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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 502

[No. 2001–44]

RIN 1550–AB47

Assessments and Fees

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its assessments rule to more accurately reflect the increased costs of supervising 3-, 4-, and 5-rated institutions. As amended, OTS will compute the condition component of a savings association's assessment at 50 percent of the size component for 3-rated institutions, and 100 percent of the size component for 4- and 5-rated institutions.

EFFECTIVE DATE: July 23, 2001.

FOR FURTHER INFORMATION CONTACT: Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office; or William Brady, 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 examining, regulating, and providing for the safe and sound operation of savings associations.[1] OTS funds its operations through assessments on savings associations and through other fees. The Home Owners' Loan Act (HOLA) specifically authorizes the Director to assess such fees to fund its direct and indirect expenses, as the Director deems necessary or appropriate.[2]

Under 12 CFR part 502, OTS determines each institution's assessment by adding together three components reflecting the size, condition and complexity of an institution. OTS computes the size component by multiplying an institution's total assets (as reported on the Thrift Financial Report (TFR)) by the applicable assessment rate. The condition component is a percentage of the size component and is imposed on institutions that have a 3-, 4-, or 5-composite rating under the Uniform Financial Institutions Rating System (UFIRS) (also referred to as the CAMELS rating system).[3] OTS imposes a complexity component if: (1) A thrift administers more than $1 billion in trust assets; (2) the outstanding balance of assets fully or partially covered by recourse obligations or direct credit substitutes exceeds $1 billion; or (3) the thrift services over $1 billion of loans for others. OTS calculates the complexity component by multiplying set rates times the amounts by which an association exceeds each particular threshold.

On April 30, 2001, OTS published a proposed rule revising the condition component. 66 FR 21288 (Apr. 30, 2001). Under the existing rules, the condition component equals 25 percent of the thrift's size component for 3-rated institutions, and 50 percent of the thrift's size component for 4- or 5-rated institutions.[4] Based on the higher amount of supervisory resources demanded by 3-, 4- and 5-rated institutions, OTS proposed to raise the condition component to 50 percent for 3-rated institutions and 100 percent for 4- and 5-rated institutions.

II. Analysis of the Comments

The comment period on the proposed rule closed on May 30, 2001. OTS received one comment from a trade association.

The commenter urged OTS to carefully consider whether the revised assessment structure will push the OTS regulated industry toward other federal or state charters. OTS does not believe that the final rule will have this effect. Over 90 percent of the thrift industry is 1- or 2-rated or has not received an initial rating. This final rule should benefit these institutions because their assessments will be reduced as OTS recaptures more of its supervisory costs from low rated thrifts.

Admittedly, the assessments for 3-, 4-, and 5-rated institutions will increase commensurate with their need for increased supervision. However, the assessment of a premium on such institutions is consistent with the assessments imposed by other banking regulators.[5] Moreover, our experience under the current rule indicates that the risk-adjusted premiums for 3-, 4- and 5-rated institutions have not resulted in significant defections to other charters.

The commenter also encouraged OTS to address its budget issues in a comprehensive fashion. While a wholesale review of these issues is beyond the scope of this rulemaking, OTS believes that this rule will enhance OTS budgetary efforts. In particular, this rule will permit OTS assessment revenues to automatically expand (or contract) in direct response to the supervisory demands imposed by an increased (or decreased) number of lower rated institutions.

OTS specifically sought comment whether it should consider the complexity of an institution's operations in its calculation of the condition component. The commenter urged OTS not to make such changes to the existing rule. The final rule does not make any changes in this area.

III. Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) states that OTS rules that impose new

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

[2] 12 U.S.C. 1467(k). *See also* 12 U.S.C. 1462a, 1463, 1467(a), 1467a.

[3] The UFIRS rating system was developed jointly by all of the Federal banking regulators in an effort to establish a uniform system using standard criteria and definitions for rating in six different rating areas: capital, assets, management, earnings, liquidity, and sensitivity to market risk. *See* 61 FR 67021 (Dec. 19, 1996). UFIRS is an effective supervisory tool for evaluating the soundness of financial institutions on a uniform basis, and for identifying those institutions requiring special supervisory attention or concern.

[4] OTS has assessed a 50 percent premium on 4- and 5-rated institutions since 1990. 55 FR 34519 (Aug. 23, 1990). OTS began to impose a 25 percent premium on 3-rated institutions in 1998. 63 FR 65663 (Nov. 30, 1998).

[5] Recently, the Office of the Comptroller of the Currency issued a final rule imposing a similar premium on 3-, 4- and 5-rated national banks. *See* 66 FR 29890 (Jun. 1, 2001).

requirements must take effect on the first day of a calendar quarter that begins on or after the date of publication of the rule. 12 U.S.C. 4802. A related provision, section 553 of the Administrative Procedure Act (APA), states that a rule may not be made effective less than 30 days after publication. 5 U.S.C. 553(d). Under either statute, OTS may make a rule effective on a different date, if it finds good cause.

Working together, the APA and CDRIA provisions would delay the effective date of this final rule until October 1, 2001, and OTS would be unable to use the revised calculation method for the July 31, 2001 assessment. OTS believes that this would lead to an inequitable result since 1- and 2-rated institutions would be required to subsidize the extra supervisory costs of 3-, 4- and 5-rated institutions for yet another assessment period.

Moreover, OTS does not believe that an October 1, 2001 effective date would further the purposes of CDRIA. CDRIA ensures that depository institutions will be regularly informed of new rules with which they must comply. CDRIA also ensures that depository institutions must make operational changes only four times, rather than sporadically, during a calendar year.[6] Since savings associations are not required to take any action to comply with this new rule, OTS does not believe that it is necessary to apply the CDRIA effective date provisions. For these reasons, OTS finds that there is good cause to make this rule effective on a date other than the first date of a calendar quarter. Consistent with the APA, this rule will become effective thirty days after publication.

IV. Executive Order 12866

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

V. Regulatory Flexibility Act Analysis

Under section 605(b) of the Regulatory Flexibility Act of 1980,[7] OTS has evaluated the effects this final rule will have on small businesses, small organizations, and small governmental jurisdictions. As required, OTS has prepared the following final regulatory flexibility analysis.

A. Reasons for and objectives of the rule; Legal basis for the rule

OTS funds its operations through assessments on savings associations and through other fees. The Director of OTS is authorized by the HOLA to impose assessments.[8] OTS is specifically authorized to assess such fees to fund the direct and indirect expenses of OTS, as the Director deems necessary or appropriate. 12 U.S.C. 1467(k).

OTS has found that there is significant increase in supervisory demands on the agency when an institution's rating moves to a ''3'' rating, and an even greater increase when a thrift's rating moves to a ''4'' or a ''5'' rating. Accordingly, the current OTS assessments regulation imposes a premium on these institutions to reflect the increased supervision costs.

OTS experience since 1998, when it last revised its condition component, has shown that the current premium for 3-, 4-, and 5-rated institutions does not adequately compensate it for the additional demands on its resources. Therefore, OTS has amended its rules to more closely associate its costs with its assessments.

B. Effect of the final rule on small savings associations

The final rule may affect small savings associations. The final rule, however, does not affect small businesses, small organizations other than small savings associations, or small governmental jurisdictions. Small savings associations are generally defined, for Regulatory Flexibility Act purposes, as those with assets under $100 million.[9]

As discussed above, the final rule imposes a premium equal to 50 percent of an association's size component for each 3-rated association, and a 100 percent of an association's size component on each 4- or 5-rated institution. OTS will assess this premium regardless of the institution's size. Based on OTS most recent data, 37 savings associations were 3-rated and had assets under $100 million. Currently, the semi-annual assessment for a 3-rated institution with$100 million in assets is $19,380, exclusive of any complexity component. Under the final rule, this institution's semi-annual assessment will be $23,256—an increase of $3,876. Other 3-rated small savings associations will see their assessments increase by lesser amounts depending on their asset size.

Based on OTS most recent data, six institutions were 4- or 5-rated and had assets under $100 million. Currently, the semi-annual assessment for a 4- or 5-rated institution with $100 million in assets is $23,256, exclusive of any complexity component. Under the final rule, this institution's semi-annual assessment will be $31,008—an increase of $7,752. Other 4- and 5-rated institutions will see their assessments increase by lesser amounts depending on their asset size.

C. Significant Issues Raised in Response to Initial Regulatory Flexibility Analysis and Changes Made to Minimize Burden

OTS did not receive any significant comments in response to the Initial Regulatory Flexibility Analysis and has made no changes in the final rule.

D. Significant Alternatives to the Final Rule

As discussed earlier, 3-, 4- and 5-rated savings associations require more supervisory attention than 1- or 2-rated associations. Therefore, OTS has three alternatives: impose extra assessments on all 3-, 4- and 5-rated associations; impose extra assessments on some sub-category of 3-, 4- and 5-rated institutions; or require 1- and 2-rated institutions to subsidize these extra supervisory costs of 3-, 4- and 5-rated institutions.

OTS believes it is most equitable to match assessments with OTS's supervisory costs as far as possible. Therefore, it has increased the amount of the condition component for 3-, 4-, and 5-rated associations. OTS believes that requiring these institutions to pay for their extra supervisory costs provides an incentive for those institutions to improve their condition and their ratings. OTS also believes that the condition component best accomplishes OTS's objective of closely tailoring assessment rates to OTS's increased costs in supervising 3-, 4- and 5-rated institutions.

E. Other matters

The final rule imposes no reporting, recordkeeping, or other compliance requirements. Assessments will continue to be based on Thrift Financial Reports that savings associations otherwise must file with OTS. OTS will continue to use its current collection procedures. Therefore, the final rule imposes no new or additional reporting, recordkeeping, or compliance requirements.

There are no federal rules that duplicate, overlap, or conflict with this final rule.

[6] *See* H. Rep. No. 103–252, p. 168 (1994).

[7] 5 U.S.C. 605(b).

[8] 12 U.S.C. 1462a, 1463, 1467, 1467a.

[9] 13 CFR 121.201 Division H (1998).

VI. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L.104–4 (Unfunded Mandates Act), requires an agency to 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 final 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.

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 amends part 502, chapter V, title 12, Code of Federal Regulations as set forth below.

PART 502—ASSESSMENTS AND FEES

1. The authority citation for part 502 continues to read as follows:

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

2. Section 502.20 is revised to read as follows:

§ 502.20 How does OTS determine my condition component?

OTS uses the following chart to determine your condition component.

If your component rating is:	Then your condition component is:
1 or 2	Zero.
3	50 percent of your size component.
4 or 5	100 percent of your size component.

Dated: June 13, 2001.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 01–15654 Filed 6–20–01; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR PART 707

Truth in Savings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: NCUA is amending its regulation that implements the Truth in Savings Act (TISA). This interim final rule establishes uniform standards for the electronic delivery of disclosures required by TISA. NCUA is also amending its regulation to address electronic advertisements. These amendments conform to the Electronic Signatures in Global and National Commerce Act (E-Sign Act).

DATES: This rule is effective June 21, 2001. To allow time for any necessary operational changes, however, the mandatory compliance date is October 1, 2001. Comments must be received on or before August 20, 2001.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. You may also fax comments to (703) 518–6319 or e-mail comments to regcomments@ncua.gov. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION

A. Background

Part 707 of NCUA's regulations implements TISA. 12 CFR part 707. The purpose of part 707 and TISA is to assist members in making meaningful comparisons among accounts offered by credit unions and other financial institutions. Part 707 and TISA require, among other things, disclosure of yields, fees and other terms concerning share accounts to members at account opening, upon request, when changes in terms occur and in periodic statements. Many of these disclosures must be written.

In April 2001, The Board of Governors of the Federal Reserve System (Federal Reserve) issued an interim rule amending its Regulation DD, which implements TISA (April 2001 Interim Rule). That rule established uniform standards for the timing and electronic delivery of disclosures required by TISA and Regulation DD, and addressed electronic advertisements. 66 FR 17795 (April 4, 2001). The Federal Reserve has stated that electronic disclosures can effectively reduce compliance costs for financial institutions and allow them to provide Regulation DD disclosures to the consumer more efficiently without adversely affecting consumer protections. Under that rule, disclosures may be sent by e-mail to an electronic address designated by the consumer, or made available at another location, such as an Internet web site. If disclosures are not sent by e-mail, consumers must receive a notice informing them that they are available elsewhere. If posted to a web site, disclosures must be available for at least 90 days to allow consumers adequate time to access them. For disclosures that must be provided before account opening, consumers are required to access them before the account is opened. Under this rule, financial institutions must make a good faith attempt to redeliver electronic disclosures that are returned as undelivered, using the address information available in their files.

These amendments conform to the E-Sign Act. 15 U.S.C. 7001. The E-Sign Act was enacted in June 2000, to encourage the continued expansion of electronic commerce. It generally provides that electronic documents and signatures have the same validity as paper documents and handwritten signatures. It provides that consumer disclosures may be provided in electronic form only if the consumer affirmatively consents after receiving information specified in the statute. The consumer consent provisions in the E-Sign Act became effective October 1, 2000. Section 101(c)(5) of the E-Sign Act provides that consumers who gave consent prior to the effective date are not subject to those consent requirements.

In September 1999, before enactment of the E-Sign Act, the Federal Reserve issued an interim rule that also amended Regulation DD (September 1999 Interim Rule). 64 FR 49846 (September 14, 1999). With the issuance of the April 2001 Interim Rule, the Federal Reserve has withdrawn the September 1999 Interim Rule.

TISA requires NCUA to promulgate regulations substantially similar to those promulgated by the Federal Reserve within 90 days of the effective date of the Federal Reserve's rules. 12 U.S.C. 4311(b). In doing so, NCUA is to take into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts. In compliance with TISA, as discussed more fully below, NCUA is issuing this interim final rule with