment of independent trust banks and independent trust Federal savings associations will include a fiduciary and related asset component,

in addition to the assessment calculated according to §8.2 of this part, as follows:

(i) *Minimum fee.* All independent trust banks and independent trust Federal savings associations will pay a minimum fee, to be provided in the “Notice of Comptroller of the Currency Fees.”

(ii) *Additional amount for independent trust banks and independent trust Federal savings associations with fiduciary and related assets in excess of \$1 billion.* Independent trust banks and independent trust Federal savings associations with fiduciary and related assets in excess of \$1 billion will pay an amount that exceeds the minimum fee. The amount to be paid will be calculated by multiplying the amount of fiduciary and related assets by a rate or rates provided by the OCC in the “Notice of Comptroller of the Currency Fees.”

(iii) *Surcharge based on the condition of the bank or of the Federal savings association.* Subject to any limit that the OCC prescribes in the “Notice of Comptroller of the Currency Fees,” 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 bank and independent trust Federal savings association that receives a composite rating of 3 under the Uniform Financial Institutions Rating System (UFIRS) at its most recent examination and by 2.0 for each bank that receives a composite UFIRS rating of 4 or 5 at such examination.

(2) *Trust banks affiliated with full-service national banks and trust Federal savings associations affiliated with full-service Federal savings associations.* The OCC will assess a trust bank and a trust Federal savings association in accordance with paragraph (c)(1) of this section, notwithstanding that the bank is affiliated with a full-service national bank, or that the Federal savings association is affiliated with a full-service Federal savings association, if the OCC concludes that the affiliation is intended to evade the assessment regulation.

(3) *Definitions.* For purposes of this paragraph (c) of this section, the following definitions apply:

(i) *Affiliate*, with respect to a national bank, has the same meaning as this term has in 12 U.S.C. 221a(b);

(ii) *Affiliate*, with respect to Federal savings associations, has the same meaning as in 12 U.S.C. 1462(9).

(iii) *Full-service national bank* is a national bank that generates more than 50% of its interest and non-interest income from activities other than credit card operations or trust activities and is authorized according to its charter to engage in all types of permissible banking activities.

(iv) *Full-service trust Federal savings association* is a Federal savings association that generates more than 50% of its interest and non-interest income from activities other than credit card operations or trust activities and is authorized according to its charter to engage in all types of activities permissible for Federal savings associations.

(v) *Independent trust bank* is a national bank that has trust powers, does not primarily offer full-service banking, and is not affiliated with a full-service national bank;

(vi) *Independent trust Federal savings association* is a Federal savings association that has trust powers, does not primarily offer full-service banking, and is not affiliated with a full-service Federal savings association; and

(vii) *Fiduciary and related assets* are those assets reported on Schedule RC-T of FFIEC Forms 031 and 041, Line 10 (columns A and B) and Line 11 (column B), any successor form issued by the FFIEC, and any other fiduciary and related assets defined in the “Notice of Comptroller of the Currency Fees.”

(viii) *Fiduciary and related assets for Federal savings associations* are those assets reported on Schedule FS of OTS Form 1313, Line FS21, any successor form issued by the OCC, and any other fiduciary and related assets defined in the “Notice of Comptroller of the Currency Fees.”

[76 FR 43568, July 21, 2011, as amended at 76 FR 43568, July 7, 2011]

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

(a) Each national bank, each Federal branch, each Federal agency, and each Federal savings association shall pay

Comptroller of the Currency, Treasury

§ 8.8

to the Comptroller of the Currency interest on its delinquent payments of semiannual assessments. In addition, each national bank, each Federal savings association and each entity with a trust department examined by the Comptroller of the Currency and each institution that is the subject of a special examination or investigation conducted by the Comptroller of the Currency shall pay to the Comptroller of the Currency interest on its delinquent payments of examination and investigation fees. Semiannual assessment payments will be considered delinquent if they are received after the time for payment specified in § 8.2. Examination and investigation fees will be considered delinquent if not received by the Comptroller of the Currency within 30 calendar days of the invoice date.

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

(1) Refund the amount of the overpayment or

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

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

(c) Interest on delinquent payments, as described in paragraphs (a) and (b) of this section, will be assessed beginning

the first calendar day on which payment is considered delinquent, and on each calendar day thereafter up to and including the day payment is received. Interest will be simple interest, calculated for each day payment is delinquent by multiplying the daily equivalent of the applicable interest rate by the amount delinquent. The rate of interest will be the United States Treasury Department's current value of funds rate (the "TFRM rate"); that rate is issued under the Treasury Fiscal Requirements Manual and is published quarterly in the FEDERAL REGISTER. The interest rates applicable to a delinquent payment will be determined as follows:

(1) For delinquent days occurring from January 1 to March 31, the rate will be the TFRM rate that is published the preceding December for the first quarter of the ensuing year.

(2) For delinquent days occurring from April 1 to June 30, the rate will be the TFRM rate that is published the preceding March for the second quarter of that year.

(3) For delinquent days occurring from July 1 to September 30, the rate will be the TFRM rate that is published the preceding June for the third quarter of that year.

(4) For delinquent days occurring from October 1 to December 31, the rate will be the TFRM rate that is published the preceding September for the fourth quarter of that year.

[48 FR 30599, July 1, 1983. Redesignated and amended at 49 FR 50605, Dec. 31, 1984; 70 FR 69643, Nov. 17, 2005; 76 FR 43568, July 21, 2011]

§ 8.8 Notice of Comptroller of the Currency fees.

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

(b) *Interim notice of Comptroller of the Currency fees.* The OCC may issue an "Interim Notice of Comptroller of the Currency Fees" or issue an amended "Notice of Comptroller of the Currency Fees" from time to time throughout the year as necessary. Interim or

amended notices will be effective 30 days after issuance.

[55 FR 49842, Nov. 30, 1990, as amended at 70 FR 69644, Nov. 17, 2005]

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

REGULATIONS

Sec.

- 9.1 Authority, purpose, and scope.
- 9.2 Definitions.
- 9.3 Approval requirements.
- 9.4 Administration of fiduciary powers.
- 9.5 Policies and procedures.
- 9.6 Review of fiduciary accounts.
- 9.7 Multi-state fiduciary operations.
- 9.8 Recordkeeping.
- 9.9 Audit of fiduciary activities.
- 9.10 Fiduciary funds awaiting investment or distribution.
- 9.11 Investment of fiduciary funds.
- 9.12 Self-dealing and conflicts of interest.
- 9.13 Custody of fiduciary assets.
- 9.14 Deposit of securities with state authorities.
- 9.15 Fiduciary compensation.
- 9.16 Receivership or voluntary liquidation of bank.
- 9.17 Surrender or revocation of fiduciary powers.
- 9.18 Collective investment funds.
- 9.20 Transfer agents.

INTERPRETATIONS

- 9.100 Acting as indenture trustee and creditor.
- 9.101 Providing investment advice for a fee.

AUTHORITY: 12 U.S.C. 24 (Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q–1, and 78w.

SOURCE: 61 FR 68554, Dec. 30, 1996, unless otherwise noted.

REGULATIONS

§ 9.1 Authority, purpose, and scope.

(a) *Authority.* The Office of the Comptroller of the Currency (OCC) issues this part pursuant to its authority under 12 U.S.C. 24 (Seventh), 92a, and 93a, and 15 U.S.C. 78q, 78q–1, and 78w.

(b) *Purpose.* The purpose of this part is to set forth the standards that apply to the fiduciary activities of national banks.

(c) *Scope.* This part applies to all national banks that act in a fiduciary capacity, as defined in § 9.2(e). This part also applies to all Federal branches of foreign banks to the same extent as it applies to national banks.

§ 9.2 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Affiliate* has the same meaning as in 12 U.S.C. 221a(b).

(b) *Applicable law* means the law of a state or other jurisdiction governing a national bank's fiduciary relationships, any applicable Federal law governing those relationships, the terms of the instrument governing a fiduciary relationship, or any court order pertaining to the relationship.

(c) *Custodian under a uniform gifts to minors act* means a fiduciary relationship established pursuant to a state law substantially similar to the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act as published by the American Law Institute.

(d) *Fiduciary account* means an account administered by a national bank acting in a fiduciary capacity.

(e) *Fiduciary capacity* means: trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gifts to minors act; investment adviser, if the bank receives a fee for its investment advice; any capacity in which the bank possesses investment discretion on behalf of another; or any other similar capacity that the OCC authorizes pursuant to 12 U.S.C. 92a.

(f) *Fiduciary officers and employees* means all officers and employees of a national bank to whom the board of directors or its designee has assigned functions involving the exercise of the bank's fiduciary powers.

(g) *Fiduciary powers* means the authority the OCC permits a national bank to exercise pursuant to 12 U.S.C. 92a.

(h) *Guardian* means the guardian or conservator, by whatever name used by state law, of the estate of a minor, an incompetent person, an absent person, or a person over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.

(i) *Investment discretion* means, with respect to an account, the sole or shared authority (whether or not that authority is exercised) to determine what securities or other assets to purchase or sell on behalf of the account. A bank that delegates its authority