

its confidential use. The bank's directors, in keeping with their responsibilities both to depositors and to shareholders, should thoroughly review the report. The report may be made available to other persons only in accordance with the rules on disclosure in 12 CFR part 4.

§ 7.4001 Charging interest at rates permitted competing institutions; charging interest to corporate borrowers.

(a) *Definition.* The term "interest" as used in 12 U.S.C. 85 includes any payment compensating a creditor or prospective creditor for an extension of credit, making available of a line of credit, or any default or breach by a borrower of a condition upon which credit was extended. It includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates, late fees, not sufficient funds (NSF) fees, overlimit fees, annual fees, cash advance fees, and membership fees. It does not ordinarily include appraisal fees, premiums and commissions attributable to insurance guaranteeing repayment of any extension of credit, finders' fees, fees for document preparation or notarization, or fees incurred to obtain credit reports.

(b) *Authority.* A national bank located in a state may charge interest at the maximum rate permitted to any state-chartered or licensed lending institution by the law of that state. If state law permits different interest charges on specified classes of loans, a national bank making such loans is subject only to the provisions of state law relating to that class of loans that are material to the determination of the permitted interest. For example, a national bank may lawfully charge the highest rate permitted to be charged by a state-licensed small loan company, without being so licensed, but subject to state law limitations on the size of loans made by small loan companies.

(c) *Effect on state definitions of interest.* The Federal definition of the term "interest" in paragraph (a) of this section does not change how interest is defined by the individual states (nor how the state definition of interest is

used) solely for purposes of state law. For example, if late fees are not "interest" under state law where a national bank is located but state law permits its most favored lender to charge late fees, then a national bank located in that state may charge late fees to its intrastate customers. The national bank may also charge late fees to its interstate customers because the fees are interest under the Federal definition of interest and an allowable charge under state law where the national bank is located. However, the late fees would not be treated as interest for purposes of evaluating compliance with state usury limitations because state law excludes late fees when calculating the maximum interest that lending institutions may charge under those limitations.

(d) *Usury.* A national bank located in a state the law of which denies the defense of usury to a corporate borrower may charge a corporate borrower any rate of interest agreed upon by a corporate borrower.

§ 7.4002 National bank charges.

(a) *Customer charges and fees.* A national bank may charge its customers non-interest charges and fees, including deposit account service charges. For example, a national bank may impose deposit account service charges that its board of directors determines to be reasonable on dormant accounts. A national bank may also charge a borrower reasonable fees for credit reports or investigations with respect to a borrower's credit. All charges and fees should be arrived at by each bank on a competitive basis and not on the basis of any agreement, arrangement, undertaking, understanding, or discussion with other banks or their officers.

(b) *Considerations.* The establishment of non-interest charges and fees, and the amounts thereof, is a business decision to be made by each bank, in its discretion, according to sound banking judgment and safe and sound banking principles. A bank reasonably establishes non-interest charges and fees if the bank considers the following factors, among others:

(1) The cost incurred by the bank, plus a profit margin, in providing the service;

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(2) The deterrence of misuse by customers of banking services;

(3) The enhancement of the competitive position of the bank in accordance with the bank's marketing strategy; and

(4) The maintenance of the safety and soundness of the institution.

(c) *Interest.* Charges and fees that are "interest" within the meaning of 12 U.S.C. 85 are governed by §7.4001 and not by this section.

(d) *State law.* The OCC evaluates on a case-by-case basis whether a national bank may establish non-interest charges or fees pursuant to paragraphs (a) and (b) of this section notwithstanding a contrary state law that purports to limit or prohibit such charges or fees. In issuing an opinion on whether such state laws are preempted, the OCC applies preemption principles derived from the Supremacy Clause of the United States Constitution and applicable judicial precedent.

(e) *National bank as fiduciary.* This section does not apply to charges imposed by a national bank in its capacity as a fiduciary, which are governed by 12 CFR part 9.

8.2 Semiannual assessment.

8.6 Fees for fiduciary activities examinations, special examinations and investigations fees, examination of affiliates, examinations related to corporate activities.

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. 93a, 481, 482, and 3102 and 3108; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

§8.1 Scope and application.

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 93A, 481, 482 and 3102; 15 U.S.C. 78 c and l; and 26 D.C. Code 102.

[55 FR 49842, Nov. 30, 1990]

§8.2 Semiannual assessment.

(a) Each national bank and each District of Columbia bank shall pay to the Comptroller of the Currency a semiannual assessment fee, due by January 31 and July 31 of each year, for the six-month period beginning 30 days before each payment date. The amount of the semiannual assessment paid by each bank is computed as follows:

PART 8—ASSESSMENT OF FEES; NATIONAL BANKS; DISTRICT OF COLUMBIA BANKS

Sec. 8.1 Scope and application.

If the banks' total assets (consolidated domestic and foreign subsidiaries) are:		The semiannual assessment is:			
Over—	But not over—	This amount—	Plus	Of excess over—	
Column A	Column B	Base amount	Marginal rates	Column E	
Column C	Column D				
Million	Million	\$0	Y1	Million	\$0
\$0	\$2	X1	Y2		2
2	20	X2	Y3		20
20	100	X3	Y4		100
100	200	X4	Y5		200
200	1,000	X5	Y6		1,000
1,000	2,000	X6	Y7		2,000
2,000	6,000	X7	Y8		6,000
6,000	20,000	X8	Y9		20,000
20,000	40,000	X9	Y10		40,000
40,000					

(1) Every national bank falls into one of the ten asset-size brackets denoted by Columns A and B. A bank's semiannual assessment is composed of two

parts. The first part is the calculation of a base amount of the assessment, which is computed on the assets of the bank up to the lower endpoint (Column