

## Federal Deposit Insurance Corporation

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activity designed to attract the attention of the general public; and

(E) A foreign bank that has more than one state branch in the same state may aggregate deposits in such branches (excluding deposits of other branches, agencies or wholly owned subsidiaries of the bank) for the purpose of this paragraph (a)(7).

(b) *Application for an exemption.* (1) Whenever a foreign bank proposes to accept at a State branch initial deposits of less than an amount equal to the SMDIA and such deposits are not otherwise exempted under paragraph (a) of this section, the foreign bank may apply to the FDIC for consent to operate the branch as a noninsured branch. The Board of Directors may exempt the branch from the insurance requirement if the branch is not engaged in domestic retail deposit activities requiring insurance protection. The Board of Directors will consider the size and nature of depositors and deposit accounts, the importance of maintaining and improving the availability of credit to all sectors of the United States economy, including the international trade finance sector of the United States economy, whether the exemption would give the foreign bank an unfair competitive advantage over United States banking organizations, and any other relevant factors in making this determination.

(2) Procedures for applications under this section are set out in § 303.186.

(c) Transition period. A noninsured state branch may maintain a retail deposit lawfully accepted prior to April 1, 1996 pursuant to regulations in effect prior to July 1, 1998:

(1) If the deposit qualifies pursuant to paragraph (a) or (b) of this section; or

(2) If the deposit does not qualify pursuant to paragraph (a) or (b) of this section, in the case of a time deposit, no later than the first maturity date of the time deposit after April 1, 1996.

[70 FR 17560, Apr. 6, 2005, as amended at 74 FR 47718, Sept. 17, 2009]

### § 347.216 Depositor notification.

Any state branch that is exempt from the insurance requirement pursuant to § 347.215 shall:

(a) Display conspicuously at each window or place where deposits are usually accepted a sign stating that deposits are not insured by the FDIC; and

(b) Include in bold face conspicuous type on each signature card, passbook, and instrument evidencing a deposit the statement “This deposit is not insured by the FDIC”; or require each depositor to execute a statement which acknowledges that the initial deposit and all future deposits at the branch are not insured by the FDIC. This acknowledgment shall be retained by the branch so long as the depositor maintains any deposit with the branch. This provision applies to any negotiable certificates of deposit made in a branch on or after July 6, 1989, as well as to any renewals of such deposits which become effective on or after July 6, 1989.

## Subpart C—International Lending

SOURCE: 70 FR 17560, Apr. 6, 2005; 70 FR 20704, Apr. 21, 2005, unless otherwise noted.

### § 347.301 Purpose, authority, and scope.

Under the International Lending Supervision Act of 1983 (Title IX, Pub. L. 98-181, 97 Stat. 1153) (12 U.S.C. 3901 *et seq.*) (ILSA), the Federal Deposit Insurance Corporation prescribes the regulations in this subpart relating to international lending activities of banks.

### § 347.302 Definitions.

For the purposes of this subpart:

(a) *Administrative cost* means 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. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(b) *Banking institution* means an insured state nonmember bank.

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

(d) *International assets* means those assets required to be included in banking institutions' "Country Exposure Report" form (FFIEC No. 009).

(e) *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.

(f) *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) Either:

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

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

(g) *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.

§ 347.303 Allocated transfer risk reserve.

(a) *Establishment of Allocated Transfer Risk Reserve.* A banking institution shall establish an allocated transfer risk reserve (ATRR) for specified international assets when required by the FDIC 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; or

(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

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of the principal amount of each specified international asset, or such greater or lesser percentage determined by the federal banking agencies.

(3) *FDIC notification.* Based on the joint agency determinations under paragraph (b)(1) of this section, the FDIC 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 Loan and Lease Losses or allowance for credit losses, as applicable, and shall deduct the ATRR from "gross loans and leases" to arrive at "net loans and lease." 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).

(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 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 (c)(4), international assets may be written down by a charge to the Allowance for Loan and Lease Losses or allowance for credit losses, as applicable, or a reduction in the principal amount of the asset by application of interest payments or other collections on the asset; provided, that only those international assets that may be charged to the Allowance for Loan and

Lease Losses or allowance for credit losses, as applicable, pursuant to U.S. generally accepted accounting principles may be written down by a charge to the Allowance for Loan and Lease Losses or allowance for credit losses, as applicable. However, the Allowance for Loan and Lease Losses or allowance for credit losses, as applicable, must be replenished in such amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institution's loan and lease portfolio.

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

[70 FR 17560, Apr. 6, 2005; 70 FR 20704, Apr. 21, 2005, as amended at 84 FR 4249, Feb. 14, 2019]

### § 347.304 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge, in connection with the restructuring of an international loan, any fee exceeding the administrative cost of the restructuring unless it amortizes the amount of the fee exceeding the administrative cost over the effective life of the loan.

(b) *Accounting treatment.* Subject to paragraph (a) of this section, banking institutions shall account for fees on international loans in accordance with generally accepted accounting principles.

### § 347.305 Reporting and disclosure of international assets.

(a) *Requirements.* (1) Pursuant to section 907(a) of ILSA, a banking institution shall submit to the FDIC, 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 FDIC 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 FDIC 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 federal banking agencies may include changes to existing forms (such as revisions to the Country Exposure Report, Form FFIEC No. 009) or such other requirements as the federal banking agencies deem appropriate. The federal banking agencies also may determine to exempt from the requirements of paragraph (a) of this section banking institutions that, in the federal banking agencies' judgment, have *de minimis* holdings of international assets.

(c) *Reservation of Authority.* Nothing contained in this subpart shall preclude the FDIC from requiring from a banking institution such additional or more frequent information on the institution's holdings of international assets as the agency may consider necessary.

## PART 348—MANAGEMENT OFFICIAL INTERLOCKS

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AUTHORITY: 12 U.S.C. 3207, 12 U.S.C. 1823(k).

SOURCE: 80 FR 79252, Dec. 21, 2015, unless otherwise noted.

### § 348.1 Purpose and scope.

(a) *Authority.* This part is issued under the provisions of the Depository Institution Management Interlocks Act (Interlocks Act) (12 U.S.C. 3201 *et seq.*), as amended.

(b) *Purpose.* The purpose of the Interlocks Act and this part is to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anti-competitive effect.

(c) *Scope.* This part applies to management officials of FDIC-supervised institutions and their affiliates.

### § 348.2 Other definitions and rules of construction.

For purposes of this part, the following definitions apply:

(a) *Affiliate.* (1) The term affiliate has the meaning given in section 202 of the Interlocks Act (12 U.S.C. 3201). For purposes of section 202, shares held by an individual include shares held by members of his or her immediate family. “Immediate family” means spouse, mother, father, child, grandchild, sister, brother or any of their spouses, whether or not any of their shares are held in trust.

(2) For purposes of section 202(3)(B) of the Interlocks Act (12 U.S.C. 3201(3)(B)), an affiliate relationship involving an FDIC-supervised institution based on common ownership does not exist if the FDIC determines, after giving the affected persons the opportunity to respond, that the asserted affiliation was established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the FDIC considers, among other things, whether a person, including members of his or her immediate family whose shares are necessary to constitute the group, owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate to that person's ownership of shares in the other organization.

(b) *Area median income* means:

(1) The median family income for the metropolitan statistical area (MSA), if a depository organization is located in an MSA; or

(2) The statewide nonmetropolitan median family income, if a depository organization is located outside an MSA.

(c) *Community* means a city, town, or village, and contiguous or adjacent cities, towns, or villages.

(d) *Contiguous or adjacent cities, towns, or villages* means cities, towns, or villages whose borders touch each other or whose borders are within 10 road miles of each other at their closest