

(4) shall consider as indicators of risk, where appropriate, the average reserve levels maintained by or required of banking institutions in foreign countries and secondary market prices for such loans.

(c) Timing and report

(1) Determined by agency

Except as provided in paragraph (3), each appropriate Federal banking agency shall determine the timing of any addition to reserves required by subsection (a).

(2) Report

Each appropriate Federal banking agency shall include in each report required to be made under section 3912(d)¹ of this title after 1989 a report on the actions taken pursuant to this section.

(3) Deadline

Each Federal agency required to undertake a review described in subsection (a) shall complete the review not later than December 31, 1990.

(d) “Highly indebted country” defined

As used in this section, the term “highly indebted country” means any country designated as a “Highly Indebted Country” in the annual World Debt Tables most recently published by the International Bank for Reconstruction and Development before December 19, 1989.

(Pub. L. 98–181, title I [title IX, §905A], as added Pub. L. 101–240, title IV, §402(b), Dec. 19, 1989, 103 Stat. 2501.)

Editorial Notes

REFERENCES IN TEXT

Section 3912(d) of this title, referred to in subsec. (c)(2), was repealed by Pub. L. 104–208, div. A, title II, §2224(c), Sept. 30, 1996, 110 Stat. 3009–415.

Statutory Notes and Related Subsidiaries

CONGRESSIONAL FINDINGS

Pub. L. 101–240, title IV, §402(a), Dec. 19, 1989, 103 Stat. 2501, provided that: “The Congress finds that—

“(1) since the adoption of the International Lending Supervision Act of 1983 [12 U.S.C. 3901 et seq.], the credit quality of loans by United States banking institutions to highly indebted countries has deteriorated and the prospects for full repayment of such loans have diminished;

“(2) in general during this period, the level of country exposure and transfer risk associated with loans by United States banking institutions to highly indebted countries has not been adequately reflected in the reserve levels established by many individual United States banking institutions or the reserve requirements imposed by Federal banking agencies pursuant to such Act;

“(3) during the last 3 years and particularly in recent months, United States banking institutions have increased their reserves for possible losses from loans to highly indebted countries but such reserves remain, in some cases, significantly lower than reserves established by banking institutions in a number of foreign countries and may not be adequate to deal with potential risks; and

“(4) in order to fulfill the purposes of such Act, the Federal banking agencies should take a more active

role in reviewing reserve levels established by United States banking institutions for potential losses from loans to highly indebted countries and in requiring appropriate levels of both special and general reserves to reflect the increased risk of such loans.”

§ 3905. Accounting for fees on international loans

(a)(1) In order to avoid excessive debt service burdens on debtor countries, 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 such fee over the effective life of each such loan.

(2)(A) Each appropriate Federal banking agency shall promulgate such regulations as are necessary to further carry out the provisions of this subsection.

(B) The requirement of paragraph (1) shall take effect on November 30, 1983.

(b)(1) Subject to subsection (a), the appropriate Federal banking agencies shall promulgate regulations for accounting for agency, commitment, management and other fees charged by a banking institution in connection with an international loan.

(2) Such regulations shall establish the accounting treatment of such fees for regulatory, supervisory, and disclosure purposes to assure that the appropriate portion of such fees is accrued in income over the effective life of each such loan.

(3) The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this subsection within one hundred and twenty days after November 30, 1983.

(Pub. L. 98–181, title I [title IX, §906], Nov. 30, 1983, 97 Stat. 1279.)

§ 3906. Collection and disclosure of international lending data

(a) Submission of information to Federal banking agencies

Each appropriate Federal banking agency shall require, by regulation, each banking institution with foreign country exposure to submit, no fewer than four times each calendar year, information regarding such exposure in a format prescribed by such regulations.

(b) Disclosure of information to the public

Each appropriate Federal banking agency shall require, by regulation, banking institutions to disclose to the public information regarding material foreign country exposure in relation to assets and to capital.

(c) Regulations and orders of Federal banking agencies

The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this section within one hundred and twenty days after November 30, 1983.

(Pub. L. 98–181, title I [title IX, §907], Nov. 30, 1983, 97 Stat. 1280.)

§ 3907. Capital adequacy

(a)(1) Each appropriate Federal banking agency shall cause banking institutions to achieve

¹ See References in Text note below.

and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by using such other methods as the appropriate Federal banking agency deems appropriate. Each appropriate Federal banking agency shall seek to make the capital standards required under this section or other provisions of Federal law for insured depository institutions countercyclical so that the amount of capital required to be maintained by an insured depository institution increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the insured depository institution.

(2) Each appropriate Federal banking agency shall have the authority to establish such minimum level of capital for a banking institution as the appropriate Federal banking agency, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution.

(b)(1) Failure of a banking institution to maintain capital at or above its minimum level as established pursuant to subsection (a) may be deemed by the appropriate Federal banking agency, in its discretion, to constitute an unsafe and unsound practice within the meaning of section 1818 of this title.

(2)(A) In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the appropriate Federal banking agency may issue a directive to a banking institution that fails to maintain capital¹ at or above its required level as established pursuant to subsection (a).

(B)(i) Such directive may require the banking institution to submit and adhere to a plan acceptable to the appropriate Federal banking agency describing the means and timing by which the banking institution shall achieve its required capital level.

(ii) Any such directive issued pursuant to this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of section 1818(i) of this title to the same extent as an effective and outstanding order issued pursuant to section 1818(b) of this title which has become final.

(3)(A) Each appropriate Federal banking agency may consider such banking institution's progress in adhering to any plan required under this subsection whenever such banking institution, or an affiliate thereof, or the holding company which controls such banking institution, seeks the requisite approval of such appropriate Federal banking agency for any proposal which would divert earnings, diminish capital, or otherwise impede such banking institution's progress in achieving its minimum capital level.

(B) Such appropriate Federal banking agency may deny such approval where it determines that such proposal would adversely affect the ability of the banking institution to comply with such plan.

(C) The Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall encourage governments, central banks, and regulatory authorities of

other major banking countries to work toward maintaining and, where appropriate, strengthening the capital bases of banking institutions involved in international lending.

(Pub. L. 98-181, title I [title IX, §908], Nov. 30, 1983, 97 Stat. 1280; Pub. L. 111-203, title VI, §616(c), July 21, 2010, 124 Stat. 1615.)

Editorial Notes

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-203 inserted at end “Each appropriate Federal banking agency shall seek to make the capital standards required under this section or other provisions of Federal law for insured depository institutions countercyclical so that the amount of capital required to be maintained by an insured depository institution increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the insured depository institution.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the transfer date, see section 616(e) of Pub. L. 111-203, set out as a note under section 1467a of this title.

§ 3908. Foreign loan evaluations

(a) Projects requiring an economic feasibility evaluation; content of evaluation

(1) In any case in which one or more banking institutions extend credit, whether by loan, lease, guarantee, or otherwise, which individually or in the aggregate exceeds \$20,000,000, to finance any project which has as a major objective the construction or operation of any mining operation, any metal or mineral primary processing operation, any fabricating facility or operation, or any metal-making operations (semi and finished) located outside the United States or its territories and possessions, a written economic feasibility evaluation of such foreign project shall be prepared and approved in writing by a senior official of the banking institution, or, if more than one banking institution is involved, the lead banking institution, prior to the extension of such credit.

(2) Such evaluation shall—

(A) take into account the profit potential of the project, the impact of the project on world markets, the inherent competitive advantages and disadvantages of the project over the entire life of the project, and the likely effect of the project upon the overall long-term economic development of the country in which the project is located; and

(B) consider whether the extension of credit can reasonably be expected to be repaid from revenues generated by such foreign project without regard to any subsidy, as defined in international agreements, provided by the government involved or any instrumentality of any country.

(b) Review of evaluation by Federal banking agencies

Such economic feasibility evaluations shall be reviewed by representatives of the appropriate Federal banking agencies whenever an examination by such appropriate Federal banking agency is conducted.

¹ So in original. Probably should be “capital”.