

Issued in Washington, DC, on April 1, 1998.

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[FR Doc. 98-8952 Filed 4-3-98; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 28

[Docket No. 98-06]

RIN 1557-AB58

International Banking Activities

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend its regulation governing international lending, by simplifying the discussion concerning the accounting for fees on international loans to make the regulation consistent with generally accepted accounting principles (GAAP). This proposal also makes other changes to subpart C that are intended to clarify and simplify the rule.

DATES: Comments must be received on or before June 5, 1998.

ADDRESSES: Written comments should be submitted to Docket No. 98-06, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219. In addition, comments may be sent by facsimile transmission to FAX number (202)-874-5274, or by electronic mail to regs.comments@occ.treas.gov. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: Tom Rees, Professional Accounting Fellow, Bank Supervision Policy, (202) 874-5180; John Abbott, Deputy Comptroller, International Banking & Finance, (202) 874-4730; Rajia Bettauer, Counselor for International Activities, (202) 874-0680; or Saumya R. Bhavsar, Attorney, Legislative and Regulatory Activities, (202) 874-5090.

SUPPLEMENTARY INFORMATION:

Background

The International Lending Supervision Act of 1983 (ILSA), 12 U.S.C. 3901 *et seq.*, requires each Federal banking agency to evaluate the foreign country exposure and transfer risk of banks within its jurisdiction for

use in the examination and supervision of these banks. To implement this provision, the Federal banking agencies, through the Interagency Country Exposure Review Committee (ICERC), assess and categorize countries based on economic, social, and political conditions that may lead to increased transfer risk. "Transfer risk" arises from an obligor's inability to perform on its debt obligations using the agreed-upon currency due to the actions of the government that controls that currency. These actions include instances where a country is unable or unwilling to provide the necessary foreign exchange, because of, for example, a balance of trade deficit or currency restrictions.

In addition, ILSA directs each Federal banking agency to require banks to establish and maintain a special reserve whenever the agency determines either that the quality of a bank's international assets (*i.e.*, those assets included on a bank's Country Exposure Report, form FFIEC 009) has been impaired by the protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness, or that there are no definite prospects for the orderly restoration of debt service. 12 U.S.C. 3904(a)(1). ILSA also requires that these reserves be charged against current income and not considered as part of capital and surplus or allowances for possible loan losses. 12 U.S.C. 3904(a)(2).

Subpart C of 12 CFR part 28 implements ILSA and requires national banks and District of Columbia banks to establish reserves, referred to as allocated transfer risk reserves (ATRR), against potential losses on banks' foreign loans due to certain countries' transfer risk. Subpart C also sets forth the accounting treatment for various fees received by banks when making international loans and contains explicit requirements for the reporting and disclosure of international assets.

On July 5, 1995 (60 FR 34907), the OCC published proposed changes to 12 CFR parts 20 and 28, which set out the OCC's rules governing the international operations of domestic branches and Federal branches and agencies of foreign banks. The proposed changes included substantive modifications to part 28 and a consolidation of all the provisions relating to international banking that were previously contained in parts 20 and 28 into one CFR part, part 28. These proposed changes were part of the OCC's Regulation Review Program to update and streamline regulations and to eliminate requirements that impose inefficient and costly regulatory burdens on national banks. At that time the OCC

did not propose changes to subpart C of part 28 but invited public comment on subpart C in order to bring to the OCC's attention issues that could warrant consideration in a subsequent rulemaking.

On May 2, 1996 (61 FR 19524), the OCC published a final rule on part 28. In the preamble to the final rule, the OCC noted that it had received one comment on subpart C of part 28 and that the commenter recommended that the accounting provisions be amended to be uniform among the Federal banking agencies and consistent with GAAP. In response, the OCC stated in the preamble that it would address the issue raised by the commenter after further review of the rules in question.

For the reasons discussed below, the OCC is proposing to amend subpart C consistent with the commenter's suggestion. This proposal does not, however, amend the other two substantive provisions in subpart C dealing with the ATRR and reporting and disclosure of international assets. The OCC invites comment on any aspect of this proposal.

Discussion of Proposal

Accounting Treatment for Fees on International Loans (§ 28.53)

Current § 28.53 provides a lengthy discussion on the separate accounting treatment for each type of fee charged by banks in connection with their international lending. This proposal revises that section by replacing the discussion of the accounting treatment with a statement that banks are to account for fees on international loans in accordance with GAAP.

ILSA requires the Federal banking agencies to issue regulations for accounting for fees charged by banks in connection with international loans. (12 U.S.C. 3905(a)(2)(A)). In order to avoid excessive debt service burden on debtor countries, section 906(a) of ILSA (12 U.S.C. 3905(a)) prohibits a bank, in connection with restructuring an international loan, from charging fees in an amount that exceeds the administrative costs of restructuring the loan, unless the fee is amortized over the life of the loan. Section 906(b) of ILSA (12 U.S.C. 3905(b)) requires the Federal banking agencies to issue regulations prescribing the accounting treatment for agency, commitment, management, and other fees in connection with international loans to assure that the appropriate portion of such fees is accrued in income over the effective life of each such loan.

When ILSA was enacted in 1983 and the Federal banking agencies' final rule

on accounting for international loan fees was first published in 1984, Congress and the Federal banking agencies considered that the application of the broad fee accounting principles for banks contained in GAAP did not ensure the desired uniformity in how banks account for international loan fees. The preamble to the 1984 rule stated that the Federal banking agencies would reexamine the need for a discussion of accounting treatment if the Financial Accounting Standards Board (FASB) were to issue a final pronouncement or standard on this subject. 49 FR 12192 (March 29, 1984).

Since that time, FASB has revised the GAAP rules for fee accounting for international loans in a manner that accommodates the specific requirements of section 906 of ILSA (12 U.S.C. 3905). In addition, although there are some differences between § 28.53 and the GAAP standard (Financial Accounting Standard No. 91), they are relatively minor. For instance, GAAP requires different accounting methods than § 28.53 in the recognition of fees and administrative costs of originating, restructuring or syndicating international loans. However, adoption of the GAAP standard would not impose additional burden on banks, but would reduce burden in some instances.

Therefore, to reduce the regulatory burden of banks and simplify the rule, the OCC is proposing to eliminate the detailed discussion concerning the particular accounting method to be followed in accounting for various fees on international loans. The OCC proposes to require instead that national banks follow GAAP in accounting for such fees, subject to the amortization requirement for fees charged in connection with restructuring an international loan that exceed the administrative cost of the restructuring.¹ In the event that FASB changes the GAAP rules on fee accounting for international loans, the OCC will reexamine its rule in light of ILSA to assess the need for further revision to the regulation.

This proposal does not affect, in any way, the standards by which a bank recognizes loss on international assets affected by transfer risk, nor does it change the accounting treatment of a bank's transfer risk reserve. As discussed earlier, the proposal does, however, change the accounting treatment of fees that banks collect on international loans by adopting GAAP

accounting requirements for fee income on loans.

The change summarized above removes the need for the definitions of "international syndicated loan" and "loan agreement" which are used only in the discussion in current § 28.53. Accordingly, the proposal amends § 28.51 by removing the definitions of "international syndicated loan" and "loan agreement" from §§ 28.51(e) and (f), respectively, and redesignating the remaining definitions accordingly.

Regulatory Flexibility Act

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. As is explained in greater detail in the preamble to this proposal, there is only one substantive change and this change would simplify the regulation to make it consistent with generally accepted accounting principles. The proposed rule will reduce the regulatory burden on national banks, regardless of size. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

The OCC has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

The OCC has determined that the proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, consistent with section 202 of the Unfunded Mandates Act of 1995 (2 U.S.C. 1532), the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, the proposed rule simplifies the discussion concerning the accounting for fees on international loans to make the regulation consistent with generally accepted accounting principles. The proposed rule also makes other nonsubstantive changes to subpart C that are intended to clarify and simplify the rule.

List of Subjects in 12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, the OCC proposes to amend part 28 of chapter I of title 12 of the Code of Federal Regulations as set forth below:

PART 28—INTERNATIONAL BANKING ACTIVITIES

1. The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a, 161, 602, 1818, 3102, 3108, and 3901 *et seq.*

Subpart C—International Lending Supervision

§ 28.51 [Amended]

2. Section 28.51 is amended by removing paragraphs (e) and (f), and redesignating paragraphs (g) and (h) as paragraphs (e) and (f).

3. Section 28.53 is revised to read as follows:

§ 28.53 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 costs 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 in accordance with generally accepted accounting principles.

Dated: March 30, 1998.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 98-8864 Filed 4-3-98; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-67-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A320 and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 and A321 series airplanes. This proposal would require modification of the slat and flap control computer (SFCC) in the aft electronics rack. This proposal is prompted by issuance of mandatory continuing airworthiness information by

¹ The proposed change in this rulemaking is substantively identical to the change proposed by the Federal Deposit Insurance Corporation. (See 62 FR 37748 (July 15, 1997).)