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shall review and determine the need for continued maintenance of supplemental reserves and shall transmit annual reports to the Congress regarding the need for continuing such requirement.

(2) Any supplemental reserve requirement shall terminate at the close of the first 90-day period after the requirement is imposed during which the average amount of supplemental reserves required are less than the amount of reserves which would be required if the ratios in effect on September 1, 1980, were applied.

(c) *Earnings Participation Account.* A depository institutions's supplemental reserve requirement shall be maintained by the Federal Reserve Banks in an Earnings Participation Account. Such balances shall receive earnings to be paid by the Federal Reserve Banks during each calendar quarter at a rate not to exceed the rate earned on the securities portfolio of the Federal Reserve System during the previous calendar quarter. Additional rules and regulations maybe prescribed by the Board concerning the payment of earnings on Earnings Participation Accounts by Federal Reserve Banks.

(d) *Report to Congress.* The Board shall transmit promptly to the Congress a report stating the basis for exercising its authority to require a supplemental reserve under this section.

(e) *Reserve requirements.* At present, there are no supplemental reserve requirements imposed under this section.

[45 FR 56018, Aug. 22, 1980, as amended at 45 FR 81537, Dec. 11, 1980]

§ 204.7 Penalties.

(a) *Charges for deficiencies*—(1) *Assessment of charges.* Deficiencies in a depository institution's required reserve balance, after application of the carryover provided in § 204.3(h) are subject to reserve deficiency charges. Federal Reserve Banks are authorized to assess charges for deficiencies in required reserves at a rate of 1 percentage point per year above the primary credit rate, as provided in § 201.51(a) of this chapter, in effect for borrowings from the Federal Reserve Bank on the first day of the calendar month in which the deficiencies occurred. Charges shall be assessed on the basis of daily average deficiencies during each maintenance period. Reserve Banks may, as an alternative to levying monetary charges, after consideration of the circumstances involved, permit a depository institution to eliminate deficiencies in its required reserve balance by maintaining additional reserves during subsequent reserve maintenance periods.

(2) *Waivers.* (i) Reserve Banks may waive the charges for reserve deficiencies except when the deficiency arises out of a depository institution's gross negligence or conduct that is inconsistent with the principles and purposes of reserve requirements. Each Reserve Bank has adopted guidelines that provide for waivers of small charges. The guidelines also provide for waiving the charge once during a two-year period for any deficiency that does not exceed a certain percentage of the depository institution's required reserves. Decisions by Reserve Banks to waive charges in other situations are based on an evaluation of the circumstances in each individual case and the depository institution's reserve maintenance record. If a depository institution has demonstrated a lack of due regard for the proper maintenance of required reserves, the Reserve Bank may decline to exercise the waiver privilege and assess all charges regardless of amount or reason for the deficiency.

(ii) In individual cases, where a federal supervisory authority waives a liquidity requirement, or waives the penalty for failing to satisfy a liquidity requirement, the Reserve Bank in the District where the involved depository institution is located shall waive the reserve requirement imposed under this part for such depository institution when requested by the federal supervisory authority involved.

(b) *Penalties for Violations.* Violations of this part may be subject to assessment of civil money penalties by the Board under authority of section 19(1) of the Federal Reserve Act (12 U.S.C 505) as implemented in 12 CFR part 263. In addition, the Board and any other Federal financial institution supervisory authority may enforce this part with respect to depository institutions

subject to their jurisdiction under authority conferred by law to undertake cease and desist proceedings.

[Reg. D, 44 FR 56018, Aug. 22, 1980, as amended at 56 FR 15495, Apr. 17, 1991; 61 FR 69025, Dec. 31, 1996; 67 FR 67787, Nov. 7, 2002]

§ 204.8 International banking facilities.

(a) *Definitions.* For purposes of this part, the following definitions apply:

(1) *International banking facility* or *IBF* means a set of asset and liability accounts segregated on the books and records of a depository institution, United States branch or agency of a foreign bank, or an Edge or Agreement Corporation that includes only international banking facility time deposits and international banking facility extensions of credit.

(2) *International banking facility time deposit* or *IBF time deposit* means a deposit, placement, borrowing or similar obligation represented by a promissory note, acknowledgment of advance, or similar instrument that is not issued in negotiable or bearer form, and

(i)(A) That must remain on deposit at the IBF at least overnight; and

(B) That is issued to

(*1*) Any office located outside the United States of another depository institution organized under the laws of the United States or of an Edge or Agreement Corporation;

(*2*) Any office located outside the United States of a foreign bank;

(*3*) A United States office or a non-United States office of the entity establishing the IBF;

(*4*) Another IBF; or

(*5*) A foreign national government, or an agency or instrumentality thereof,[10] engaged principally in activities which are ordinarily performed in the United States by governmental entities; an international entity of which the United States is a member; or any other foreign international or supranational entity specifically designated by the Board;[11] or

(ii) (A) That is payable

(*1*) On a specified date not less than two business days after the date of deposit;

(*2*) Upon expiration of a specified period of time not less than two business days after the date of deposit; or

(*3*) Upon written notice that actually is required to be given by the depositor not less than two business days prior to the date of withdrawal;

(B) That represents funds deposited to the credit of a non-United States resident or a foreign branch, office, subsidiary, affiliate, or other foreign establishment (*foreign affiliate*) controlled by one or more domestic corporations provided that such funds are used only to support the operations outside the United States of the depositor or of its affiliates located outside the United States; and

(C) That is maintained under an agreement or arrangement under which no deposit or withdrawal of less than $100,000 is permitted, except that a withdrawal of less than $100,000 is permitted if such withdrawal closes an account.

(3) *International banking facility extension of credit* or *IBF loan* means any transaction where an IBF supplies funds by making a loan, or placing funds in a deposit account. Such transactions may be represented by a promissory note, security, acknowledgment of advance, due bill, repurchase agreement, or any other form of credit transaction. Such credit may be extended only to:

(i) Any office located outside the United States of another depository institution organized under the laws of the United States or of an Edge or Agreement Corporation;

(ii) Any office located outside the United States of a foreign bank;

(iii) A United States or a non-United States office of the institution establishing the IBF;

(iv) Another IBF;

(v) A foreign national government, or an agency or instrumentality thereof,[12] engaged principally in activities which are ordinarily performed in the United States by governmental entities; an international entity of which the United States is a member; or any

[10] Other than states, provinces, municipalities, or other regional or local governmental units or agencies or instrumentalities thereof.

[11] The designated entities are specified in 12 CFR 204.125.

[12] See footnote 10.