

Subpart D—International Lending Supervision

SOURCE: 49 FR 5592, Feb. 13, 1984, unless otherwise noted.

§211.41 Authority, purpose, and scope.

(a) *Authority*. This subpart is issued by the Board of Governors of the Federal Reserve System (“Board”) under the authority of the International Lending Supervision Act of 1983 (Pub. L. 98-181, title IX, 97 Stat. 1153) (“International Lending Supervision Act”); the Federal Reserve Act (12 U.S.C. 221 *et seq.*) (“FRA”), and the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) (“BHC Act”).

(b) *Purpose and scope*. This subpart is issued in furtherance of the purposes of the International Lending Supervision Act. It applies to State banks that are members of the Federal Reserve System (“State member banks”); corporations organized under section 25(a) of the FRA (12 U.S.C. 611 through 631) (“Edge Corporations”); corporations operating subject to an agreement with the Board under section 25 of the FRA (12 U.S.C. 601 through 604a) (“Agreement Corporations”); and bank holding companies (as defined in section 2 of the BHC Act (12 U.S.C. 1841(a)) but not including a bank holding company that is a foreign banking organization as defined in §211.21(n) of this regulation.

[49 FR 5592, Feb. 13, 1984, as amended at 58 FR 46076, Sept. 1, 1993]

§211.42 Definitions.

For the purposes of this subpart:

(a) *Banking institution* means a State member bank; bank holding company; Edge Corporation and Agreement Corporation engaged in banking. *Banking institution* does not include a *foreign banking organization* as defined in §211.21(n).

(b) *Federal banking agencies* means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

(c) *International assets* means those assets required to be included in banking institutions’ *Country Exposure Report* forms (FFIEC No. 009).

(d) *International loan* means a loan as defined in the instructions to the *Report of Condition and Income* for the respective banking institution (FFIEC Nos. 031, 032, 033 and 034) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(e) *International syndicated loan* means a loan characterized by the formation of a group of *managing* banking institutions and, in the usual case, assumption by them of underwriting commitments and participation in the loan by other banking institutions.

(f) *Loan agreement* means the documents signed by all of the parties to a loan, containing the amount, terms and conditions of the loan, and the interest and fees to be paid by the borrower.

(g) *Restructured international loan* means a loan that meets the following criteria:

(1) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and

(2) The terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or

(3) A new loan is made to, or for the benefit of, the borrower, enabling the borrower to service or refinance the existing debt.

(h) *Transfer risk* means the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on the availability of, needed foreign exchange in the country of the obligor.

[49 FR 5592, Feb. 13, 1984, as amended at 49 FR 12197, Mar. 29, 1984; 58 FR 46076, Sept. 1, 1993]

§211.43 Allocated transfer risk reserve.

(a) *Establishment of Allocated Transfer Risk Reserve*. A banking institution shall establish an allocated transfer

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risk reserve (ATRR) for specified international assets when required by the Board in accordance with this section.

(b) *Procedures and standards*—(1) *Joint agency determination*. At least annually, the Federal banking agencies shall determine jointly, based on the standards set forth in paragraph (b)(2) of this section, the following:

(i) Which international assets subject to transfer risk warrant establishment of an ATRR;

(ii) The amount of the ATRR for the specified assets; and

(iii) Whether an ATRR established for specified assets may be reduced.

(2) *Standards for requiring ATRR*—(i) *Evaluation of assets*. The Federal banking agencies shall apply the following criteria in determining whether an ATRR is required for particular international assets:

(A) Whether the quality of a banking institution's assets has been impaired by a protracted inability of public or private obligors in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as whether:

(1) Such obligors have failed to make full interest payments on external indebtedness;

(2) Such obligors have failed to comply with the terms of any restructured indebtedness; or

(3) A foreign country has failed to comply with any International Monetary Fund or other suitable adjustment program; or

(B) Whether no definite prospects exist for the orderly restoration of debt service.

(ii) *Determination of amount of ATRR*.

(A) In determining the amount of the ATRR, the Federal banking agencies shall consider:

(1) The length of time the quality of the asset has been impaired;

(2) Recent actions taken to restore debt service capability;

(3) Prospects for restored asset quality; and

(4) Such other factors as the Federal banking agencies may consider relevant to the quality of the asset.

(B) The initial year's provision for the ATRR shall be ten percent of the principal amount of each specified international asset, or such greater or

lesser percentage determined by the Federal banking agencies. Additional provision, if any, for the ATRR in subsequent years shall be fifteen percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies.

(3) *Board notification*. Based on the joint agency determinations under paragraph (b)(1) of this section, the Board shall notify each banking institution holding assets subject to an ATRR:

(i) Of the amount of the ATRR to be established by the institution for specified international assets; and

(ii) That an ATRR established for specified assets may be reduced.

(c) *Accounting treatment of ATRR*—(1) *Charge to current income*. A banking institution shall establish an ATRR by a charge to current income and the amounts so charged shall not be included in the banking institution's capital or surplus.

(2) *Separate accounting*. A banking institution shall account for an ATRR separately from the Allowance for Possible Loan Losses, and shall deduct the ATRR from "gross loans and leases" to arrive at "net loans and leases." The ATRR must be established for each asset subject to the ATRR in the percentage amount specified.

(3) *Consolidation*. A banking institution shall establish an ATRR, as required, on a consolidated basis. For banks, consolidation should be in accordance with the procedures and tests of significance set forth in the instructions for preparation of *Consolidated Reports of Condition and Income* (FFIEC Nos. 031, 032, 033 and 034). For bank holding companies, the consolidation shall be in accordance with the principles set forth in the "Instructions to the Bank Holding Company Financial Supplement to Report F.R. Y-6" (Form F.R. Y-9). Edge and Agreement corporations engaged in banking shall report in accordance with instructions for preparation of the Report of Condition for Edge and Agreement Corporations (Form F.R. 2886b).

(4) *Alternative accounting treatment*. A banking institution need not establish an ATRR if it writes down in the period in which the ATRR is required, or has

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written down in prior periods, the value of the specified international assets in the requisite amount for each such asset. For purposes of this paragraph, international assets may be written down by a charge to the Allowance for Possible Loan Losses or a reduction in the principal amount of the asset by application of interest payments or other collections on the asset. However, the Allowance for Possible Loan Losses must be replenished in such amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institutions's loan portfolio.

(5) *Reduction of ATRR.* A banking institution may reduce an ATRR when notified by the Board or, at any time, by writing down such amount of the international asset for which the ATRR was established.

§211.44 Reporting and disclosure of international assets.

(a) *Requirements.* (1) Pursuant to section 907(a) of the International Lending Supervision Act of 1983 (Title IX, Pub. L. 98-181, 97 Stat. 1153) (ILSA), a banking institution shall submit to the Board, at least quarterly, information regarding the amounts and composition of its holdings of international assets.

(2) Pursuant to section 907(b) of ILSA, a banking institution shall submit to the Board information regarding concentrations in its holdings of international assets that are material in relation to total assets and to capital of the institution, such information to be made publicly available by the Board on request.

(b) *Procedures.* The format, content and reporting and filing dates of the reports required under paragraph (a) of this section shall be determined jointly by the Federal banking agencies. The requirements to be prescribed by the agencies may include changes to existing reporting forms (such as the Country exposure Report, form FFIEC No. 009) or such other requirements as the agencies deem appropriate. The agencies also may determine to exempt from the requirements of paragraph (a) of this section banking institutions that, in the agencies' judgment, have

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de minimis holdings of international assets.

(c) *Reservation of authority.* Nothing contained in this rule shall preclude the Board from requiring from a banking institution such additional or more frequent information on the institution's holding of international assets as the Board may consider necessary.

[49 FR 5587, Feb. 13, 1984]

§211.45 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge any fee in connection with a restructured international loan unless all fees exceeding the banking institution's administrative costs, as described in paragraph (c)(2) of this section, are deferred and recognized over the term of the loan as an interest yield adjustment.

(b) *Amortizing fees.* Except as otherwise provided by this section, fees received on international loans shall be deferred and amortized over the term of the loan. The interest method should be used during the loan period to recognize the deferred fee revenue in relation to the outstanding loan balance. If it is not practicable to apply the interest method during the loan period, the straight-line method shall be used.

(c) *Accounting treatment of international loan or syndication administrative costs and corresponding fees.* (1) Administrative costs of originating, restructuring or syndicating an international loan shall be expensed as incurred. A portion of the fee income equal to the banking institution's administrative costs may be recognized as income in the same period such costs are expensed.

(2) The administrative costs of originating, restructuring, or syndicating an international loan include those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function and,