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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 26

[Docket No. 99-11]
RIN 1557-AB60

FEDERAL RESERVE BOARD

12 CFR Part 212

[Docket No. R-0907]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 348

RIN 3064-ACO8

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563f

[Docket No. 99-36]
RIN 1550-AB07

Management Official Interlocks

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury.

ACTION: Joint final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (the Agencies) are revising their rules regarding management interlocks. The final rule conforms the interlocks rules to recent statutory changes, modernizes and clarifies the rules, and reduces unnecessary regulatory burdens where feasible, consistent with statutory requirements.

EFFECTIVE DATE: This joint rule is effective January 1, 2000.

FOR FURTHER INFORMATION CONTACT: OCC: Emily R. McNaughton, National Bank Examiner, Senior Policy Analyst, Core Policy Development (202)

874-5190; Jackie Durham, Senior Licensing Policy Analyst, Bank Organization and Structure (202) 874-5060; Sue E. Auerbach, Senior Attorney, Bank Activities and Structure (202) 874-5300; or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities (202) 874-5090. Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Thomas M. Corsi, Senior Counsel (202) 452-3275, or Andrew Baer, Attorney (202) 452-2246, Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for Deaf (TDD), Dorothea Thompson (202) 452-3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: Curtis Vaughn, Examination Specialist, Division of Supervision, (202) 898-6759; or Mark Mellon, Counsel, Regulation and Legislation Section, Legal Division, (202) 898-3854, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OTS: David Bristol, Senior Attorney, Business Transactions Division, Chief Counsel's Office (202) 906-6461; or Joseph M. Casey, Supervision Policy, (202) 906-5741, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The Depository Institution Management Interlocks Act (12 U.S.C. 3201-3208) (the Interlocks Act or Act) generally prohibits bank management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies (depository organizations). The scope of the prohibition depends on the size and location of the organizations involved. For instance, the Act prohibits

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interlocks between unaffiliated depository organizations, regardless of size, if each organization has an office ¹ in the same community (the community prohibition). Interlocks are also prohibited between unaffiliated depository organizations if each organization has total assets of $20 million or more and has an office in the same relevant metropolitan statistical area (RMSA) (the RMSA prohibition). The Interlocks Act also prohibits interlocks between unaffiliated depository organizations, regardless of location, if each organization has total assets exceeding specified thresholds (the major assets prohibition).

\1\ Each of the Agencies' regulations generally define ``office'' as a home or branch office. See 12 CFR 26.2 (OCC), 212.2 (Board), 348.2 (FDIC), and 563f.2 (OTS).

Summary of Statutory Changes

Section 2210 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104-208, 110 Stat. 3009-409) (the EGRPR Act) amended sections 204, 206 and 209 of the Interlocks Act (12 U.S.C. 3203, 3205 and 3207). Section 2210(a) of the EGRPR Act amended the Interlocks Act by changing the thresholds for the major assets prohibition under 12 U.S.C. 3203. Prior to the EGRPR Act, management officials of depository organizations with total assets exceeding $1 billion were prohibited from serving as management officials of unaffiliated depository organizations with assets exceeding $500 million, regardless of the location of the organizations.² The EGRPR Act raised the thresholds to $2.5 billion and $1.5 billion,

respectively. The amendment also authorized the Agencies to adjust the thresholds by regulation, as necessary to allow for inflation or market conditions.

\2\ The Agencies define ``total assets'' of diversified savings and loan holding companies and bank holding companies exempt from section 4 of the Bank Holding Company Act (12 U.S.C. 1843) to include only the assets of their depository institution affiliates. See 12 CFR 26.2(r) (OCC), 212.2(q) (Board), 348.2(q) (FDIC), and 563f.2(r) (OTS).

Section 2210(b) of the EGRPR Act permanently extended the grandfather exemptions for management officials whose service began before November 10, 1978, which appear at 12 U.S.C. 3205(a) and (b) which were due to expire in 1998. The EGRPR Act repealed section 3205(c) which mandated Agency review of these grandfathered interlocks before March 1995.

The EGRPR Act also amended 12 U.S.C. 3207 to provide that the Agencies may adopt regulations that permit service by a management official that would otherwise be prohibited by the Interlocks Act, if such service would not result in a monopoly or substantial lessening of competition. This change repealed the specific ``regulatory standards'' and ``management consignment'' exemptions added by the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act),³ and restored the Agencies' broad authority to create regulatory exemptions to the statutory prohibitions on interlocks.

\3\ The Agencies adopted final regulations implementing the management interlocks provisions of the CDRI Act, effective October 1, 1996. See 61 FR 40293 (August 2, 1996).

II. The Proposal

On August 11, 1998, the Agencies published a joint notice of proposed rulemaking (the Proposal) (63 FR 43052) to implement the statutory changes made by the EGRPR Act. In addition, the Proposal renewed an earlier proposal for a small market share exemption that the Board, OCC, and FDIC had advanced before enactment of the CDRI Act.

III. The Final Rule and Comments Received

The Agencies received a total of seven comments,⁴ some of which were sent to more than one agency. Commenters generally supported the Proposal. A few commenters, while supporting the Proposal, suggested that the Agencies make additional changes as discussed later in this preamble. Most of the proposed changes received either no comments or uniformly favorable comments. Accordingly, except where noted in the text that follows, the Agencies have adopted the Proposal without change. The following discussion summarizes the amendments to the Agencies' management interlocks rules and the comments received.

\4\ The Board received 4 comments from the public, while the OCC, FDIC, and OTS received 4, 6, and 5 respectively.

A. Definitions

The Agencies' regulations define key terms implementing the

Interlocks Act. The Agencies added or revised a number of these definitions in 1996 to implement the CDRI Act.⁵ With the repeal of the specific exemptive standards in the CDRI Act, two of these definitions became unnecessary, specifically, ``anticompetitive effect'' and ``critical''. The Agencies therefore proposed that they be removed.

\5\ See 61 FR 40293 (August 2, 1996).

The Agencies received only one comment on the proposed elimination of these terms. The commenter agreed that these definitions should be removed. The Agencies therefore adopt this provision without any changes.

B. Major Assets Prohibition

Prior to the EGRPR Act, if a depository institution or depository holding company had total assets exceeding $1 billion, a management official of the institution or any of its affiliates could not serve as a management official of any other nonaffiliated depository institution or depository holding company having total assets exceeding $500 million or as a management official of any affiliates of the other institution, regardless of location. The EGRPR Act revised the asset thresholds for the major assets prohibition from $1 billion and $500 million to $2.5 billion and $1.5 billion, respectively. The legislation also authorized the Agencies to adjust the threshold from time to time to reflect inflation or market changes.

The Agencies proposed to amend the regulations to reflect the new threshold amounts, and to add a mechanism providing for periodic adjustments of the thresholds. The adjustment would be based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (the Consumer Price Index). In those years when changes in the Consumer Price Index would change the thresholds by more than $100 million, the Agencies will adjust the threshold and announce the change by a final rule without notice and opportunity for comment published in the Federal Register. For those years in which changes in the Consumer Price Index would not change the thresholds by more than $100 million, the Agencies will not adjust the threshold. The Agencies invited comment on other types of market changes that may warrant subsequent adjustments to the major assets prohibition. The Agencies, however, wish to clarify that if they do not adjust the threshold to reflect a Consumer Price Index change in any given year, they will consider the change for that year in computing adjustments to the threshold in subsequent years.

Two commenters supported the proposed adjustment of the major asset thresholds based on the Consumer Price Index. One commenter, however, suggested that the Agencies notify financial institutions of threshold amounts at least annually even if they are not adjusted.

The Agencies believe that the $100 million benchmark will make it easy for the banking industry to keep track of the thresholds while preserving the flexibility to reflect changes in the economy that are significant enough to

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warrant changing the asset thresholds. Accordingly, the Agencies adopt the mechanism providing for periodic adjustments of the thresholds set forth in the Proposal without any changes.

C. Regulatory Standards and Management Consignment Exemptions

The current regulations contain Regulatory Standards and Management

Consignment exemptions which were predicated on section 3207 of the Interlocks Act. The EGRPR Act removed the specific exemptions from the Interlocks Act and substituted a general authority for the Agencies to create exemptions by regulation. Accordingly, the Proposal recommended removal of these regulatory exemptions.

The Agencies received only one comment on this provision. The commenter supported removal of the Regulatory Standards and Management Consignment exemptions. The Agencies find the removal of the exemptions appropriate in light of their statutory repeal and therefore adopt this provision as set forth in the Proposal without any changes.

D. General Exemptive Authority

Section 2210(c) of the EGRPR Act authorizes the Agencies to adopt regulations permitting service by a management official that would otherwise be prohibited by the Interlocks Act, if that official's service would not result in ``a monopoly or substantial lessening of competition.'' To implement this authority, the Agencies proposed to exempt otherwise prohibited management interlocks where the dual service would not result in a monopoly or substantial lessening of competition, and would not otherwise threaten safety and soundness. As noted in the preamble to the Proposal, the process for obtaining such exemptions will be set out in each Agency's procedural regulations or, in the case of the OCC, in the Management Interlocks booklet of the Comptroller's Corporate Manual.

The Agencies also proposed to create a rebuttable presumption that an interlock would not result in a monopoly or substantial lessening of competition, if: (1) The depository organization primarily serves low- or moderate-income areas; (2) the depository organization is controlled or managed by members of a minority group or women; (3) the depository institution has been chartered for less than two years; or (4) the depository organization is deemed to be in a troubled condition'' under regulations implementing section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1831i).

Under the proposal, interlocks granted in reliance on one of these presumptions may continue for three years unless the Agency granting the interlock provides otherwise in writing.

Three commenters supported the general exemption. One commenter suggested that the rebuttable presumption be extended to depository institutions that have been chartered for less than five years rather than the two-year limit suggested in the Proposal. The commenter argued that the time period should be extended to take into consideration the challenges facing a de novo depository institution in its first or second market cycle. Another commenter, however, cautioned against allowing an interlock to continue when the original reason for granting the interlock in the first place no longer applies. For example, the commenter noted that if an interlock is granted to strengthen an institution in a troubled condition and the bank is still in that status at the end of the three-year time period, the appropriate supervisory agency should consider other courses of action instead of allowing the interlock to continue.

A fourth commenter stated that the justification offered by the Agencies was insufficient to establish a rebuttable presumption for a depository organization controlled or managed by members of a minority group or women or for a newly chartered depository institution. The commenter further questioned the reason for presuming that interlocks in these conditions automatically would not result in a monopoly or reduction of competition. The commenter argued that proper management should be addressed in the chartering process and that the burden of management oversight rests there. The commenter therefore recommended that these two categories be dropped from the list of those eligible for the rebuttable presumption.

In response, the Agencies note that when the regulatory exceptions for these two categories of interlocks were created in 1979, the

Agencies found the exceptions were appropriate for the promotion of competition over the long term and to encourage the development and preservation of these depository organizations, thereby contributing to the convenience and needs of the public and the well-being of the financial community. The Agencies continue to believe that the exception for a depository organization controlled or managed by members of a minority group or women does not create an unfair advantage but instead recognizes that it has historically been more difficult for institutions controlled by women and minorities to recruit seasoned management and that, accordingly, competition to serve traditionally underserved markets may have suffered. By permitting interlocks that improve the quality of management in minority and women-owned institutions, the Agencies believe that these institutions are better able to compete with other institutions in the relevant market to serve traditionally underserved customers and markets. Similarly, because de novo entrants into a market are presumed to enhance competition in that market, the Agencies believe that an interlock that improves the management of newly chartered institutions also enhances competition.

For these reasons, the Agencies have retained the two categories of rebuttable presumptions. As noted by the Agencies in the Proposal, however, a claim that factors exist giving rise to a presumption does not preclude an Agency from denying a request for an exemption if the Agency finds that the interlock nevertheless would result in a monopoly or substantial lessening of competition. See 63 FR 43054.

The Proposal stated that these presumptions would be applied in a manner consistent with the Agencies' past analysis of the factors to meet the legitimate needs of the institutions and organizations involved for qualified and skilled management. The Proposal further stated that the definitions of ``area median income'' and ``low-and moderate-income areas'' added to the regulations in 1996 to implement the CDRI Act amendments would be retained to provide guidance as to when an organization would qualify for one of the presumptions. Under the Proposal, interlocks based on a rebuttable presumption would be allowed to continue for three years, unless otherwise provided in the approval order. The Proposal would not prevent an organization from applying for an extension of an interlock exemption if the factors continued to apply. The organization would also be free under the Proposal to utilize any other exemption that may be available. The Agencies proposed that any interlock approved under this section may continue so long as it would not result in a monopoly or a substantial lessening of competition, becomes unsafe or unsound, or is subject to a condition requiring termination at a specific time. The Agencies are adopting the proposed section without any changes.

The Agencies also decline to extend the eligibility period for the rebuttable

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presumption to depository institutions that have been chartered for less than five years rather than the two-year limit as suggested by another commenter. The Agencies believe that extending the rebuttable presumption to depository institutions that have been chartered for less than five years would cause de novo depository organizations to rely on interlocking service, rather than to obtain independent management from other more appropriate sources. Once a de novo depository institution is granted a general exemption, the exemption would continue for a period of three years.

E. Small Market Share Exemption

The Proposal sought comment on an exemption for interlocks involving institutions that, on a combined basis, control less than 20 percent of the deposits in a community or relevant MSA. The Agencies

proposed the small market share exemption to enlarge the pool of management talent upon which depository institutions may draw, thereby resulting in more competitive, better managed institutions without causing significant anticompetitive effects. As stated in the Proposal, financial institutions seeking to form an interlock pursuant to the small market share exemption must determine their eligibility by using deposit share data published by the FDIC in its Summary of Deposits.

All seven commenters supported the small market share exemption. In addition, five commenters found the FDIC Summary of Deposits to be the best available database for determining eligibility for the exception (with the other two commenters expressing no opinion on this question). Four commenters did not believe that institutions would abuse this exception by developing webs of interlocking relationships (hub and spoke interlocks). One of these four commenters urged the Agencies to approach such interlocks on a case-by-case basis.

Four commenters stated that 20 percent of deposits was an appropriate threshold to determine eligibility for the exception. One commenter in this group recommended, however, that the Agencies periodically reexamine the appropriateness of the 20 percent limit in light of the declining market shares of banks generally. Another commenter argued that the Agencies should increase the threshold to 30 percent due to a shortage of talent in some small towns. A second commenter suggested that the Agencies adopt a higher percentage for depository organizations in small communities. This commenter noted that depository organizations in sparsely populated areas often control a large share of deposits and that there would be no benefit in depriving small or rural banks of eligibility for this exemption. Two commenters suggested that credit union deposits should be taken into account when ascertaining the total amount of deposits in a particular community.

The Agencies agree with the majority of commenters that 20 percent of deposits within the relevant community is the appropriate threshold to determine eligibility for the small market share exemption. While there will be highly concentrated markets where this threshold will not affect institutions' ability to form interlocks, the Agencies believe that interlocks between unaffiliated institutions that together control more than 20 percent of the deposits in a market create the risk that the interlocked institutions will be able to adversely affect the availability or terms of credit in that market. The Agencies note, however, that the rule permits institutions that do not qualify for the small market share exemption to apply for a general exemption. The general exemption is available even to institutions that control more than 20 percent of the deposits in the relevant market if the institutions are able to demonstrate that the interlock will not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns.

The Agencies do not agree with the commenters' suggestion of including data on credit union deposits along with depository institution deposits when determining the total amount of deposits in a given market. The Agencies continue to believe ⁶ that the deposit data maintained in the FDIC's Summary of Deposits, which does not include credit union data, provides a reliable approximation of the market for a given location. To the extent that credit unions hold a significant amount of the total deposits in a given market, this information may be used to demonstrate that an interlock will not result in a monopoly or substantial lessening of competition under the general exemption. This approach is consistent with the Agencies' treatment of credit union deposits in the merger context, where the Agencies consider credit union deposits as one of many mitigating factors if a merger transaction exceeds a specified threshold.⁷

\6\ The Agencies' small market share exemption proposal in 1994

also did not include credit union deposit data in the determination of the market.

\7\ The National Credit Union Administration in its proposed rulemaking to revise its management interlocks regulation, however, considers credit union deposits when determining the total amount of deposits in a given market. See 63 FR 57947 (October 29, 1998).

The small market share exemption criteria remain as outlined in the Proposal. Organizations claiming the exemption must determine the market share in each RMSA and community in which both depository organizations (or their depository institution affiliates) have offices. The relevant market used for the small market share exception (that is, the RMSAs or communities in which both depository organizations or their depository institution affiliates have offices) are the same markets described in the community and RMSA prohibitions. The small market share exemption is not available for interlocks subject to the major assets prohibition.

The exemptions continue to apply as long as the organizations meet the applicable conditions. Any event, such as an expansion or merger, that causes the level of deposits controlled to exceed 20 percent of deposits in any RMSA or community is considered a change in circumstances. Accordingly, the depository organizations have 15 months (or such shorter period as directed by the appropriate Agency) to address the prohibited interlock. Conforming changes relating to termination have been made to the Agencies' change of circumstances provisions.

No prior Agency approval is required in order to claim the proposed small market share exemption. Management is responsible for complying with the terms of a small market share exemption and for maintaining sufficient supporting documentation. Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption and must reconfirm that determination on an annual basis.

IV. Effective Date of Final Rule

Subject to certain exceptions, 12 U.S.C. 4802(b) provides that new regulations and amendments to regulations prescribed by a federal banking agency which impose additional reporting, disclosures, or other new requirements on an insured depository institution shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form. In addition, the Administrative Procedure Act generally provides that rules will become effective 30 days after publication. 5 U.S.C. 553. Accordingly, compliance with the final rule is not mandatory until the effective

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date provided earlier in this document. Section 4802(b), however, also permits any person subject to the regulation to comply with the regulation voluntarily, prior to the effective date. Consequently, affected insured depository institutions may elect to comply voluntarily with the final rule immediately. If an insured depository institution or foreign bank elects to comply voluntarily with any section of the management interlocks rules, the institution or bank must comply with the entire part.

V. Paperwork Reduction Act

The Agencies may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control numbers are listed below.

OCC: 1557-0196
Board: 7100-0134
FDIC: 3604-0118
OTS: 1550-0051

The Agencies sought comment on the burden estimates for the information collections listed below and received no comments that specifically addressed the burden stemming from these information collections.

OCC: The collection of information requirements contained in this final rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Persons interested in commenting on these requirements should send comments to the Office of Management and Budget, Paperwork Reduction Project (1557-0196), Washington, D.C. 20503, with copies to the Communications Division, Third Floor, Attention: 1557-0196, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

The collection of information requirements in this final rule are found in 12 CFR 26.4(h)(1)(i), 26.6(b), and 26.6(c). This information is required to evidence compliance with the requirements of the Interlocks Act by national banks and District banks.

Estimated average annual burden hours per respondent: 4 hours.

Estimated number of respondents: 7.

Estimated total annual reporting burden: 29 hours.

Start-up costs to correspondents: None.

Board: In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget.

The collection of information requirements in the final rule are found in 12 CFR 212.4(h)(1)(i), 212.5(a)(2), 212.6(b), and 212.6(c). This information is required to evidence compliance with the Interlocks Act. The respondents are state member banks and subsidiary depository institutions of bank holding companies (for-profit financial institutions, including small businesses).

Estimated number of respondents: 6 applicants per year.

Estimated average annual burden per respondent: 4 hours.

Estimated annual frequency of reporting: One-time application.

Estimated total annual reporting burden: 24 hours.

Start-up costs to respondents: None.

The Board has a continued interest in the public's opinions of Federal Reserve collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0134), Washington, DC 20503.

FDIC: The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget under control number 3604-0118 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (3604-0118), Washington, D.C. 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, Room F-453, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: The collection of information requirements in this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under OMB control number 1550-0051.

Persons interested in commenting on these requirements should send

comments to the Office of Management and Budget, Paperwork Reduction Project (1550-0051), Washington, DC 20503, with copies to the Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G St., NW., Washington, DC 20552.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to the collection of information in this final rule is displayed at 12 CFR 506.1.

The collection of information requirements are found in 12 CFR 563f.4(h)(1)(i), 563f.6(b) and 563f.6(c). OTS requires this information to evidence compliance with the Management Interlocks Act by savings associations. The likely respondents are savings associations and their holding companies.

VI. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the regulatory flexibility analysis otherwise required under section 603 of the RFA (5 U.S.C. 603) is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such certification and a statement explaining the factual basis for such certification in the Federal Register along with its final rule.

Pursuant to section 605(b) of the RFA, the Agencies hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. The Agencies expect that this rule will not create any additional burden on small entities. The rule relaxes the criteria for obtaining an exemption from the interlocks prohibitions, and specifically addresses the needs of small entities by creating the small market share exemption. Accordingly, a regulatory flexibility analysis is not required.

VII. Small Business Regulatory Enforcement Fairness Act

Title II of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) ⁸ provides generally for agencies to report rules to Congress and the General Accounting Office for review. The reporting requirement is triggered when a Federal agency issues a final rule. The Agencies will file the appropriate reports with Congress and the GAO as required by SBREFA. The Office of Management and Budget has determined that the rules promulgated by the Agencies do not constitute ``major rules'' as defined by SBREFA.

\8\ Pub. L. 104-121, 110 Stat. 857.

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VIII. Executive Order 12866

The OCC and OTS have determined that this Proposal is not a significant regulatory action under Executive Order 12866.

IX. Unfunded Mandates Act of 1995

OCC and OTS: Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule likely to result in a Federal mandate that may result in the annual expenditure of $100 million or more in any one year by State, local, and tribal

governments, in the aggregate, or by the private sector. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act requires an agency to identify and consider a reasonable number of alternatives before promulgating the rule.

The OCC and OTS have determined that this final 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, neither the OCC nor the OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

X. Assessment of Impact of Federal Regulation on Families

The Agencies have determined that this amendment will not affect family well-being within the meaning of section 654 of the Treasury Department Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105-277, 112 Stat. 2681).

List of Subjects

12 CFR Part 26

Antitrust, Banks, banking, Holding companies, Management official interlocks, National banks, Reporting and recordkeeping requirements.

12 CFR Part 212

Antitrust, Banks, banking, Holding companies, Management official interlocks, Reporting and recordkeeping requirements.

12 CFR Part 348

Antitrust, Banks, banking, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 563f

Antitrust, Holding companies, Reporting and recordkeeping requirements, Savings associations.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the joint preamble, the OCC amends chapter I of title 12 of the Code of Federal Regulations as follows:

PART 26--MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 26 continues to read as follows:

Authority: 12 U.S.C. 93a and 3201-3208.

Sec. 26.2 [Amended]

2. Section 26.2 is amended by removing paragraphs (b) and (f) and redesignating paragraphs (c) through (s) as paragraphs (b) through (q), respectively.

3. Section 26.3 is amended by revising paragraph (c) to read as follows:

Sec. 26.3 Prohibitions.

* * * * *

(c) Major assets. A management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. The OCC will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest $100 million. The OCC will announce the revised thresholds by publishing a final rule without notice and comment in the Federal Register.

4. Section 26.5 is revised to read as follows:

Sec. 26.5 Small market share exemption.

(a) Exemption. A management interlock that is prohibited by Sec. 26.3 is permissible, if:

(1) The interlock is not prohibited by Sec. 26.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) Confirmation and records. Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

5. Section 26.6 is revised to read as follows:

Sec. 26.6 General exemption.

(a) Exemption. The OCC may by order issued following receipt of an application, exempt an interlock from the prohibitions in Sec. 26.3 if the OCC finds that the interlock would not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns.

(b) Presumptions. In reviewing an application for an exemption under this section, the OCC will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

(1) Primarily serves low-and moderate-income areas;

(2) Is controlled or managed by persons who are members of a minority group, or women;

(3) Is a depository institution that has been chartered for less than two years; or

(4) Is deemed to be in ``troubled condition'' as defined in 12 CFR 5.51(c)(6).

(c) Duration. Unless a specific expiration period is provided in the OCC approval, an exemption permitted by paragraph (a) of this section may continue so long as it does not result in a monopoly or substantial lessening of competition, or is unsafe or unsound. If the OCC grants an interlock exemption in reliance upon a presumption under

paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the OCC in writing.

6. Section 26.7 is amended by revising paragraph (a) to read as follows:

Sec. 26.7 Change in circumstances.

(a) Termination. A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or any reorganization of the ownership structure of a depository organization

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that causes a previously permissible interlock to become prohibited.

* * * * *

Dated: July 12, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set out in the joint preamble, the Board amends chapter II of title 12 of the Code of Federal Regulations as follows:

PART 212--MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 212 continues to read as follows:

Authority: 12 U.S.C. and 3201-3208; 15 U.S.C. 19.

Sec. 212.2 [Amended]

2. Section 212.2 is amended by removing paragraphs (b) and (f) and redesignating paragraphs (c) through (r) as paragraphs (b) through (p), respectively.

3. Section 212.3 is amended by revising paragraphs (b) and (c) to read as follows:

Sec. 212.3 Prohibitions.

* * * * *

(b) RMSA. A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same RMSA and, in the case of depository institutions, each depository organization has total assets of $20 million or more.

(c) Major assets. A management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets

exceeding $1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. The Board will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest $100 million. The Board will announce the revised thresholds by publishing a final rule without notice and comment in the Federal Register.

4. Section 212.5 is revised to read as follows:

Sec. 212.5 Small market share exemption.

(a) Exemption. A management interlock that is prohibited by Sec. 212.3 is permissible, if:

(1) The interlock is not prohibited by Sec. 212.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) Confirmation and records. Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

5. Section 212.6 is revised to read as follows:

Sec. 212.6 General exemption.

(a) Exemption. The Board may, by agency order, exempt an interlock from the prohibitions in Sec. 212.3, if the Board finds that the interlock would not result in a monopoly or substantial lessening of competition, and would not present safety and soundness concerns.

(b) Presumptions. In reviewing an application for an exemption under this section, the Board will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

(1) Primarily serves low- and moderate-income areas;

(2) Is controlled or managed by persons who are members of a minority group, or women;

(3) Is a depository institution that has been chartered for less than two years; or

(4) Is deemed to be in ``troubled condition'' as defined in 12 CFR 225.71.

(c) Duration. Unless a shorter expiration period is provided in the Board approval, an exemption permitted by paragraph (a) of this section may continue so long as it does not result in a monopoly or substantial lessening of competition, or is unsafe or unsound. If the Board grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the Board in writing.

6. Section 212.7 is amended by revising paragraph (a) to read as follows:

Sec. 212.7 Change in circumstances.

(a) Termination. A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include

an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.
* * * * *
By order of the Board of Governors of the Federal Reserve System.

Dated at Washington, DC, this 13th day of September, 1999.

Board of Governors of the Federal Reserve System.
Jennifer J. Johnson,
Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC amends chapter III of title 12 of the Code of Federal Regulations as follows:

PART 348--MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 348 continues to read as follows:

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

Sec. 348.2 [Amended]

2. Section 348.2 is amended by removing paragraphs (b) and (f) and redesignating paragraphs (c) through (r) as paragraphs (b) through (p), respectively.
3. Section 348.3 is amended by revising paragraph (c) to read as follows:

Sec. 348.3 Prohibitions.

* * * * *
(c) Major assets. A management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. The FDIC will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban

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Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest $100 million. The FDIC will announce the revised thresholds by publishing a final rule without notice and comment in the Federal Register.
4. Section 348.5 is revised to read as follows:

Sec. 348.5 Small market share exemption.

(a) Exemption. A management interlock that is prohibited by Sec. 348.3 is permissible, if:

(1) The interlock is not prohibited by Sec. 348.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) Confirmation and records. Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

5. Section 348.6 is revised to read as follows:

Sec. 348.6 General exemption.

(a) Exemption. The FDIC may by agency order exempt an interlock from the prohibitions in Sec. 348.3 if the FDIC finds that the interlock would not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns.

(b) Presumptions. In reviewing an application for an exemption under this section, the FDIC will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

(1) Primarily serves low-and moderate-income areas;

(2) Is controlled or managed by persons who are members of a minority group, or women;

(3) Is a depository institution that has been chartered for less than two years; or

(4) Is deemed to be in ``troubled condition'' as defined in Sec. 303.101(c).

(c) Duration. Unless a shorter expiration period is provided in the FDIC approval, an exemption permitted by paragraph (a) of this section may continue so long as it does not result in a monopoly or substantial lessening of competition, or is unsafe or unsound. If the FDIC grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the FDIC in writing.

(d) Procedures. Procedures for applying for an exemption under this section are set forth in 12 CFR 303.250.

6. Section 348.7 is amended by revising paragraph (a) to read as follows:

Sec. 348.7 Change in circumstances.

(a) Termination. A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 31st day of August, 1999.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the joint preamble, the OTS amends chapter V of title 12 of the Code of Federal Regulations as follows:

PART 563f--MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 563f continues to read as follows:

Authority: 12 U.S.C. 3201-3208.

Sec. 563f.2 [Amended]

2. Section 563f.2 is amended by removing paragraphs (b) and (f) and redesignating paragraphs (c) through (s) as paragraphs (b) through (q), respectively.

3. Section 563f.3 is amended by revising paragraph (c) to read as follows:

Sec. 563f.3 Prohibitions.

* * * * *

(c) Major assets. A management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. The OTS will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest $100 million. The OTS will announce the revised thresholds by publishing a final rule without notice and comment in the Federal Register.

4. Section 563f.5 is revised to read as follows:

Sec. 563f.5 Small market share exemption.

(a) Exemption. A management interlock that is prohibited by Sec. 563f.3 is permissible, if:

(1) The interlock is not prohibited by Sec. 563f.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) Confirmation and records. Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must

reconfirm that determination on an annual basis.

5. Section 563f.6 is revised to read as follows:

Sec. 563f.6 General exemption.

(a) Exemption. The OTS may by agency order exempt an interlock from the prohibitions in Sec. 563f.3 if the OTS finds that the interlock would not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns. A depository organization may apply to the OTS for an exemption as provided by Sec. 516.2 of this chapter.

(b) Presumptions. In reviewing an application for an exemption under this section, the OTS will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

(1) Primarily serves low- and moderate-income areas;

(2) Is controlled or managed by persons who are members of a minority group, or women;

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(3) Is a depository institution that or has been chartered for less than two years; or

(4) Is deemed to be in ``troubled condition'' as defined in Sec. 563.555 of this chapter.

(c) Duration. Unless a shorter expiration period is provided in the OTS approval, an exemption permitted by paragraph (a) of this section may continue so long as it does not result in a monopoly or substantial lessening of competition, or is unsafe or unsound. If the OTS grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the OTS in writing.

6. Section 563f.7 is amended by revising paragraph (a) to read as follows:

Sec. 563f.7 Change in circumstances.

(a) Termination. A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

* * * * *

Dated: June 30, 1999.

Ellen Seidman,

Director.

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