

GAO

Fact Sheet for the Chairman,
Subcommittee on International Finance,
Trade, and Monetary Policy, Committee
on Banking, Housing and Urban Affairs,
House of Representatives

September 1986

INTERNATIONAL BANKING

The Framework Underlying Country Risk in International Lending



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United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

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September 4, 1986

The Honorable Stephen L. Neal
Chairman, Subcommittee on International
Finance, Trade and Monetary Policy
Committee on Banking, Finance
and Urban Affairs
House of Representatives

Dear Mr. Chairman:

Your March 7, 1986, letter requested a study of the system used by U.S. bank supervisory agencies to regulate country risk in international bank lending. That study is in process. Reflecting the interests raised in your letter and in discussions with your staff, we are providing, as a first product, this fact sheet describing the statutory, regulatory, and administrative framework governing country risk in international bank lending. Our overall assessment of the supervision of country risk by the U.S. bank supervisory agencies is continuing, and we will report on that work at a later date.

Before 1979, federal agencies did not uniformly evaluate country risk in international lending. Country risk arises from the possibility that adverse economic, political, or social circumstances will prevent a country's borrowers from making timely, or in the extreme case, any repayment of principal or interest. As noted in our 1977 testimony before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance, House Committee on Banking, Finance and Urban Affairs, this lack of uniform evaluation resulted in dissimilar treatment in examination reports of bank exposures to the same country.

In 1979, the federal bank regulatory agencies--the Comptroller of the Currency, Federal Reserve, and Federal Deposit Insurance Corporation--established the Interagency Country Exposure Review Committee to implement a uniform system for addressing country risk in international bank lending. Members from each of these agencies meet periodically in this Committee to discuss and assess the current economic, political, social and debt repayment prospects of individual countries that have borrowed from U.S. banks. The Committee's current process for making such assessments is described in appendix II. Examination procedures for country risk in international lending are described in appendix III.

In late 1982, several Latin American countries experienced severe difficulties in repaying their debts. Congressional attention particularly was drawn to the supervision of international lending during considerations of increasing the U.S. subscription to the International Monetary Fund.

The result was passage of the International Lending Supervision Act (Public Law 98-181) in November 1983, the first legislative attempt to deal with country risk in international bank lending. The Act imposes several requirements on banks and bank supervisory agencies to encourage more prudent international lending practices. The Act's provisions dealing with country risk in international bank lending and agency implementing regulations are summarized in appendix I.

As agreed with your office, we are also distributing this fact sheet to other interested parties. If you have any questions, please contact me on (202) 275-4812.

Sincerely yours,

A handwritten signature in black ink that reads "Allan I. Mendelowitz". The signature is written in a cursive, slightly slanted style.

Allan I. Mendelowitz
Senior Associate Director

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ABBREVIATIONS

ICERC	Interagency Country Exposure Review Committee
IMF	International Monetary Fund
OTRP	Other transfer risk problems

PROVISIONS OF THE INTERNATIONAL LENDING SUPERVISION ACT
OF 1983 AND IMPLEMENTING REGULATIONS

The provisions of the International Lending Supervision Act of 1983 dealing with country risk (see app. IV) and agency implementing regulations (see app. V--the principal regulations) are summarized below.

SPECIAL RESERVES

The federal bank supervisory agencies (Comptroller of the Currency, Federal Reserve, and Federal Deposit Insurance Corporation) shall require banks to establish special reserves, called allocated transfer risk reserves, when in the judgement of the agencies the quality of the banks' international assets has been impaired, as evidenced by such factors as the borrowers in a country not servicing their debt, a country failing to comply with a restructuring agreement or International Monetary Fund (IMF) adjustment program, or no definite prospects exist for the orderly restoration of debt service.

Special reserves are required for exposures (i.e., international loans and other claims) to individual countries; hence, they are separate from the general loan loss reserve that banks establish to cover risks in their overall loan portfolios. Special reserves must be charged against the income of the bank and are not considered part of bank capital and surplus or allowance for general loan losses.

Implementing regulations for special reserve requirements were issued by the bank regulatory agencies in February 1984. The agencies must jointly determine the need for and size of special reserves at least annually, according to these regulations, and do so through the Interagency Country Exposure Review Committee. Following a determination that international assets have been impaired, the initial reserve requirement is generally set at 10 percent of those assets considered to be impaired, with additions of 15 percent in subsequent years, if necessary. The agencies have the flexibility to establish higher or lower percentages. Certain international assets are not subject to these special reserve requirements, including certain collateralized assets and commitments.

A bank can write down the value of a loan in lieu of establishing a special reserve. To the extent that this write-down is made against the general loan loss reserve, however, the bank must replenish this general reserve to reflect the losses estimated to remain in the balance of the loan portfolio.

According to present banking agency policy, the special reserve requirements do not apply to new lending made in the context of an IMF or other economic adjustment program.

STRENGTHENED EXAMINATION PROCEDURES

Previously, the bank supervisory agencies set the framework for examination of country risk in international bank lending; now the International Lending Supervision Act of 1983 requires bank supervisory agencies to examine banks for country risk. In addition, these agencies must now establish procedures for ensuring that country risk in international bank lending is taken into account when the agencies evaluate the capital adequacy of banks.

ACCOUNTING FOR FEES

Any fees earned by banks in connection with rescheduled international loans in excess of administrative costs must be amortized over the life of the loans. This changes the previous practice of some banks which had included the entire fee in current income in the year of the debt rescheduling.

The banking agencies must also assure that the "appropriate portion" of fees charged by banks on other international loans is accrued to income over the life of the loans. These provisions are designed to reduce the incentive for banks to make imprudent foreign loans as well as to avoid excessive debt service burdens on debtor countries.

The banking agencies issued implementing regulations on accounting for international loan fees in March 1984. Under these regulations, fees received by a bank for syndicating an international loan may be taken into income in the year the loan is made only to the extent the bank can identify and document the services for which the fee was received. Commitment fees can be amortized over the term of the commitment period, rather than over the longer loan period, to the extent they can be separated from other components of the fee. But as a general rule, the regulations require that fees received on international loans in excess of administrative costs must be amortized over the life of the loan as an interest yield adjustment.

DISCLOSURE OF INTERNATIONAL LOANS

The bank regulatory agencies must require banks to furnish data on international bank lending quarterly instead of semiannually as was previously done. In addition, banks must

publicly disclose information on international lending that is considered "material."

The agencies' instructions require banks that have (1) foreign branches, foreign subsidiaries, Edge or Agreement subsidiaries, branches in Puerto Rico or a U.S. territory or possession, or International Banking Facilities and (2) at least \$30 million in claims on residents of foreign countries to file country exposure reports with their respective regulatory agencies.¹

In addition, the agencies may require any other bank with a significant percentage of foreign exposures to file these reports. The filing time for these reports also has been shortened from 60 to 45 days from the end of each quarter. These reports list loans or other claims on each country by type of borrower. Commitments, such as letters of credit and undisbursed portions of loans, are also included.

For public disclosure purposes the agencies' instructions require banks to submit derivative reports, known as country exposure information reports, on "material" foreign loans. The derivative reports list exposures to individual countries that exceed 1 percent of total assets or 20 percent of primary capital.² For smaller country exposures (exceeding either 0.75 percent of total assets or 15 percent of primary capital), the banks are required to list only the names of the countries and the aggregate exposures to these countries; individual exposures to each of these countries do not have to be shown. The derivative reports are made available to the public upon request.

¹Edge or Agreement Corporations are domestic corporations chartered solely for foreign banking or financial activities. An International Banking Facility is essentially a segregated account on the books of a bank in the United States through which a deposit and loan business with foreign residents may be conducted without being subject to reserve requirements, insurance coverage and assessments, and interest rate ceilings.

²Primary capital consists of common stock, perpetual preferred stock, surplus, undivided profits, contingency and other capital reserves (excluding accrued dividends), net worth certificates, minority interests in consolidated subsidiaries and the allowance for loan and lease losses minus tangible assets (except purchased mortgage service rights) plus mandatory convertible debt equal to no more than 20 percent of primary capital before mandatory convertible debt is included.

CAPITAL ADEQUACY

The federal bank regulatory agencies shall require banks to achieve and maintain minimum capital levels. Furthermore, the Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury are directed to encourage similar agencies in other countries to work toward maintaining and strengthening capital levels of all banks involved in international lending.

INTERAGENCY COUNTRY EXPOSURE REVIEW COMMITTEE

The federal bank regulatory agencies have given the Interagency Country Exposure Review Committee (ICERC) much of the responsibility for ensuring that country risk is adequately taken into account in bank supervision. The ICERC was created in 1979 to bring a uniform approach to the agencies' assessments of the risk involved in lending to individual countries.

The ICERC meets approximately three times a year to review the political, economic, and social conditions of countries in which U.S. banks have significant exposures. It focuses on the actual or potential debt servicing problems of the countries, including their participation in any rescheduling of existing debt and their compliance with IMF or other adjustment programs. Conditions in about 15 countries are reviewed at each meeting.

The ICERC consists of three representatives from each of the three regulatory agencies--a headquarters representative in a middle management or staff position and two senior examiners from the field offices who have had experience in supervising the international activities of banks.

In its deliberations, the ICERC reviews the following data.

1. "Screens" of economic indicators. The relative rankings of countries on five indicators of debt service capability are used as screens to place each country into one of three broad categories of economic strength. The screens are prepared by the Federal Reserve Bank of New York.

2. Country studies. These studies assess the recent economic, political, and social developments in a country. They usually contain sections discussing the country's domestic economic performance and policy, balance-of-payments performance, external debt, and political and social risk. Each of these factors is rated in the studies, and an overall risk assessment is given. These studies are also generally prepared by the Federal Reserve Bank of New York.

3. Examiner discussions with bankers. Shortly before each ICERC meeting, examiners of each regulatory agency meet with a number of banks engaged in international lending, especially those with large foreign exposures. At these meetings, banks are asked their current views of the economic and political prospects of countries that will be discussed at the next ICERC meeting. Issues raised during these meetings include

--the current lending strategy for these countries,

including any recent revisions to the bank's internal lending limits for the countries;

--the existence and amount of any arrearages on loans to these countries;

--recent or contemplated extensions of credit to borrowers in these countries; and

--the nature of any internal classification of exposures or addition to loan loss reserve made in light of exposures to these countries.

4. Briefings by Treasury and Federal Reserve Bank of New York economists. Treasury economists who monitor country developments brief the agencies' representatives at the ICERC meetings on current country conditions, thereby supplementing the written country studies of the Federal Reserve. These briefings focus on a country's current and prospective ability to service its debt. Federal Reserve Bank of New York economists also provide summary briefings on issues they consider significant.

Based on these four factors, the nine ICERC representatives discuss each country on the meeting's agenda, then vote to place bank exposures to these countries in one of seven categories, with differences of opinion decided by majority vote. The seven categories are as follows.

1. "Strong" - countries experiencing no perceivable economic, social, or political problems or none which are not mitigated by other factors.

2. "Moderately strong" - countries experiencing a limited number of identifiable economic, social, or political problems which are not presently of major concern.

3. "Weak" - countries experiencing a number of economic, social, and political problems, or a significant problem deemed correctable if remedial managerial actions are being taken or can be taken in the near term.

4. "Other transfer risk problems" (OTRP) - countries not complying with their external debt-service obligations, as evidenced by arrearages, forced restructurings or rollovers, but which are taking positive actions to restore debt service through economic adjustment measures, such as an IMF program; countries meeting their debt obligations but whose non-compliance appears imminent; or countries previously classified (see

definition below) which now demonstrate the ability to resume debt service.

5. "Substandard" - countries not complying with their external debt service obligations and (a) not in the process of adopting or adequately adhering to an IMF or other economic adjustment program or (b) not negotiating a viable rescheduling of their debts or likely to do so in the future.

6. "Value impaired" - countries having prolonged debt-servicing arrearages as evidenced by more than one of the following: (a) have not fully paid their interest for 6 months, (b) have not complied with IMF programs and there is no immediate prospect for compliance, (c) have not met rescheduling terms for over one year, and (d) show no definite prospects for orderly restoration of debt service in the near future.

7. "Loss" - countries whose loans are considered uncollectible. An example would be a country which has repudiated its obligations to banks, the IMF, or other lenders.

Exposures in categories 5, 6, and 7 are referred to as "classified" by the agencies and, as such, must be used in evaluating a bank's asset quality and adequacy of capital and reserves. Category 4 (other transfer risk problems), which was added in December 1983, allows the agencies to avoid classifying exposures to countries with debt arrearages if positive actions to restore debt service are evident. Exposures in this category may be used to evaluate a bank's asset quality and the adequacy of capital and reserves, at the discretion of the bank examiner.

The ICERC may decide that one category applies to all bank exposures to a country or it may apply different categories to different exposures in a particular country (e.g., trade credits may be categorized differently than other types of credit).

Except for categories 6 and 7 (value-impaired and loss), the ICERC's decisions do not require specific action by banks. Value-impaired exposures trigger the special reserves required by the Act (see pp. 4 and 5), except if banks have already set aside on their own amounts at least equal to the required reserves. Exposures classified as "loss" must be completely written off by banks.

The ICERC also prepares country-development descriptions for countries it has reviewed with bank exposures determined to be classified, OTRP, weak, or moderately strong. Shortly after the

ICERC's meetings, the categorizations and write-ups for countries designated as "other transfer risk problems", "substandard", "value-impaired", and "loss" are disseminated to banks with exposures to these countries by the bank supervisory agencies. The results of ICERC deliberations are not distributed to all banks nationwide.

BANK EXAMINATION PROCEDURES FOR COUNTRY RISK ASSESSMENT

Federal bank supervisory agencies are to use the ICERC's decisions during bank examinations to assess the country risk associated with a bank's international loan portfolio. The agencies' examination procedures require examiners to comment on all the bank's exposures to countries in the "loss", "value-impaired", and "substandard" categories (the classified categories), as well as the "other transfer risk problems" category. In addition, exposures in the weak and moderately strong category are also commented on when they exceed 10 and 15 percent, respectively, of the bank's total capital. However, the Office of the Comptroller of the Currency's current policy does not require comments on country risk exposures in bank examination reports.

Each comment indicates the amount of the bank's exposure to the country in question, frequently breaking it down by maturities, types of borrowers, or credits. Additional analyses of the exposure may also be included, such as comparisons with the bank's prior exposure, its existing internal limits, or the exposures of other banks. These comments specific to the exposure are then followed by the ICERC's current write-up for the country.

The agencies' procedures require that the exposures classified for country risk reasons be combined with other loans classified for credit risk purposes and that the total be used in assessing the adequacy of a bank's capital and assets. Examiner judgement determines the extent to which "other transfer risk problems" exposures are included in these assessments .

Examination procedures for country risk also require an analysis of the bank's internal system for monitoring and controlling its international lending activities. A determination of the adequacy of the bank's system includes a review of the bank's (1) assessments of economic, political, and social developments in countries, (2) policies establishing limits on exposures to individual countries, and (3) internal reporting system for monitoring and controlling country exposure.

THE INTERNATIONAL LENDING SUPERVISION ACT OF 1983

97 STAT 1278

PUBLIC LAW 98-181—NOV 30, 1983

PUBLIC LAW 98-181—NOV 30, 1983

97 STAT 1279

International Lending Supervision Act of 1983 12 USC 3901 note

TITLE IX—INTERNATIONAL LENDING SUPERVISION

SHORT TITLE

Sec 901 This title may be cited as the 'International Lending Supervision Act of 1983

DECLARATION OF POLICY

Sec 902 (a)(1) It is the policy of the Congress to assure that the economic health and stability of the United States and the other nations of the world shall not be adversely affected or threatened in the future by imprudent lending practices or inadequate supervision

(2) This shall be achieved by strengthening the bank regulatory framework to encourage prudent private decisionmaking and by enhancing international coordination among bank regulatory authorities

(b) The Federal banking agencies shall consult with the banking supervisory authorities of other countries to reach understandings aimed at achieving the adoption of effective and consistent supervisory policies and practices with respect to international lending

DEFINITIONS

Sec 903 For purposes of this title—

(1) the term 'appropriate Federal banking agency' has the same meaning given such term in section 3(q) of the Federal Deposit Insurance Act, except that for purposes of this title such term means the Board of Governors of the Federal Reserve System for—

(A) bank holding companies and any nonbank subsidiary thereof,

(B) Edge Act corporations organized under section 25(a) of the Federal Reserve Act, and

(C) Agreement Corporations operating under section 25 of the Federal Reserve Act, and

(2) the term 'banking institution' means—

(A) an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act or any subsidiary of an insured bank,

(i) an Edge Act corporation organized under section 25(a) of the Federal Reserve Act and

(ii) an Agreement Corporation operating under section 25 of the Federal Reserve Act, and

(B) to the extent determined by the appropriate Federal banking agency, any agency or branch of a foreign bank, and any commercial lending company owned or controlled by one or more foreign banks or companies that control a foreign bank as those terms are defined in the Interna-

tional Banking Act of 1978 The term "banking institution" shall not include a foreign bank

12 USC 3101 note

STRENGTHENED SUPERVISION OF INTERNATIONAL LENDING

Sec 904 (a) Each appropriate Federal banking agency shall evaluate banking institution foreign country exposure and transfer risk for use in banking institution examination and supervision

12 USC 3903

(b) Each such agency shall establish examination and supervisory procedures to assure that factors such as foreign country exposure and transfer risk are taken into account in evaluating the adequacy of the capital of banking institutions

RESERVES

Sec 905 (a)(1) Each appropriate Federal banking agency shall require a banking institution to establish and maintain a special reserve whenever, in the judgment of such appropriate Federal banking agency—

12 USC 3904

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

(i) a failure by such public or private borrowers to make full interest payments on external indebtedness,

(ii) a failure to comply with the terms of any restructured indebtedness, or

(iii) a failure by the foreign country to comply with any International Monetary Fund or other suitable adjustment program, or

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

(2) Such reserves shall be charged against current income and shall not be considered as part of capital, and surplus or allowances for possible loan losses for regulatory, supervisory, or disclosure purposes

(b) The appropriate Federal banking agencies shall analyze the results of foreign loan rescheduling negotiations, assess the loan loss risk reflected in rescheduling agreements, and, using the powers set forth in section 908 (regarding capital adequacy), ensure that the capital and reserve positions of United States banks are adequate to accommodate potential losses on their foreign loans

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(c) The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this section within one hundred and twenty days after the date of the enactment of this title

Regulations

ACCOUNTING FOR FEES ON INTERNATIONAL LOANS

Sec 906 (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

12 USC 3905

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

Regulations	<p>(B) The requirement of paragraph (1) shall take effect on the date of the enactment of this section</p> <p>(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</p> <p>(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</p> <p>(3) The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this subsection within one hundred and twenty days after the date of the enactment of this title</p>	<p>agency describing the means and timing by which the banking institution shall achieve its required capital level</p> <p>(u) Any such directive issued pursuant to this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of section 8(i) of the Federal Deposit Insurance Act to the same extent as an effective and outstanding order issued pursuant to section 8(b) of the Federal Deposit Insurance Act which has become final</p> <p>(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</p> <p>(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</p> <p>(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</p>	12 USC 1818
12 USC 1906	<p style="text-align: center;">COLLECTION AND DISCLOSURE OF CERTAIN INTERNATIONAL LENDING DATA</p> <p>Sec 907 (a) 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</p> <p>(b) 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</p> <p>(c) The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this section within one hundred and twenty days after the date of the enactment of this title</p>	<p style="text-align: center;">FOREIGN LOAN EVALUATIONS</p> <p>Sec 909 (a)(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</p> <p>(2) Such evaluation shall—</p> <p>(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</p> <p>(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</p> <p>(b) 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</p>	12 USC 1908
12 USC 1907	<p style="text-align: center;">CAPITAL ADEQUACY</p> <p>Sec 908 (a)(1) Each appropriate Federal banking agency shall cause banking institutions to achieve 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</p> <p>(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</p> <p>(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 8 of the Federal Deposit Insurance Act</p> <p>(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 capital at or above its required level as established pursuant to subsection (a)</p> <p>(B)(1) Such directive may require the banking institution to submit and adhere to a plan acceptable to the appropriate Federal banking</p>	<p>(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</p> <p>(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</p> <p>(b) 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</p>	Review
12 USC 1818 Directive	<p>Failure to maintain minimum level</p>		

12 USC 1818

(c)(1) The authorities of the Federal banking agencies contained in section 8 of the Federal Deposit Insurance Act and in section 910 of this Act, except those contained in section 910(d), shall be applicable to this section
(2) No private right of action or claim for relief may be predicated upon this section

GENERAL AUTHORITIES

Regulations or orders
12 USC 1909

SEC 910 (a)(1) The appropriate Federal banking agencies are authorized to interpret and define the terms used in this title, and each appropriate Federal banking agency shall prescribe rules or regulations or issue orders as necessary to effectuate the purposes of this title and to prevent evasions thereof

(2) The appropriate Federal banking agency is authorized to apply the provisions of this title to any affiliate of an insured bank, but only to affiliates for which it is the appropriate Federal banking agency, in order to promote uniform application of this title or to prevent evasions thereof

12 USC 171

(3) For purposes of this section, the term "affiliate" shall have the same meaning as in section 23A of the Federal Reserve Act, except that the term "member bank" in such section shall be deemed to refer to an "insured bank", as such term is used in section 3(h) of the Federal Deposit Insurance Act

12 USC 1811

(b) The appropriate Federal banking agencies shall establish uniform systems to implement the authorities provided under this title

Supplemental powers or authorities
12 USC 1818

(c)(1) The powers and authorities granted in this title shall be supplemental to and shall not be deemed in any manner to derogate from or restrict the authority of each appropriate Federal banking agency under section 8 of the Federal Deposit Insurance Act or any other law including the authority to require additional capital or reserves

(2) Any such authority may be used by any appropriate Federal banking agency to ensure compliance by a banking institution with the provisions of this title and all rules, regulations, or orders issued pursuant thereto

Violations

(d)(1) Any banking institution which violates, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such banking institution, who violates any provision of this title, or any rule, regulation, or order, issued under this title, shall forfeit and pay a civil penalty of not more than \$1,000 per day for each day during which such violation continues

12 USC 1818

(2) Such violations shall be deemed to be a violation of a final order under section 912(2) of the Federal Deposit Insurance Act and the penalty shall be assessed and collected by the appropriate Federal banking agency under the procedures established by, and subject to the rights afforded to parties in, such section

GAO AUDIT AUTHORITY

12 USC 1910

SEC 911 (a)(1) Under regulations of the Comptroller General, the Comptroller General shall audit the appropriate Federal banking agencies (as defined in section 903 of this title), but may carry out an onsite examination of an open insured bank or bank holding company only if the appropriate Federal banking agency has consented in writing

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Audit inclusions

(2) An audit under this subsection may include a review or evaluation of the international regulation, supervision, and exami-

nation activities of the appropriate Federal banking agency, including the coordination of such activities with similar activities of regulatory authorities of a foreign government or international organization

(3) Audits of the Federal Reserve Board and Federal Reserve banks may not include—

(A) transactions for, or with, a foreign central bank, government of a foreign country, or nonprivate international financing organization,

(B) deliberations, decisions, or actions on monetary policy matters, including discount window operations, reserves of member banks, securities credit, interest on deposits, or open market operations;

(C) transactions made under the direction of the Federal Open Market Committee, or

(D) a part of a discussion or communication among or between members of the Board of Governors of the Federal Reserve System and officers and employees of the Federal Reserve System related to subparagraphs (A) through (C) of this paragraph

(b)(1)(A) Except as provided in this subsection, an officer or employee of the General Accounting Office may not disclose information identifying an open bank, an open bank holding company, or a customer of an open or closed bank or bank holding company

(B) The Comptroller General may disclose information related to the affairs of a closed bank or closed bank holding company identifying a customer of the closed bank or closed bank holding company only if the Comptroller General believes the customer had a controlling influence in the management of the closed bank or closed bank holding company or was related to or affiliated with a person or group having a controlling influence

(2) An officer or employee of the General Accounting Office may discuss a customer, bank, or bank holding company with an official of an appropriate Federal banking agency and may report an apparent criminal violation to an appropriate law enforcement authority of the United States Government or a State

(3) This subsection does not authorize an officer or employee of an appropriate Federal banking agency to withhold information from a committee of the Congress authorized to have the information.

(c)(1)(A) To carry out this section, all records and property of or used by an appropriate Federal banking agency, including samples of reports of examinations of a bank or bank holding company the Comptroller General considers statistically meaningful and workpapers and correspondence related to the reports shall be made available to the Comptroller General, including such records and property pertaining to the coordination of international regulation, supervisor and examination activities of an appropriate Federal banking agency

(B) The Comptroller General shall give each appropriate Federal banking agency a current list of officers and employees to whom, with proper identification, records and property may be made available, and who may make notes or copies necessary to carry out an audit.

(C) Each appropriate Federal banking agency shall give the Comptroller General suitable and lockable offices and furniture, telephones, and access to copying facilities

Federal Reserve Board and bank audits exclusions

Information disclosure

Reporting criminal violations.

Information withholding from Congress
Records and property

(2) Except for the temporary removal of workpapers of the Comptroller General that do not identify a customer of an open or closed bank or bank holding company, an open bank or an open bank holding company, all workpapers of the Comptroller General and records and property of or used by an appropriate Federal banking agency that the Comptroller General possesses during an audit shall remain in such agency. The Comptroller General shall prevent unauthorized access to records or property.

EQUAL REPRESENTATION FOR THE FEDERAL DEPOSIT INSURANCE CORPORATION

12 USC 1911

Sec 912 As one of the three Federal bank regulatory and supervisory agencies, and as the insurer of the United States banks involved in international lending, the Federal Deposit Insurance Corporation shall be given equal representation with the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency on the Committee on Banking Regulations and Supervisory Practices of the Group of Ten Countries and Switzerland.

REPORTS

Transmittal to Congress
12 USC 1912

Sec 913 Not later than six months after the date of the enactment of this title, the Secretary of the Treasury or the appropriate Federal banking agencies as specified below, shall transmit a report to the Congress regarding changes to improve the international lending operations of banking institutions. Such report shall—

(1) review the laws, regulations, and examination and supervisory procedures and practices, governing international banking in each of the Group of Ten Nations and Switzerland with particular attention to such matters bearing on capital requirements, lending limits, reserves, disclosure, examiner access, and lender of last resort resources, such report to be prepared by the Chairman of the Board of Governors of the Federal Reserve System,

(2) outline progress made in reaching the goal specified in section 908(c), such report to be prepared by the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System, and

(3) indicate actions taken to implement this title by the appropriate Federal banking agencies, including a description of the actions taken in carrying out the objectives of the title and any actions taken by any appropriate Federal banking agency that are inconsistent with the uniform implementation by the appropriate Federal banking agencies of their respective authorities under this title, and any recommendations for amendments to this or other legislation, such report to be prepared by the appropriate Federal banking agencies.

Ante p 1280

REGULATIONS OF THE INTERNATIONAL LENDING SUPERVISION ACT OF 1983³

12 CFR Ch. II (1-1-86 Edition)

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 (the "Board") under the authority of the International Lending Supervision Act of 1983 (Pub. L. 98-181, Title IX, 97 Stat. 1133) (the "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. 611-631) ("Edge Corporations"), corporations operating subject to an agreement with the Board under section 25 of the FRA (12 U.S.C. 601-604a) ("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 § 211.23(a)(2) of this regulation.

§ 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 § 211.23(a)(2).

(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]

§ 211.43 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 re-

quired 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 FR Y-6 (Form FR 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 FR 2886b).

(4) *Alternative accounting treatment.* A banking institution need not

³ Similar regulations apply to banks supervised by the Comptroller of the Currency and Federal Deposit Insurance Corporation.

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 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 institution'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 require-

ments of paragraph (a) of this section banking institutions that in the agencies' judgment have *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 summing the loan. These costs include but are not necessarily limited to legal fees, costs of preparing and processing loan documents and an al-

locable portion of salaries and related benefits of employees engaged in the international lending function and, where applicable, the syndication function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(d) *Fees received by managing banking institutions in an international syndicated loan* Fees received on international syndicated loans representing an adjustment of the yield on the loan shall be recognized over the loan period using the interest method. If the interest yield portion of a fee received on an international syndicated loan by a managing banking institution is unstated or differs materially from the pro rata portion of fees paid other participants in the syndication, an amount necessary for an interest yield adjustment shall be recognized. This amount shall at least be equivalent (on a pro rata basis) to the largest fee received by a loan participant in the syndication that is not a managing banking institution. The remaining portion of the syndication fee may be recognized as income at the loan closing date to the extent that it is identified and documented as compensation for services in arranging the loan. Such documentation shall include the loan agreement. Otherwise the fee shall be deemed an adjustment of yield.

(e) *Loan commitment fees* (1) Fees which are based upon the unfunded portion of a credit for the period until it is drawn and represent compensation for a binding commitment to provide funds or for rendering a service in issuing the commitment shall be recognized as income over the term of the commitment period using the straight line method of amortization. Such fees for revolving credit arrangements where the fees are received periodically in arrears and are based on the amount of the unused loan commitment may be recognized as income when received provided the income result would not be materially different.

(2) If it is not practicable to separate the commitment portion from other components of the fee, the entire fee

shall be amortized over the term of the combined commitment and expected loan period. The straight line method of amortization should be used during the commitment period to recognize the fee revenue. The interest method should be used during the loan period to recognize the remaining fee revenue in relation to the outstanding loan balance. If the loan is funded before the end of the commitment period, any unamortized commitment fees shall be recognized as revenue at that time.

(f) *Agency fees* Fees paid to an agent banking institution for administrative services in an international syndicated loan shall be recognized at the time of the loan closing or as the service is performed, if later.

(49 FR 12197 Mar 29 1984)

(483415)

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