

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1423

RIN 0560-AE50

Standards for Approval of Warehouses for CCC Interest Commodity Storage

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: The Commodity Credit Corporation (CCC) is reopening and extending the comment period for the proposed rulemaking, "Standards for Approval of Warehouses for CCC Interest Commodity Storage." The original comment period for the proposed rule closed on January 20, 2004, and CCC is reopening and extending it for 30 days. This action responds to requests from warehouse operators to provide more time to comment on the proposed rule.

DATES: Comments are due March 11, 2004.

ADDRESSES: Comments and requests for additional information should be directed to Howard Froehlich, Chief, Program Development Branch, Warehouse and Inventory Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 0553, Washington, DC 20250-0553, telephone: (202) 720-7398, FAX: (202) 690-3123, e-mail:

Howard_Froehlich@wdc.fsa.usda.gov. Persons with disabilities who require alternative means for communication for regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: On November 20, 2003, CCC published a proposed rule, "Standards for Approval of Warehouses for CCC Interest Commodity Storage" in the **Federal Register** (68 FR 65412). The rule

proposed to revise regulations covering the storage of commodities in which CCC has an interest. For the most part, those commodities are acquired in connection with non-recourse commodity loan programs that benefit farmers. The rule will consolidate the regulations for all commodities stored by CCC into one set of regulations. In addition, the rule would, in some instances, revise the substantive provisions that are in effect under the existing regulations.

The Agency believes that the request for additional time to comment on the proposed rule is reasonable and will still allow the rulemaking to proceed in a timely manner. As a result of the reopening and extension, the comment period for the proposed rule will close on March 11, 2004.

Signed in Washington, DC, January 23, 2004.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 04-2785 Filed 2-9-04; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 502

[No. 2004-06]

RIN 1550-AB47

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 rules on assessments and fees. The proposed rule would replace examination fees for savings and loan holding companies (SLHCs) with semi-annual assessments on top-tier SLHCs. OTS would charge a base assessment amount on all top-tier SLHCs, and would add up to three additional components to this base amount. The three components would be based on the risk or complexity of the SLHC's business, its organizational form, and its condition. OTS is also considering assessing certain SLHCs that are large and complex enterprises

(conglomerates) under a separate assessment procedure and solicits comments on these assessment procedures.

OTS also proposes to amend the existing rules governing the calculation of savings association semi-annual assessments. Specifically, OTS proposes to eliminate the alternative calculation for the asset size component currently available to small "qualifying savings associations."

DATES: Comments must be received on or before March 26, 2004.

ADDRESSES: *Mail:* Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2004-06.

Commenters should be aware that there have been some unpredictable and lengthy delays in postal deliveries to the Washington, DC area and may prefer to make their comments via facsimile, e-mail, or hand delivery.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, No. 2004-06.

Facsimiles: Send facsimile transmissions to Fax Number (202) 906-6518, Attention: No. 2004-06.

E-Mail: Send e-mails to regs.comments@ots.treas.gov, Attention: No. 2004-06, and include your name and telephone number.

Availability of comments: OTS will post comments and the related index on the OTS Internet Site at www.ots.treas.gov. You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755. (Please identify the materials you would like to inspect to assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the business day after the date we receive a request.

FOR FURTHER INFORMATION CONTACT: Donna Deale, Manager, Affiliates and Holding Company Supervision, (202) 906-7488; or Karen Osterloh, Special Counsel, Regulations and Legislation Division, Chief Counsel's Office, (202)

906-6639; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The Home Owners' Loan Act (HOLA) authorizes the OTS Director to assess fees against savings associations and holding companies to fund OTS's direct and indirect expenses as the Director deems necessary or appropriate.¹ OTS also may assess savings associations and affiliates of savings associations for the costs of conducting examinations.²

OTS has promulgated regulations implementing this authority at 12 CFR part 502. Under these rules, OTS currently charges each savings association a semi-annual assessment, which includes a size component, a condition component, and a complexity component. In addition, OTS charges an examination fee for thrifts that have trust assets that are under the \$1 billion complexity component threshold. OTS also charges SLHCs and other thrift affiliates fees for investigating and examining their operations. These examination-related fees are assessed at an hourly rate for examiner time spent performing the examination.

II. Description of the Proposal

OTS proposes to revise its current rules to more accurately apportion the cost of OTS supervision among savings associations, SLHCs, and other affiliates. The agency has three primary goals: (1) Keep charges as low as possible while providing the agency with the resources essential to effectively supervise a changing industry; (2) tailor its charges to more accurately reflect the agency's costs of supervising institutions and their affiliates; and (3) provide institutions and their affiliates with consistent and predictable assessments to facilitate financial planning.

Consistent with these principles, OTS is proposing several amendments to its existing assessments rule. OTS expects to implement the proposed changes in the July 2004 semi-annual assessment.

OTS proposes the following changes. First, OTS proposes to eliminate most examination fees for SLHCs and instead charge semi-annual assessments to these entities. In addition, OTS proposes to revise the assessment procedures for savings associations by eliminating the alternative calculation for the asset size

component currently available to small "qualifying savings associations."

A. SLHC Semi-Annual Assessment

Under the existing assessment regulation at 12 CFR 502.50, OTS may assess fees for examining or investigating savings association affiliates, including SLHCs. OTS currently charges SLHCs for time spent conducting on-site examinations and working on off-site examination related issues.

As SLHCs have become more complex in both structure and nature of operations, OTS staff has spent substantially more off-site time addressing supervisory and examination related issues, as well as monitoring the financial condition of SLHCs. To attempt to better capture off-site time spent on these supervisory issues, OTS enhanced its system for tracking time devoted by regional and headquarters staff to specific SLHCs, and issued a Thrift Bulletin stating that OTS would bill SLHCs directly for these off-site services. Thrift Bulletin 48-19 (September 23, 2003).

Following the publication of the Thrift Bulletin, various members of the industry contacted OTS to discuss the proposed assessment of off-site examination hours. In addition to industry feedback, OTS conducted an analysis of off-site examination time records and collected input from staff on the process of collecting and tracking off-site examination time. Based on the industry and staff feedback, OTS has determined that the administrative burden of collecting and billing off-site hours outweighs the cost-recovery benefit.

In response to these developments, OTS is proposing a revision of its assessment regulation to permit OTS to recoup supervisory expenses related to the examination of SLHCs through semi-annual assessments rather than to directly bill for OTS hours. In connection with this change, OTS will cease charging most fees connected with staff time spent on SLHC and affiliate examination related issues.³

OTS's goal is to tailor its charges in relation to its supervisory efforts and to provide transparency and predictability to the industry regarding costs. The current system primarily bases SLHC fees on on-site examiner hours. This method does not capture the significant

amount of OTS staff time devoted to off-site monitoring and supervision of SLHCs. Moreover, the current system can result in sharply fluctuating or unexpected examination billings. As conditions and activities at the SLHC change from year-to-year, OTS attempts to adjust its examination scope to conduct its work in a risk-focused manner. Therefore, examiners do not spend the same amount of time at a particular SLHC during each examination. The time spent on-site can also vary considerably depending upon the amount of time spent off-site both in preparation for and concluding the examination. OTS believes that the recovery of supervisory costs based on regular assessments offers a measure of predictability as to the amount and the timing of payments and will aid SLHCs in their budgetary planning processes.

OTS believes that the proposed change will better support our risk-focused examination and supervisory processes and encourage efforts to perform exam related SLHC work off premise, when possible. With SLHC assessment fees set at fixed rates based on a variety of factors, staff will be encouraged to conduct its SLHC supervision in the most effective and efficient manner based on each SLHC's overall profile. With fixed assessments, staff will not feel undue pressure to expand or restrict on-site examination time due to concerns about the potential examination charges.

In today's rulemaking, OTS proposes to eliminate most examination related fees for SLHCs, and substitute semi-annual assessments. In establishing the proposed assessment structure, OTS is aware that every type of SLHC does not require an equal amount of supervisory attention. Accordingly, OTS has developed a rule that considers important factors, such as the complexity and risk of the SLHC enterprise, the total amount of SLHC assets, the organizational form of the SLHC, and the condition of SLHCs in the holding company structure.

1. Assessment of Top-Tier SLHCs

In most cases, OTS performs only one examination of each SLHC structure, even though the examination often includes a review of multiple tiers of direct and indirect thrift ownership. Because our SLHC examination and supervisory efforts consider the entire holding company structure, OTS does not propose to assess any charge on intermediate-level SLHCs in a holding company structure. Instead, the proposed rule would institute a semi-annual assessment only on the top-tier SLHC. The top-tier SLHC is defined as

¹ 12 U.S.C. 1467(k). See also 12 U.S.C. 1462a, 1463, 1467, 1467a.

² 12 U.S.C. 1467(a) and (b) and 1467a(b)(4). See also 12 U.S.C. 1467(d) (trust examinations of savings associations).

³ OTS will, however, retain the authority to charge a fee to recover extraordinary expenses related to examination, investigation, regulation, or supervision of savings associations and their affiliates. 12 CFR 502.60(e). OTS will also continue to charge application fees as outlined in TB 48-19 (September 23, 2003).

the highest level of ownership by a registered holding company in the holding company structure.

Occasionally two or more SLHCs own a controlling interest in a savings association. This occurs, for example, where two companies each directly owns 50 percent of the savings association's voting stock. Where there are two or more distinct controlling interests in a savings association, OTS examines each ownership structure separately. Accordingly, OTS would impose a semi-annual assessment on the top-tier SLHC in each ownership path. OTS would *not* reduce the amount of the assessment to reflect overlaps in these ownership structures.

In some cases, a top-tier SLHC is a trust that holds a controlling interest in an intermediate-tier SLHC. When OTS examines such structures, the vast majority of its efforts are expended in the review of the intermediate tier SLHC. OTS specifically requests comment on whether it should assess the intermediate SLHC, rather than the top-tier SLHC, in these instances.

2. Calculation of Semi-Annual Assessment

OTS intends to calculate the semi-annual assessments for most SLHC enterprises under the procedures described at section II.A.2.a. of this preamble. OTS is also considering assessing those SLHCs that are large and particularly complex enterprises (conglomerates) under a separate assessment procedure described at section II.A.2.b. of this preamble.

a. Calculation of Semi-Annual Assessment—In General. OTS intends to calculate the semi-annual assessments for most SLHC enterprises as follows. First, OTS would impose a base assessment amount on top-tier SLHCs. OTS would then add up to three components to this base assessment amount. These three components would be based on the risk or complexity of the SLHC's business, its organizational form, and its condition. See proposed § 502.26. The calculation of the base charge and the three components is discussed below.

Base Charge. As noted above, OTS will establish the amount of the base assessment charge for top-tier SLHCs. The amount of the charge will reflect OTS's estimate of the base cost of conducting on- and off-site supervision of small low risk, noncomplex SLHCs. OTS anticipates that these costs will reflect the costs of conducting on-site examinations using the abbreviated holding company examination

program,⁴ conducting off-site activities in preparation for such an examination,⁵ and performing off-site monitoring between examinations.⁶ OTS also will recover a portion of its operating costs, such as the cost of OTS facilities and examination support personnel allocated to these activities.

OTS is currently considering establishing a fixed charge of \$ 3,000 for each semi-annual assessment. This charge would equate to approximately 21 hours at OTS's current billing rate of \$145 per hour. OTS will separately publish the amount of the final fixed charge in a Thrift Bulletin. We specifically request comment on the amount of this base charge.⁷

Risk and Complexity Component. The first component of the general SLHC semi-annual assessment is the risk and complexity component. OTS will compute the amount of this component using schedules that set out charges based on OTS holding company risk classifications and total consolidated holding company assets.

Currently, OTS classifies SLHCs into two categories.⁸ This process distinguishes low risk or noncomplex holding company enterprises (Category I) from those that have complex operations or structures or exhibit a higher risk profile (Category II). To recognize that OTS spends greater resources to supervise Category II SLHCs, the proposed rule would permit OTS to establish separate risk and complexity component schedules for different categories of SLHCs.⁹

⁴ See Holding Company Handbook, Section 720, Abbreviated Holding Company Examination Program.

⁵ This would include, for example, the costs of completing pre-examination procedures and the risk classification checklist for a low risk, noncomplex SLHC. See Holding Company Handbook, Section 710 Holding Company Administrative Program.

⁶ These costs would include the costs to review and analyze basic reports filed by the savings association and SLHCs (e.g., Schedule HC of the Thrift Financial Report (TFR), the SLHC's quarterly H-(b)11 reports, and relevant private sector information).

⁷ The amounts included as examples in this preamble are subject to change in the Thrift Bulletin implementing the final rule. These amounts reflect OTS's current costs and the proposed assessment structure. Because OTS cannot predict what its final rule will look like, OTS cannot determine with certainty what assessment amounts will appear in the implementing Thrift Bulletin. At the same time, OTS wants to be as informative as possible about potential assessments under the proposed rule. It hopes that SLHCs will find the proposed amounts useful in determining how the proposed regulation may affect them.

⁸ See Holding Companies Handbook, Section 100, Supervisory Approach, and Section 710, Administrative Program.

⁹ There is also a limited, select number of large and complex enterprises (conglomerates), which OTS will assess under a separate assessment

In assigning a particular SLHC to a risk category, OTS assesses the following factors:

- *SLHC financial condition.* OTS will review whether the SLHC lacks a consistent source of reliable cash flow and stable earnings from operations, other than proceeds from the thrift or affiliates that are regulated financial entities; is significantly leveraged, either with high debt levels, hybrid instruments with debt-like features, or highly volatile instruments; has major investments that can rapidly require significant cash expenditures; is in a cyclical industry that is distressed or experiencing adverse trends; has a history of volatile operations; or has recently had a downgrade in debt rating by a major debt rating agency.

- *Financial independence.* OTS will consider whether the savings association or affiliates that are regulated financial entities are dependent on the SLHC for access to capital markets and whether they are unlikely to survive the financial collapse of the SLHC or a major SLHC affiliate.

- *Operational independence.* OTS will determine whether the management and board of the savings association or affiliates that are regulated financial entities consistently act in a manner beholden to the SLHC; their operational systems are dependent on the SLHC or any affiliate; the thrift or affiliates that are regulated financial entities have few full time employees dedicated to them; audit functions are consolidated within the SLHC, rather than in a separate audit department; key functions are performed by the SLHC or any other affiliate; the compensation of employees is tied directly or indirectly to the performance of the SLHC; or there are significant or abusive inter-company or insider transactions.

- *Reputational risk.* In reviewing this factor, OTS reviews whether the public identity of the thrift or affiliates that are regulated financial entities are linked to the SLHC through similar names or marketing strategies; whether there is significant cross-selling of proprietary products; whether the thrift and affiliates that are regulated financial entities serve only to facilitate the sales of SLHC services and products; or whether all assets or liabilities of the thrift or affiliates that are regulated financial entities come from the SLHC or other affiliates.

- *Management experience.* In reviewing this factor, OTS considers the management experience of the SLHC in

procedure described at section II.A.2.b. of this preamble.

running regulated financial entities; whether the thrift (or affiliates that are regulated financial entities) are *de novo* entities or have existing management with a proven track record; whether the SLHC is newly established or has a record of successful operation; or whether the SLHC is engaged in a significantly different business other than financial services.

If a holding company enterprise is classified as Category I, OTS considers the structure to be noncomplex and to have relatively low risk. OTS examination and supervision of these entities requires limited OTS resources. Typically, OTS will examine these entities using an abbreviated examination program, although the examination staff may also apply some of the more detailed procedures from

the CORE Holding Company Examination Program.¹⁰ OTS intends to assess these enterprises a lower amount under the risk and complexity component.

Category II holding company structures, on the other hand, include complex structures and entities that exhibit characteristics that present a higher degree of risk. OTS examinations of these entities generally require greater resources in order to review the current and prospective risks that the entity may pose to the thrift. Usually, OTS will examine these entities using the CORE Holding Company Examination Program, although all CORE procedures may not be required.

Similar to the size component currently assessed on thrifts, amounts assessed under the risk and complexity

component would increase as the amount of the total consolidated SLHC assets increase.¹¹ This would reflect the fact that OTS's supervisory efforts and related costs typically increase as the overall size of the top-tier SLHC increases. Because a flat rate for all asset sizes would fail to reflect economies of scale in the supervision of larger structures, the scheduled amounts established under this section would also reflect marginal assessment rates that decrease as asset size increases.

OTS will establish and publish these schedules in a Thrift Bulletin. To assist commenters in assessing the impact of the proposed rule, OTS is considering establishing the following schedules under the risk and complexity component:¹²

SCHEDULE FOR CATEGORY I SLHCs

If you are a top-tier Category I SLHC and your total consolidated assets are . . .		Your risk and complexity component is . . .		
Over . . .	But not over . . .	This amount . . .	Plus—this marginal rate . . .	Of assets over . . .
\$0	\$150 Million	\$0	N/A	\$0.
\$150 Million	\$250 Million	0	0.000007500000	\$150 Million.
\$250 Million	\$500 Million	750	0.000003000000	\$250 Million.
\$500 Million	\$1 Billion	1,500	0.000002000000	\$500 Million.
\$1 Billion	\$5 Billion	2,500	0.000000500000	\$1 Billion.
\$5 Billion	\$50 Billion	4,500	0.000000055556	\$5 Billion.
\$50 Billion	\$100 Billion	7,000	0.000000040000	\$50 Billion.
\$100 Billion	\$300 Billion	9,000	0.000000017500	\$100 Billion.
Over \$300 Billion		12,500	0.000000007857	\$300 Billion.

SCHEDULE FOR CATEGORY II SLHCs

If you are a top-tier Category II SLHC and your total consolidated assets are . . .		Your risk and complexity component is . . .		
Over . . .	But not over . . .	This amount . . .	Plus—this marginal rate . . .	Of assets over . . .
\$0	\$150 Million	\$1,000	0.00001333335	\$0.
\$150 Million	\$250 Million	3,000	0.00001000000	\$150 Million.
\$250 Million	\$500 Million	4,000	0.00000800000	\$250 Million.
\$500 Million	\$1 Billion	6,000	0.00000600000	\$500 Million.
\$1 Billion	\$5 Billion	9,000	0.00000225000	\$1 Billion.
\$5 Billion	\$50 Billion	18,000	0.00000017778	\$5 Billion.
\$50 Billion	\$100 Billion	26,000	0.00000014000	\$50 Billion.
\$100 Billion	\$300 Billion	33,000	0.00000006000	\$100 Billion.
Over \$300 Billion		45,000	0.00000002000	\$300 Billion.

In applying the assessment schedules, OTS will use the most recent risk classification assigned by OTS of which a SLHC enterprise has been notified in writing before an assessment's due date. OTS does not currently inform SLHC enterprises whether they are identified

as a Category I or Category II holding company. At publication, approximately 80 percent of SLHCs are Category I. To assist commenters in responding to the issues raised in this proposed rulemaking, OTS regional staff will

inform SLHC enterprises of their risk classification category upon request.

Using the proposed schedule, the risk and complexity component for a Category I SLHC with total consolidated assets of \$1.0 billion is \$2,500. Assuming the organizational form

¹⁰ The CORE Holding Company Examination Program focuses on four primary areas of review: Capital, Organizational Structure, Relationship and Earnings. Holding Company Handbook, Section 730, CORE Holding Company Examination Program.

¹¹ OTS would use total consolidated top-tier SLHC assets, as reported in Schedule HC of the TFR. Where the depository institution does not submit Schedule HC, OTS would use consolidated assets reported on the quarterly report H-(b)11. OTS would use the September 30 TFR or report H-(b)11 to determine amounts due at the January 31

assessment; and the March 31 TFR or report H-(b)11 to determine amounts due at the July 31 assessment.

¹² See footnote 7.

component and condition component do not apply to the SLHC, OTS would add the base assessment amount (\$3,000) and the risk and complexity component (\$2,500), and would impose a semi-annual assessment of \$5,500 on this SLHC.

Organizational Form Component. The second component of the general SLHC semi-annual assessment is the organizational form component. OTS-regulated SLHCs can own thrifts in a variety of forms, including stock holding companies, mutual holding companies, and trust holding companies. Certain SLHCs own thrifts that operate as trust only institutions and do not accept insured deposits from the public. In addition, OTS regulates certain holding companies under section 10(l) of the HOLA, which permits a state savings bank (or state cooperative bank) to elect to be treated as a savings association for the purposes of regulating the holding company.¹³

OTS may incur different supervisory costs to properly supervise SLHC with a particular organizational form. To allow OTS to tailor its assessments to these costs of supervising a particular form of SLHC, the proposed rule would permit OTS to modify the amount of the assessment charged under the organizational form component. OTS would compute the amount of the organizational form component by adding the base assessment to the risk and complexity component, and multiplying this total by a factor (positive or negative) established for the particular organizational form. OTS would establish the applicable factors in a Thrift Bulletin. See proposed § 502.28.

OTS is currently considering applying this component only to section 10(l) holding companies. OTS regulation of section 10(l) holding companies presents many challenges. OTS's primary regulatory goal for section 10(l) holding companies is the same as its regulatory goal for SLHCs—to understand how holding company operations may affect the operations of the subsidiary depository institution. When OTS examines a SLHC that controls a savings association, it already has a thorough knowledge of thrift operations because it has examined the thrift. As a result, OTS can focus its primary efforts on understanding the

operations of the SLHC. When it undertakes the examination of a section 10(l) holding company, however, OTS has little direct information on the operations of the state subsidiary depository institution and must undertake a more extensive review to understand those operations. OTS is also responsible for ensuring that the state subsidiary depository institution complies with a number of requirements applicable under section 10 of the HOLA. For example, a state savings bank (or a cooperative bank) that is deemed to be a savings association for purposes of section 10 of the HOLA must comply with section 10(d) of the HOLA, which subjects it to additional transactions with affiliate restrictions.¹⁴ In addition, section 10(f) of the HOLA requires the subsidiary insured institution to file advance notices of dividend declarations with OTS. OTS must also ensure that the state savings bank (or a cooperative bank) meets the requirements of a qualified thrift lender. See 12 U.S.C. 1467a(l)(2).

This review also requires OTS to work closely with other federal and state regulators. For example, OTS examiners must communicate with these regulators to determine whether they have any special concerns with the depository subsidiary/holding company relationship. They must also obtain data from one or more of 50 state regulators, which may or may not be in an automated format readily transferable and usable by OTS. OTS also attempts to coordinate with appropriate regulators to conduct its examination of section 10(l) holding companies in conjunction with the examination of the subsidiary depository institution.

To assist commenters in assessing the impact of the proposed rule, OTS is considering establishing an organizational form component multiplier of 50 percent for section 10(l) holding companies.¹⁵ Building on the example described above, the base assessment (\$3,000) plus the risk and complexity component for a Category I SLHC with consolidated assets of \$1.0 billion (\$2,500) would total \$5,500. If this SLHC is a section 10(l) holding company, its complexity component would be an additional \$2,750 (50 percent times \$5,500). Assuming the SLHC was not subject to the condition component discussed below, its semi-annual assessment would be \$8,250.

OTS specifically requests comment whether the organizational form component should apply to other types of SLHCs. For example, OTS supervises

several large insurance companies and securities firms that control savings associations that provide only trust services and do not accept insured deposits from the public. Because the proposed assessment is based on the amount of consolidated holding company assets, OTS is concerned that the assessment for these companies, as calculated under the proposed rule, may not correspond to the actual costs of supervision. Under the proposed rule, an organizational form component may be a positive or negative amount. In these instances, it may be appropriate to calculate a negative amount under the organizational component. Accordingly, OTS specifically requests comment on how it should treat SLHCs where the sole savings association in the structure is a trust-only institution.

Condition Component. The third component of the general SLHC assessment is the condition component. Under proposed § 502.29, OTS would add an additional amount to an assessment if the most recent examination rating assigned to the top-tier SLHC (or the most recent examination rating assigned to any savings and loan holding company directly or indirectly controlled by the top-tier SLHC) was “unsatisfactory.”¹⁶ OTS will use the most recent examination rating of which the SLHC has been notified in writing before an assessment due date.

Under OTS's holding company rating system, an unsatisfactory rating is reserved for SLHCs that have a detrimental or burdensome effect on the thrift. These companies typically exhibit troublesome operating weaknesses. Either the SLHC inordinately relies on the thrift for cash flow, revenue, or dividends, or the thrift is inordinately reliant upon the SLHC for critical operating systems. Without immediate corrective action, the thrift's viability may be impaired.

Historically, OTS has not frequently assigned unsatisfactory ratings to SLHCs. Currently, only 11 SLHCs have unsatisfactory ratings.¹⁷ Nonetheless, OTS must devote considerably more resources to the supervision of these few SLHC structures than it devotes to SLHCs with satisfactory or above average ratings. For similar reasons, OTS imposes an additional assessment amount on savings associations that receive a “3,” “4,” or “5” rating under the Uniform Financial Institutions Rating System (UFIRS) (also referred to

¹³ By making such an election, the holding company is regulated by OTS as a SLHC for purposes of section 10 of the HOLA, rather than by the Federal Reserve Board as a bank holding company. However, another appropriate federal banking regulator and the appropriate State regulator, not OTS, continue to be the primary regulators of the subsidiary state bank or cooperative bank.

¹⁴ See section 11 of the HOLA. 12 U.S.C. 1468.

¹⁵ See footnote 7.

¹⁶ See Holding Companies Handbook page 200.8.

¹⁷ These numbers are based on ratings data as of December 6, 2003.

as the CAMELS rating system). See 12 CFR 502.20.

Under the proposed rule, the condition component of the SLHC assessment would be equal to 100 percent of the total of the base assessment, the risk and complexity component, and the organizational component. As a result, the semi-annual assessment for a SLHC rated as unsatisfactory would be twice as much as a similar SLHC rated as satisfactory. Building on the example described more fully above, the semi-annual assessment for an unsatisfactory-rated, section 10(l) SLHC in Category I with consolidated assets of \$1.0 billion would be \$16,500.

b. *Calculation of Semi-Annual Assessment—Conglomerates.* OTS also supervises a limited, select number of large and particularly complex enterprises (conglomerates) that are made up of a number of different companies, or legal entities that operate in diversified fields. Unlike traditional SLHCs, these conglomerates are often highly integrated and are managed with less regard for separate corporate existence and with more focus on product lines or geographic areas. OTS examines and supervises these SLHCs along functional or centralized lines in order to match the SLHC's business practices. OTS's supervision of these entities often involves increased planning and off-site monitoring; a more formalized supervisory process that focuses OTS's efforts on major risk areas and evaluates the enterprise across business lines; and substantial coordination with other domestic and foreign regulators. See Holding Company Handbook, Section 940, Large and Complex Enterprises (Conglomerates). The examination and regulation of these conglomerates consume a disproportionate amount of agency resources vis a vis other SLHCs.

One of the goals of the proposed rule is to closely tailor OTS charges to the actual costs of supervision. To ensure that the costs of supervision for conglomerates are not subsidized by other SLHCs, OTS intends to assess complex conglomerates (*i.e.*, those SLHCs examined under section 940 of the Holding Company Handbook) under separate assessment procedures. OTS anticipates that these assessments will substantially exceed the amounts prescribed for other SLHCs under the proposed rule. OTS has not included rule text addressing these procedures as part of today's rulemaking because it believes that information gathered through the public comment process will be critical in crafting these procedures. However, OTS intends to describe the possible assessment

procedures in sufficient detail to permit their codification in the final rule.

OTS is considering various approaches to calculating assessments for complex conglomerates.¹⁸ For example, OTS may impose:

- A set charge or flat fee.
- A variable charge that is based upon a percentage of the total holding company assets or some other financial measure. The applicable percentage may vary as the size of holding company assets (or other financial measure) increases or may represent a multiple of the Category II SLHC assessment schedule.

- An additional charge for complex multinational conglomerates with activities that require a high degree of coordination with other regulators. See *e.g.*, Holding Company Handbook, Section 940A, Financial Activities in the European Union.

- A fee structure that combines some of the elements listed above. For example, OTS may include a flat fee for each complex conglomerate and an additional charge based on a percentage of total holding company assets.

OTS requests comment on these possible calculations and any alternative methods for calculating semi-annual assessments for complex conglomerates.

3. Collection of Semi-Annual SLHC Assessments

Under the proposed rule, OTS will bill SLHCs using the same procedures it uses to bill the semi-annual assessments from savings associations. OTS will bill each SLHC enterprise semi-annually for assessments. Assessments would be due January 31 and July 31 of each year. At least seven days before the assessment is due, OTS will mail the top-tier of the SLHC enterprise a notice that indicates the amount of the assessment, explains how OTS calculated the amount, and specifies when payment is due. See proposed § 502.25. The proposed rule would clarify that where an assessment due date is a Saturday, Sunday, or Federal holiday, assessments would be due on the first day preceding the due date that is not also a Saturday, Sunday or Federal holiday.

Proposed § 502.35(b) would permit a SLHC to establish an account at an insured depository institution and authorize OTS to debit the account for the semi-annual SLHC assessment. If the top-tier SLHC does not establish such an

account or does not maintain funds in the account sufficient to pay the semi-annual assessment when it is due, the proposed rule would permit OTS to charge the SLHC a fee to cover OTS administrative costs of collecting and billing for the assessment. This fee is in addition to interest on delinquent assessments charged under proposed § 502.45. Like other fees and assessments, OTS will establish the amount of the fee and publish the amount of the fee in a Thrift Bulletin.¹⁹

While OTS anticipates that it will have its new SLHC assessment structure in place for the July 2004 semi-annual assessment, it does not believe that it will be prepared to directly debit SLHC accounts at insured depository institutions until the January 2005 semi-annual assessment. Accordingly, OTS will not assess a fee for a SLHC's failure to establish the direct debit account until the January 2005 semi-annual assessment.

Proposed § 502.45(a) states that an assessment is delinquent if it is not paid by the due date. OTS will charge interest on delinquent assessments that accrues 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 calendar quarter preceding the assessment.

Pursuant to the authority in section 9(c) of the HOLA, proposed § 502.45(b) states that if a SLHC fails to pay an assessment within 60 days of the due date, OTS may assess and collect the assessment with interest from a subsidiary savings association. If a SLHC controls more than one savings association, the Director may assess and collect the assessment from each savings association as the Director may prescribe.²⁰

B. Savings Association Semi-Annual Assessment

Under 12 CFR part 502, OTS currently charges each savings association a semi-

¹⁹ OTS has also made a clarifying amendment to existing § 502.25(a). This rule requires every savings association that is a member of a Federal Home Loan Bank (FHLB) to maintain a demand deposit account at the FHLB with sufficient funds to pay the assessment. Some FLHBs no longer offer demand deposit accounts to their members. Accordingly, the proposed rule would require these thrifts to maintain an account at the association. OTS will directly debit these accounts for the amount of the assessment. See proposed § 502.25(a)(1) and (2).

²⁰ This provision is based on existing § 502.75 and 12 U.S.C. 1467(c). If OTS collects the SLHC assessment from the thrift in this manner, the thrift's payment will be considered to be an unsecured loan to the SLHC and would raise issues under sections 23A and 23B of the Federal Reserve Act. 12 U.S.C. 371c and 371c-1.

¹⁸ In addition to this separate assessment procedure, OTS may still exercise its existing authority to recover extraordinary expenses related to the examination, investigation, regulation, or supervision of complex conglomerates and their affiliates under 12 CFR 502.60(e).

annual assessment. OTS determines each institution's semi-annual assessment by totaling three components. These components address the following factors:

- *Asset size.* To compute the asset size component, OTS applies an assessment rate to the total asset size of the institution as reported on the TFR. The applicable rate schedule incorporates OTS fixed rates as an explicit fixed charge and marginal assessment rates that decrease in size as the asset size increases. OTS provides a lower alternate asset size component for certain small savings associations ("qualifying savings associations").

- *Condition.* OTS assesses an additional assessment amount based on the condition of the institution, as determined by the most recent composite rating under the CAMELS rating system. This additional amount is equal to 50% of the size component for 3-rated institutions, and 100% percent of the size component for 4- or 5-rated institutions.

- *Complexity.* The complexity component addresses certain complex assets or activities, including trust assets administered by a thrift, assets covered by a thrift's recourse obligations or direct credit substitutes, and loans serviced by the thrift for others. OTS applies the complexity component only where the thrift exceeds \$1 billion in an asset category.

As noted above, OTS provides an alternate asset size component calculation for qualifying savings associations. To be eligible for this calculation, a savings association must have been a savings association as of January 1, 1999, and its total assets must not exceed \$100 million at the end of the current or any previous quarter. Under the alternate calculation, the asset size component for a qualifying savings association is its assessment calculated under pre-1998 assessment tables.

OTS developed the alternative asset size component in its 1998 rulemaking, 63 FR 65663 (November 30, 1998). One of the primary purposes of the 1998 rule changes was to make OTS assessments

more equitable for institutions of all sizes. In analyzing the effects of various assessment rates, however, OTS feared that its changes to the asset size component would have a disproportionate impact on the smallest institutions, which might not have been in a position to absorb new costs. 63 FR 65665.

OTS is proposing to abandon the alternative asset size computation for qualifying savings associations. OTS's assessment regulation, to the maximum extent possible, attempts to tailor rates and charges to the agency's costs of supervising particular institutions. While OTS believes that it may have been appropriate to provide qualifying savings associations with an initial period to adjust to the 1998 assessment regime, OTS questions whether it is equitable to continue to require non-qualifying savings associations to carry some of the cost burdens for qualifying savings associations.

Non-qualifying savings associations, which include some small savings associations,²¹ have now carried an extra burden for qualifying institutions for five years. The burden has not remained static, but rather has increased over the five-year period, as a result of two factors.

First, more savings associations use the alternative computation method. The alternative computation did not initially benefit all qualifying savings associations. Based on the assessment rates for the January 1999 semi-annual assessment, only qualifying savings associations with less than \$67.5 million in assets benefited from lower assessments under the alternative asset size computation. As a result of subsequent revisions to OTS's assessment schedules reflecting inflation and increased costs, all qualifying savings associations now benefit from the alternative computation.

In addition, non-qualifying savings associations have shouldered, and in the absence of regulatory change will continue to shoulder, an increasing burden as OTS modifies its assessment schedule to adjust for increases in costs.

As noted above, assessments computed using the alternative asset size computation remain fixed at 1998 levels, even as OTS has periodically increased the base assessment rate and marginal rates to reflect inflation.²² As a result, qualifying savings associations now receive a much greater reduction to their assessment. For example, the asset size component computed under the standard method for an institution with \$67 million in assets was \$11,584 for the January 1999 semi-annual assessment. The alternate computation reduced the asset size component to \$11,575, a net reduction of only \$9. See TB 48-15 (November 30, 1998). For the January 2004 semi-annual assessment, however, the asset size component computed under the standard method for a \$67 million institution is \$13,252. The alternate computation reduced the asset component to \$11,575, a net reduction of \$1,677. Because the alternate computation remains fixed at 1998 levels, the amount of this disparity under the alternative computation will become more pronounced as OTS revises its assessment schedules upward over time.

OTS believes that all institutions, even small institutions, should be able to plan for, adjust to, and carry the burden of inflation-related and cost changes to the assessments schedule. Accordingly, OTS does not believe that it is appropriate to hold assessments for certain institutions at pre-1998 levels, and compel other institutions to carry an increased burden. Accordingly, OTS proposes to delete the alternative computation under the asset size computation.

To help interested persons understand this proposal and to provide the greatest opportunity to review the probable assessment rates that will apply to all savings associations, OTS is publishing the asset size schedule that will apply if the proposed rule is finalized without substantive changes. This schedule reflects the rates for non-qualifying small institutions contained in TB 48-20 (December 2, 2003).

If total assets (SC60) is:		The size component is:		
Over:	But not over:	This amount:	Plus:	Of excess over:
\$0	\$67 million	\$2,042	.000116731	\$0.
\$67 million	\$215 million	13,252	.000111160	\$67 million.
\$215 million	\$1 billion	29,769	.00008928	\$215 million.
\$1 billion	\$6.03 billion	99,853	.00007142	\$1 billion.

²¹ While the alternate asset size calculation was originally promulgated to relieve the disproportionate impact of the size component on small institutions, this calculation does not benefit

all small institutions. Savings associations organized after 1998 may not take advantage of the changes and institutions that go over \$100 million in assets do not qualify for the alternative program,

even when their asset size returns to below \$100 million.

²² See TB 48-20 (December 2, 2003).

If total assets (SC60) is:		The size component is:		
Over:	But not over:	This amount:	Plus:	Of excess over:
\$6.03 million	\$18 billion	459,096	.00006126	\$6.03 billion.
\$18 billion	\$35 billion	1,192,378	.00004518	\$18 billion.
\$35 billion .....	.....	1,960,438	.00003388	\$35 billion.

By contrast, the alternative size assessment schedule for qualifying small institutions proposed for deletion in this rule is as follows:

Alternative size assessment schedule for qualifying small institutions				
Over:	But not over:	This amount:	Plus:	Of excess over:
\$0	\$67 million	\$0	.000172761	\$0.
\$67 million	\$100 million	11,575	.000133872	\$67 million.

OTS encourages comments on all aspects of this proposal.²³

III. Solicitation of Comments Regarding the Use of Plain Language

Section 722 of the Gramm-Leach Bliley Act (12 U.S.C. 4809) requires federal banking agencies to use “plain language” in all proposed and final rules published after January 1, 2000. OTS invites comments on how to make this proposed rule easier to understand. For example:

- (1) Have we organized the material to suit your needs? If not, how could the material be better organized?
- (2) Do we clearly state the requirements in the rule? If not, how could the rule be more clearly stated?
- (3) Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?
- (4) Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

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 1980,²⁴ OTS has evaluated the impact that this final rule will have on small businesses, small organizations, and small governmental jurisdictions. As required, OTS has prepared the following initial regulatory flexibility analysis (IRFA).

A. Legal Basis for the Rule; Objectives of the Rule

The HOLA authorizes the Director to assess fees against savings associations and holding companies to fund OTS’s direct and indirect expenses as the Director deems necessary or appropriate.²⁵ OTS also may assess savings associations and affiliates of savings associations for the costs of conducting examinations.²⁶

OTS has promulgated regulations implementing this authority at 12 CFR part 502. Under these rules, OTS currently charges each savings association a semi-annual assessment, which includes a size component, a condition component, and a complexity component. In addition, OTS charges thrifts an examination fee for thrifts that have trust assets that are under the \$1 billion complexity component threshold. OTS also charges SLHCs and other thrift affiliates fees for investigating and examining their operations. These examination related fees are assessed at an hourly rate for examiner time spent preparing for and conducting the examination.

OTS is proposing this rule to more accurately apportion the cost of OTS supervision among savings associations, SLHCs, and other affiliates. The agency has three primary goals: (1) Keep charges as low as possible while providing the agency with the resources essential to effectively supervise a changing industry; (2) tailor its charges to more accurately reflect the agency’s costs of supervising institutions and their affiliates; and (3) providing institutions and their affiliates with consistent and predictable assessments to facilitate financial planning.

²⁵ 12 U.S.C. 1467(k). See also 12 U.S.C. 1462a, 1463, 1467, 1467a.

²⁶ 12 U.S.C. 1467(a) and (b) and 1467a(b)(4). See also 12 U.S.C. 1467(d) (trust examinations of savings associations).

B. Impact of the Rule

The proposed rule would affect small savings associations and small SLHCs. It would not affect other small businesses, small organizations, or small governmental jurisdictions. OTS addresses the impact of the rule on small savings associations and small SLHCs below. OTS also considered various alternatives to the proposed rule to reduce the impact of the rule on small savings associations and small SLHCs. These alternatives are also discussed below.

1. Effect on Small SLHCs

a. *Size standard for small SLHCs.* The Small Business Administration (SBA) prescribes size standards for various economic activities and industries using the North American Industry Classification System (NAICS).²⁷ Under the SBA’s standards, companies that are primarily engaged in holding securities of (or other equity interests in) depository institutions for the purpose of controlling those companies are addressed at NAICS Codes 551111 and 551112 (Office of Bank Holding Companies and Offices of Other Holding Companies). Companies within this group are considered to be small if they have annual receipts of \$6 million or less. Companies that are primarily engaged in holding the securities of depository institutions and *operating* these entities are classified under NAICS Codes 522110–522190. Companies classified in this group are considered to be small if their total assets are less than \$150 million.

In this IRFA, OTS has analyzed the impact of this rule using both the \$150 million asset size standard and the \$6 million annual receipts standard. OTS specifically requests comment on its use of these standards. Commenters are

²⁷ 13 CFR part 121.

²³ See footnote 7.

²⁴ 5 U.S.C. 605(b).

invited to address whether these or other size standards are appropriate.

b. *Impact on small SLHCs.* The proposed rule would replace examination fees for SLHCs with semi-annual assessments on each top-tier SLHC. For small SLHCs, OTS would impose a base assessment amount, and would add up to three components to this base amount. The three components would be based on the risk and complexity of the SLHC's business, its organizational form, and its condition. No small SLHC would be subject to the alternative assessment on conglomerate enterprises.

OTS calculates that there are 946 OTS-regulated SLHCs, including many intermediate holding companies within a single ownership structure. The proposed rule would charge semi-annual assessment fees only on the top-tier SLHC in each holding company structure. OTS regulates 509 top tier SLHCs. Of these 509 top tier SLHCs, 163 have total consolidated assets of less than \$150 million and are considered to be small under the asset size standard. OTS estimates that 103 top-tier SLHCs have annual receipts of \$6 million or less and would be considered to be small under the annual receipts standard.²⁸

The proposed assessment amount would affect all of these small SLHCs in

varying degrees. Specifically, the various aspects of the rule would have the following impacts:

Base assessment charge. The base assessment charge will affect all small SLHCs. Under the current proposal, these small SLHCs would be assessed a charge of \$3,000 for each semi-annual assessment (or \$6,000 per year).

Risk and complexity component. Under the anticipated schedules, OTS is not proposing to impose any additional charge on small Category I SLHCs under the risk and complexity component. Small Category II SLHCs, however, would be assessed an additional semi-annual charge of \$1,000 to \$3,000 (or \$2,000 to \$6,000 per year) under the anticipated schedules, depending on total consolidated assets.

There are 147 small Category I SLHCs and 16 small Category II SLHCs under the asset size standard. OTS estimates that there are 93 small Category I SLHCs and 10 small Category II SLHCs under the annual receipts standard.²⁹

Organizational form component. The proposed organizational form component would apply only to section 10(l) SLHCs. For small section 10(l) holding companies that are Category I SLHCs, this component would increase the semi-annual assessment by an additional 50 percent or \$1,500 (\$3,000 per year).³⁰ For small section 10(l)

holding companies that are Category II SLHCs, this component would also increase the semi-annual assessment by 50 percent. The increase to the semi-annual assessment for these SLHCs under this component would range from \$2,000 to \$3,000 (\$4,000 to \$6,000 per year).³¹ The actual amount of the increase will depend upon total consolidated SLHC assets.

OTS regulates 47 section 10(l) SLHCs. Nineteen of these section 10(l) SLHCs are small under the asset size standard. Of these 19 small section 10(l) SLHCs, 14 are Category I and 5 are Category II. OTS estimates that 12 section 10(l) SLHCs are small under the annual receipts standard, and that 9 of these small SLHCs are Category I and 3 of these SLHCs are Category II.

Condition component. The proposed rule would impose an additional charge on SLHCs that are rated "unsatisfactory." For these small SLHCs, the proposed condition component would increase the assessment by 100 percent. Applying the asset size standard, only 5 small SLHCs are rated unsatisfactory. Under the annual receipts standard, only 3 small SLHC are rated unsatisfactory.³²

The following chart summarizes the impact of the proposed rule on the semi-annual assessment for small SLHCs:

	Number of small SLHCs	A	B	C	D
		Base assessment amount ³³	Risk and complexity component ³⁴	Organizational form component ³⁵	Total semi-annual assessment ³⁶
Small Category I SLHCs that are not section 10(l) SLHCs.	133 (asset size standard) 84 (receipts standard)	\$3,000	\$0	N/A	\$3,000
Small Category II SLHCs that are not section 10(l) SLHCs.	11 (asset size standard) 7 (receipts standard)	3,000	*3,000	N/A	*6,000
Small Category I SLHCs that are section 10(l) SLHCs.	14 (asset size standard) 9 (receipts standard)	3,000	0	\$1,500	4,500
Small Category II SLHCs that are section 10(l) SLHCs.	5 (asset size standard) 3 (receipts standard)	3,000	*3,000	*3,000	*9,000

* Maximum.

³³ OTS has proposed a \$3,000 base semi-annual assessment amount for all SLHCs.

³⁴ Amounts in Column B are from the proposed schedule for the risk and complexity component.

³⁵ Amounts in Column C are 50% of the total of Column A + Column B.

³⁶ Amounts in Column D equal Column A + Column B + Column C.

As noted above, for the five SLHCs that are rated unsatisfactory, the amount

of the semi-annual assessment is doubled.

The amounts charged under the new assessments rule for SLHC would be

²⁸ OTS electronically collects information on total consolidated assets held by most SLHCs. However, it does not electronically collect annual receipts data. OTS has estimated the number of small SLHCs under the annual receipts standard by analyzing actual trailing 12-month revenues reported for 277 publicly traded SLHCs for the fiscal/calendar year ending December 31, 2003. Source: SNLDataSource. Using total revenue figures, OTS has concluded that approximately 20.2% of the 509 holding company structures are small under the annual receipts standard.

²⁹ As noted above, OTS does not electronically collect annual receipts data for SLHCs. OTS has estimated the number of small Category I and II SLHCs, small section 10(l) SLHCs, and small unsatisfactorily rated SLHCs under the annual revenues standard by applying the proportion of small SLHCs in these categories under the asset size standard.

³⁰ The additional semi-annual organizational charge of \$1,500 is 50 percent times the total of the base assessment component (\$3,000) plus the risk and complexity component for Category I SLHCs (\$0).

³¹ This \$2,000 to \$3,000 range for the semi-annual organizational component is 50 percent times the total of the base charge (\$3,000) plus the risk and complexity component for a Category II SLHC. As noted above, the risk and complexity component for a Category II SLHC will range from \$1,000 to 3,000.

³² OTS cannot provide a more specific breakdown regarding the impact of the condition component on each of these small SLHCs because such information may result in the public disclosure of sensitive and privileged supervisory rating information for specific SLHCs. See 12 CFR 510.5.

offset by the elimination of the periodic SLHC examination fees. Although the amount of this offset will vary from SLHC-to-SLHC, OTS estimates that the average examination for a small SLHC is conducted every 18 months, and consumes approximately 39 examiner hours. At the current OTS billing rate of \$145 per hour, OTS estimates that the average small SLHC will avoid on-site examination charges of \$5,655 or an annualized charge of \$3,770 per year.

In any event, OTS has considered alternatives to the proposed assessment rule. OTS considered, for example, assessing all SLHCs the same base assessment amount; computing the semi-annual assessment amount for all SLHCs using the same asset-based assessment schedule; and continuing to assess only on-site examination and off-site examination related fees rather than semi-annual assessments.

OTS does not believe that the first two alternatives would further the goal of tailoring OTS charges more closely to the costs of supervising various types of SLHCs, and could result in some SLHCs subsidizing the increased costs of

supervising others.³⁷ For the reasons set forth in the preamble, OTS further believes that continuing to assess examination fees would not provide SLHCs with consistency and predictability of assessments to facilitate financial planning.

OTS specifically requests comments on each of these alternatives, and any other alternatives that may minimize the impact of the rule on small SLHCs consistent with the goals of this rulemaking.

2. Effect on Small Savings Associations

This proposed rule would effect small savings associations by eliminating the alternative calculation of the size component currently available to certain small savings associations. To be eligible for this calculation, a savings association must have been a savings association as of January 1, 1999, and its total assets must not exceed \$100 million at the end of the current or any previous quarter.

Small savings associations are defined as institutions with assets under \$150 million.³⁸ OTS estimates that it regulates approximately 478 small

savings associations and that 289 of these small savings associations will take advantage of the alternative size calculation for the January 2004 assessment.

Under the alternate calculation, the asset size component for a qualifying savings association is its assessment calculated under pre-1998 assessment schedules, rather than the current assessment schedules. Unlike the pre-1998 assessment schedules, the current assessment schedules use rates that have been adjusted for inflation and include a base charge for certain fixed costs that are the same or nearly the same for all institutions. Because the amount of the size component varies with the size of the institution, the impact of the proposed change on the 289 small thrifts will vary. Using the most recent assessment table published in TB 48-20 for the January 2004 semi-annual assessment, the asset size component computed under the standard method and the alternative methods for institutions of various selected sizes is illustrated by the following chart:

IMPACT OF THE ALTERNATIVE SIZE COMPUTATION ON INSTITUTIONS OF SELECTED SIZES

Asset size	Asset size component computed under TB 48-20 schedules	Alternative asset size component computation	Net reduction of assessment
\$0 Million	\$2,042	\$0	\$2,042
\$35 Million	7,898	6,046	1,852
\$67 Million	13,252	11,575	1,677
\$100 Million	16,935	15,993	942

Approximately 20 of the 289 small savings associations are currently rated “3” and are subject to an additional assessment under the condition component. This additional assessment is equal to 50 percent of the size component. For these 20 thrifts, the overall benefit of the alternative size calculation is 150 percent of the amount in the final column of the chart. Thus, the overall semi-annual benefit from the alternative size calculation for any individual 3-rated savings association will range from \$1,413 to \$3,063, depending on the institution’s asset size. Three small savings associations are rated “4” or “5” and are subject to an additional assessment under the condition component that is equal to

100 percent of the size component. For these three institutions, the overall benefit of the alternative size calculation is 200 percent of figure in the final column of the chart. The overall semi-annual benefit from the alternative size calculation for any individual 4- or 5-rated savings association will range from \$1,884 to \$4,084, depending on the institution’s asset size.³⁹

OTS considered various alternatives to the proposed rule. For example, it considered retaining the alternative asset size component for qualifying savings associations, prescribing a separate asset size schedule for smaller institutions with a lower base assessment rate or lower rates for

smaller institutions, or phasing out the alternative schedule over time.

OTS’s assessment regulation, to the maximum extent possible, attempts to tailor rates and charges to the agency’s costs of supervising particular institutions. While it may have been appropriate to provide qualifying savings associations with an initial period to adjust to the assessment regulation originally adopted in 1998, it is not equitable to continue to require non-qualifying savings associations to carry the cost burdens for qualifying savings associations. Non-qualifying savings associations, which include many small savings associations,⁴⁰ have carried an extra burden for qualifying institutions for five years. As described

³⁷ Moreover, OTS believes that requiring unsatisfactory-rated SLHCs to pay for their extra supervisory costs will provide an added incentive for those SLHCs to promptly address the supervisory concerns that could adversely impact the depository subsidiary and to take other actions to improve their ratings.

³⁸ 13 CFR 121.201.

³⁹ See 12 CFR 502.20. These numbers are based on ratings data as of December 6, 2003. OTS cannot provide a more specific breakdown regarding the impact of the condition component on each of these small savings associations because such information may result in the public disclosure of

sensitive and privileged supervisory rating information for specific institutions. See 12 CFR 510.5.

⁴⁰ OTS estimates that 189 of the 478 institutions with assets under \$150 million are not qualifying savings associations.

above at Section II.B.1., the burden has not remained static, but rather has increased over the five-year period. OTS believes that all institutions, even small institutions, should be able to plan for, adjust to, and carry the burden of inflation-related and cost changes reflected in OTS's assessments schedule. Accordingly, OTS does not believe that it is appropriate to compel other institutions to continue to carry an increased burden.

OTS specifically requests comments on each of these alternatives, and any other alternatives that may minimize the impact of the rule on small savings associations consistent with the goals of this rulemaking.

C. Other Matters

The proposed rule imposes no reporting, recordkeeping, or other compliance requirements. The current savings association assessment and the new SLHC assessment would be based on information contained in TFRs or in report H-(b)11, which savings associations and their SLHCs otherwise must file with OTS. While state-regulated depository institutions held by section 10(l) SLHCs do not currently submit holding company asset size information to OTS in Schedule HC of the TFR, OTS is considering revising its TFR filing requirements to collect this information electronically through Schedule HC filings.

OTS will continue to use its current collection procedures for savings associations and would use similar procedures for billing and collecting semi-annual assessments from SLHCs.

No federal rules duplicate, overlap, or conflict with this final rule.

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 proposes to amend 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. In § 502.5, revise paragraphs (b) and (c) to read as follows:

§ 502.5 Who must pay assessments and fees?

* * * * *

(b) *Assessments.* If you are a savings association or a top-tier savings and loan holding company, and OTS regulates you 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.* If you make a filing 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 Director may charge a fee for any filing including

notices, applications, and securities filings. The Director may charge a fee for any service including 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 savings associations that administer trust assets of \$1 billion or less, and savings association affiliates. If OTS incurs extraordinary expenses related to examination, investigation, regulation, or supervision of a savings association or its affiliate, the Director may charge the savings association or the affiliate a fee to fund those expenses. Subpart B of this part describes OTS's fee procedures and requirements.

3. Revise part 502, subpart A to read as follows:

Subpart A—Assessments

Savings Associations—Calculation of Assessments

§ 502.10 How does OTS calculate the semi-annual assessment for savings associations?

(a) If you are a savings association, OTS determines your semi-annual assessment by totaling three components: Your size, your condition, and the complexity of your business. OTS determines the amounts of each component under §§ 502.15 through 502.25 of this part.

(b) 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 §§ 502.10 through 502.25 of this part, total assets are your total assets as reported on Thrift Financial Reports filed with OTS.

§ 502.15 How does OTS determine my size component?

(a) *Chart.* If you are a savings association, OTS uses the following chart to calculate your size component:

If your total assets are:		Your size component is:		
Over— Column A	But not over— Column B	This amount— base assess- ment amount Column C	Plus—marginal rate Column D	Of assets over— class floor 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.
18 billion	35 billion	C6	D6	18 billion.
35 billion .....	.....	C7	D7	35 billion.

(b) *Calculation.* 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.

§ 502.20 How does OTS determine my condition component?

(a) If you are a savings association, 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	50 percent of your size component.
4 or 5	100 percent of your size component.

(b) For the purposes of this section, OTS uses the most recent composite rating, as defined in 12 CFR part 516, of which you have been notified in writing before an assessment's due date.

§ 502.25 How does OTS determine my complexity component?

If you are a savings association and your portfolio exceeds any of the thresholds in paragraph (a) of this section, OTS will calculate your complexity component according to paragraph (c) of this section. If your portfolio does not exceed any of the thresholds in paragraph (a) of this section, your complexity component is zero.

(a) *Thresholds for complexity component.* OTS uses three separate thresholds in calculating your complexity component. You exceed a

threshold if you have more than \$1 billion in any of the following:

- (1) Trust assets that you administer.
- (2) The outstanding principal balances of assets that are covered, fully or partially, by your recourse obligations or direct credit substitutes.
- (3) The principal amount of loans that you service for others.

(b) *Assessment rates.* OTS will establish one or more assessment rates for each of the types of activities listed in paragraph (a) of this section. OTS will publish those assessment rates in a Thrift Bulletin.

(c) *Calculation of complexity component.* OTS separately considers each of the thresholds in paragraph (a) of this section in calculating your complexity component. OTS first calculates the amount by which you exceed any of those thresholds. OTS multiplies the amount by which you exceed any thresholds in paragraph (a) of this section by the applicable assessment rate(s) under paragraph (b) of this section. OTS then totals the results. This total is your complexity component.

Savings and Loan Holding Companies—Calculation of Assessments

§ 502.26 How does OTS calculate the semi-annual assessment for savings and loan holding companies?

(a) OTS will assess a base assessment amount on all top-tier savings and loan holding companies. The base assessment amount will reflect OTS's estimate of the base costs of conducting on- and off-site supervision of a noncomplex, low risk savings and loan holding company. OTS will establish the amount of the base assessment component in a Thrift Bulletin.

(b) OTS will add three components to the base assessment amount to compute the amount of the semi-annual assessment for top-tier savings and loan holding companies: a component based on the risk and complexity of the savings and loan holding company's business, a component based on its organizational form, and a component based on its condition. OTS determines

the amount of each component under §§ 502.27 through 502.29 of this part.

(c) For purposes of the semi-annual assessment of savings and loan holding companies:

(1) The top-tier holding company is the highest level of ownership by a registered holding company in the holding company structure.

(2) Total consolidated holding company assets are the total assets as reported on Thrift Financial Reports, Schedule HC. If Schedule HC is unavailable, OTS will use total assets reported on report H-(b)11. OTS uses information contained in the September 30 Thrift Financial Report or report H-(b)11 to determine amounts due at the January 31 assessment; and the March 31 Thrift Financial Report or report H-(b)11 to determine amounts due at the July 31 assessment.

§ 502.27 How does OTS determine the risk and complexity component for a savings and loan holding company?

(a) OTS computes the risk and complexity component for top-tier savings and loan holding companies using schedules that set out charges based on OTS holding company risk classifications and total consolidated holding company assets. OTS will establish these schedules in a Thrift Bulletin.

(b) For the purposes of this section, the holding company risk classification is the most recent risk classification assigned by OTS of which the savings and loan holding company has been notified in writing before an assessment's due date. OTS holding company risk classifications reflect OTS's assessment of a holding company's financial condition, financial independence, operational independence, reputational risk, and management experience, as more fully described in OTS Holding Company Handbook.

(c) OTS uses the following chart to compute the risk and complexity component under this section. OTS will establish the amounts in column C and D in the Thrift Bulletin.

If your total consolidated assets are . . .		Your risk and complexity component is . . .		
Over . . .	But not over . . .	This amount . . .	Plus—this marginal rate . . .	Of assets over . . .
Column A	Column B	Column C	Column D	Column E
\$0	\$150 Million .....	.....	.....	\$0.
\$150 Million	\$250 Million .....	.....	.....	\$150 Million.
\$250 Million	\$500 Million .....	.....	.....	\$250 Million.
\$500 Million	\$1 Billion .....	.....	.....	\$500 Million.
\$1 Billion	\$5 Billion .....	.....	.....	\$1 Billion.
\$5 Billion	\$50 Billion .....	.....	.....	\$5 Billion.
\$50 Billion	\$100 Billion .....	.....	.....	\$50 Billion.

If your total consolidated assets are . . .		Your risk and complexity component is . . .		
Over . . .	But not over . . .	This amount . . .	Plus—this marginal rate . . .	Of assets over . . .
Column A	Column B	Column C	Column D	Column E
\$100 Billion	\$300 Billion .....	.....	.....	\$100 Billion.
Over \$300 Billion .....	.....	.....	.....	\$300 Billion.

(d) To compute your risk and complexity component, find the row in the appropriate schedule that describes your total consolidated assets by referring to the amounts in Columns A and B. In that row, calculate how much your total consolidated assets exceed the class floor (Column E); multiply this number by your marginal rate (Column D); and add the product to the amount in Column C. The total is your risk and complexity component.

§ 502.28 How does OTS determine the organizational form component for a savings and loan holding company?

(a) OTS may determine that a particular organizational form used by savings and loan holding companies causes OTS to incur different supervisory costs, and may modify the assessment charged to such top-tier savings and loan holding companies under the organizational form component.

(b) OTS computes the organizational form component for top-tier savings and loan holding companies by adding the base assessment to the risk and complexity component, and multiplying this amount times a factor (positive or negative) established for the particular organizational form.

(c) OTS will establish applicable factors in a Thrift Bulletin. OTS may establish different factors for different organizational forms and based on the amount of total consolidated holding company assets.

§ 502.29 How does OTS determine the condition component for a savings and loan holding company?

(a) If the most recent examination rating assigned to a top-tier savings and loan holding company (or the most recent examination rating assigned to a savings and loan holding company controlled by the top-tier savings and loan holding company) was “unsatisfactory,” OTS will assess a charge under the condition component. The amount of the condition component is equal to 100 percent of the assessment amounts computed under §§ 502.26 through 502.28 of this part.

(b) For the purposes of this section, examination ratings are the ratings that OTS assigns under the OTS holding

company rating system. OTS uses the most recent rating of which the savings and loan holding company has been notified in writing before an assessment’s due date.

Payment of Assessments

§ 502.30 When must I pay my assessment?

OTS will bill you semi-annually for your assessments. Assessments are due January 31 and July 31 of each year, unless that date is a Saturday, Sunday, or Federal holiday. If the due date is a Saturday, Sunday or Federal holiday, your assessment is due on the first day preceding the due date that is not a Saturday, Sunday or Federal holiday. 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 do I pay my assessment?

(a) *Savings associations.* (1) If you are a member of a Federal Home Loan Bank that offers demand deposit accounts, 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.

(2) If paragraph (a)(1) of this section does not apply to you, OTS will directly debit an account you must maintain at your association.

(b) *Savings and loan holding companies.* You may establish an account at an insured depository institution and authorize OTS to debit the account for your semi-annual assessment. If you do not establish an account and maintain funds in the account sufficient to pay the semi-annual assessment when due, OTS may charge you a fee to cover its administrative costs of collecting and billing your assessment. This fee is in addition to interest on delinquent assessments charged under § 502.45 of this part. OTS will establish the amount of the administrative fee and publish the amount of the fee in a Thrift Bulletin.

§ 502.40 Will OTS refund or prorate my assessment?

(a) OTS will not refund or prorate your assessment, even if you cease to be a savings association or a savings and loan holding company.

(b) 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 will happen if I do not pay my assessment on time.

(a) Your assessment is delinquent if you do not pay it on the date it is due under § 502.30 of this part. 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 calendar quarter preceding the assessment.

(b) If a savings and loan holding company fails to pay an assessment within 60 days of the date it is due under § 502.30 of this part, the Director may assess and collect the assessment with interest from a subsidiary savings association. If a savings and loan holding company controls more than one savings association, the Director may assess and collect the assessment from each savings association as the Director may prescribe.

4. Revise § 502.50 to read as follows:

§ 502.50 What fees does OTS charge?

(a) The Director assesses fees for examining or investigating savings associations that administer trust assets of \$1 billion or less, and saving association affiliates. Because OTS recovers the ordinary costs of examining and investigating savings and loan holding companies through the semi-annual assessment under §§ 502.25 through 502.29 of this part, the Director will not generally charge an examination fee to a savings and loan holding company. “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 Condition of the Thrift Financial Report.

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

5. Revise § 502.75(b) to read as follows:

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

* * * * *

(b) *Failure to pay.* If you are a savings association and your holding company, affiliate, or subsidiary fails to pay any fee within 60 days of the date specified in a bill, the Director may assess and collect that fee, with interest, from you. If the holding company, affiliate, or subsidiary is related to 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: February 4, 2004.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

[FR Doc. 04-2846 Filed 2-9-04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003-SW-38-AD]

RIN 2120-AA64

Airworthiness Directives; Eurocopter Deutschland Model MBB-BK 117 A-1, A-3, A-4, B-1, B-2, and C-1

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the specified Eurocopter Deutschland (ECD) model helicopters. This proposal would require inspecting the vertical fin skin paneling to determine if it was manufactured with the correct wall thickness. This proposal is prompted by a report from the manufacturer that some vertical fins may have been produced with the wrong vertical fin skin thickness. The actions specified by this proposed AD are intended to prevent failure of the vertical fin and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 12, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003-SW-38-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0110, telephone (817) 222-5116, fax (817) 222-5961.

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 will be considered before taking action on the proposed rule. The proposals contained in this document 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 summarizing 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 mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2003-SW-38-AD." The postcard will be date stamped and returned to the commenter.

Discussion

The Luftfahrt-Bundesamt (LBA), the airworthiness authority for the Federal Republic of Germany, notified the FAA that an unsafe condition may exist on ECD Model MBB-BK117 helicopters,

Model A-1 up to B-2, serial number (S/N) all, and Model C-1, S/N 7500 up to 7545. The LBA advises that during tail boom production, metal sheeting of 0.6-millimeter (mm) thickness was found instead of the specified 0.8-mm thickness for the skin paneling of several tail booms.

ECD has issued Alert Service Bulletin No. ASB-MBB-BK117-30-109, Revision 1, dated July 3, 2003, which specifies measuring the wall thickness of the skin paneling of the vertical fin to determine the thickness. The LBA classified this service bulletin as mandatory and issued AD No. 2003-219, dated August 21, 2003, to ensure the continued airworthiness of these helicopters in the Federal Republic of Germany.

This helicopter model is manufactured in the Federal Republic of Germany and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, the proposed AD would require, within 100 hours time-in-service, using external calipers, measuring the wall thickness, including primer coating, of the skin paneling of the vertical fin. If the wall thickness, including the primer coating, of the paneling is less than 0.778 millimeter (0.03063 inch) at any of the measured locations, this proposed AD would also require replacing the vertical fin with an airworthy part before further flight.

The FAA estimates that this proposed AD would affect 132 helicopters of U.S. registry and the proposed actions would take approximately 1 hour per helicopter to accomplish at an average labor rate of \$65 per work hour. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be \$8580 assuming no vertical fins will need to be replaced.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal