Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.9 [Amended]

2. In § 94.9, paragraph (a) is amended by adding ''The Netherlands,'' immediately after ''Iceland,''.

§ 94.10 [Amended]

3. In § 94.10, paragraph (a) is amended by adding ''The Netherlands,'' immediately after ''Iceland,''.

§ 94.12 [Amended]

4. In § 94.12, paragraph (a) is amended by adding ''The Netherlands,'' immediately after ''Mexico,''.

§ 94.13 [Amended]

5. In § 94.13, the introductory text, the first sentence is amended by adding ''The Netherlands,'' immediately after ''Luxembourg,''.

Done in Washington, DC, this 29th day of July 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–19720 Filed 8–1–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 26

[Docket No. 96–15]

RIN 1557–AB39

FEDERAL RESERVE BOARD

12 CFR Part 212

[Docket No. R–0907]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 348

RIN 3064–AB71

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563f

[Docket No. 96–62]

RIN 1150–AA95

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) (collectively, the agencies) are revising their rules regarding management interlocks. This 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. In so doing, it reflects comments received on the proposed rule and the agencies' further internal considerations.

EFFECTIVE DATE: This joint rule is effective October 1, 1996.

FOR FURTHER INFORMATION, CONTACT: OCC: Sue E. Auerbach, Senior Attorney, Bank Activities and Structure Division (202) 874–5300; Emily R. McNaughton, National Bank Examiner, Credit & Management Policy (202) 874–5170; Jackie Durham, Senior Licensing Policy Analyst (202) 874–5060; or Mark J. Tenhundfeld, Senior Attorney, Legislative and Regulatory Activities (202) 874–5090, 250 E Street, SW., Washington, DC 20219.

Board: Thomas M. Corsi, Senior Attorney (202/452–3275), or Tina Woo, Attorney (202/452–3890), 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, (202) 906–6461; or Donna Deale, Program Manager, Supervision Policy, (202) 906–7488.

SUPPLEMENTARY INFORMATION:

Background

Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act)

Section 303(a) of the CDRI Act (12 U.S.C. 4803(a)) requires the agencies to review their regulations in order to streamline and modify the regulations to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires the agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. The agencies have reviewed their respective management interlocks regulations with these purposes in mind and are amending the regulations in ways designed to meet the goals of section 303(a).

The agencies have made the following changes to their respective management interlocks rules in order to comply with the mandate of section 303(a):

- The final rules revise the definition of ''senior management official'' to eliminate uncertainty as to when an employee of a depository institution will be considered to be a senior management official for purposes of the Depository Institution Management Interlocks Act (12 U.S.C. 3201–3208) (Interlocks Act). Moreover, the final rules conform this definition to definitions of similar terms used elsewhere in the agencies' regulations.
- The final rules revise the definition of ''representative or nominee'' to clarify

that the agencies will determine that a person is acting as a representative or nominee on behalf of another person only when there is an agreement, express or implied, obligating the first person to act on the second person's behalf with respect to management responsibilities.

- The final rules reflect a reinterpretation of the Interlocks Act by the agencies that permits management interlocks within a relevant metropolitan statistical area (MSA) when either of the depository institutions in the MSA has assets of less than $20 million (the agencies previously interpreted the Interlocks Act to permit interlocks between unaffiliated institutions in MSA only if both depository institutions have assets of less than $20 million). This expands the pool of available managerial talent for small depository institutions.

In implementing the Interlocks Act's ''regulatory standards'' exemption (Regulatory Standards exemption) and the exemption under a ''management official consignment program'' (Management Consignment exemption), the final rules contain certain presumptions and define key terms so as to eliminate unnecessary burdens.

The final rules remove the provision concerning statutorily grandfathered management interlocks, given that it is unnecessary in light of the changes made to the Interlocks Act by the CDRI Act.

The agencies believe that these changes will streamline and modify their respective management interlocks regulations, thus furthering the goals of section 303 of the CDRI Act. These changes are explained more fully in the discussion of the final rule and comments received.

Summary of Statutory Changes

The CDRI Act amended the Interlocks Act by removing the agencies' broad authority to exempt otherwise impermissible interlocks and replacing it with the authority to exempt interlocks under more narrow circumstances. The CDRI Act also required a depository organization with a ''grandfathered'' interlock to apply for an extension of the grandfather period if the organization wanted to keep the interlock in place.[1]

Pursuant to the changes made by the CDRI Act, a depository institution seeking an exemption from the Interlocks Act's restrictions must qualify either for a Regulatory Standards exemption or a Management Consignment exemption. An applicant seeking a Regulatory Standards exemption must submit a board resolution certifying that no other candidate from the relevant community has the necessary expertise to serve as a management official, is willing to serve, and is not otherwise prohibited by the Interlocks Act from serving. Before granting the exemption request, the appropriate agency must find that the individual is critical to the institution's safe and sound operations, that the interlock will not produce an anticompetitive effect, and that the management official meets any additional requirements imposed by the agency. Under the Management Consignment exemption, the appropriate agency may permit an interlock that otherwise would be prohibited by the Interlocks Act if the agency determines that the interlock would: (1) improve the provision of credit to low- and moderate-income areas; (2) increase the competitive position of a minority- or women-owned institution; or (3) strengthen the management of a newly chartered institution or an institution that is in an unsafe or unsound condition (*see* text following ''Management Consignment exemption'' in this preamble for a discussion regarding interlocks involving a newly chartered institution or an institution that is in an unsafe or unsound condition).

The Proposal

On December 29, 1995, the agencies published a joint notice of proposed rulemaking (proposal) (60 FR 67424) to implement these statutory changes. In addition, the proposal permitted interlocks involving two institutions located in the same relevant metropolitan statistical area (RMSA) if the institutions were not also located in the same community and if at least one of the institutions had total assets of less than $20 million. Finally, the proposal streamlined and clarified the agencies' interlocks rules in various respects.

The Final Rule and Comments Received

The agencies received a total of 26 comments,[2] some of which were sent to more than one agency. Commenters overwhelmingly 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 provisions in the proposal received either no comments or uniformly favorable comments. Accordingly, except where noted in the text that follows, the agencies have adopted without revision the changes to their respective interlocks rules that were set forth in the proposal.

The following discussion summarizes the amendments to the agencies' management interlock rules and the comments received.

Authority, Purpose, and Scope

This section in the agencies' final rules identifies the Interlocks Act as the statutory authority for the management interlocks regulation. It also states that the purpose of the rules governing management interlocks is to foster competition between unaffiliated institutions. Finally, this section identifies the types of institutions to which each agency's regulation applies. The OCC rule uses the term ''District bank'' to describe banks operating under the Code of Laws of the District of Columbia. (*See* definition of ''District bank'' at § 26.2(k).)

Definitions

Anticompetitive effect

The final rules define the term ''anticompetitive effect'' to mean ''a monopoly or substantial lessening of competition,'' a definition derived from the Bank Merger Act (12 U.S.C. 1828(c)). The term ''anticompetitive effect'' is used in the Regulatory Standards exemption. Under the Regulatory Standards exemption, the appropriate agency may approve a request for an exemption to the Interlocks Act if, among other things, the agency finds that continuation of service by the management official does not produce an anticompetitive effect with respect to the affected institution.

The statute does not define the term ''anticompetitive effect,'' nor does the legislative history to the CDRI Act point to a particular definition. The context of the Regulatory Standards exemption suggests, however, that the agencies should apply the term ''anticompetitive effect'' in a manner that permits interlocks that present no substantial lessening of competition. By prohibiting an interlock that would result in a monopoly or substantial lessening of competition, the definition preserves the free flow of credit and other banking services that the Interlocks Act is designed to protect. Moreover, use of a definition familiar to the banking industry enables the agencies to accomplish the legislative purpose of

[1] The agencies completed their review of requests for extensions by March 23, 1995, as directed by the statute. Therefore, the provision regarding extending the grandfather period is moot for purposes of this regulation.

[2] The Board received 10 comments from the public, while the OCC, FDIC, and OTS received 6, 6, and 4, respectively.

the Interlocks Act without imposing unnecessary regulatory burdens.

Area Median Income

The final rules define ''area median income'' as the median family income for the MSA in which an institution is located or the statewide nonmetropolitan median family income if an institution is located outside an MSA. The term ''area median income'' is used in the definition of ''low- and moderate-income areas,'' which in turn is used in the implementation of the Management Consignment exemption.

Critical

The final rules define ''critical'' as ''important to restoring or maintaining a depository organization's safe and sound operations.'' The term ''critical'' is used in the Regulatory Standards exemption. Under that exemption, the appropriate agency must find that a proposed management official is critical to the safe and sound operations of the affected institution. 12 U.S.C. 3207(b)(2)(A).

Neither the statute nor its legislative history defines ''critical.'' The agencies are concerned that a narrow interpretation of this term would nullify the Regulatory Standards exemption. If someone were ''critical'' to the safe and sound operations of an institution only if the institution would fail but for the service of the person in question, the exemption would have little relevance, because the standard would be impossible to meet. Given that Congress clearly intended for the Regulatory Standards exemption to permit interlocks under some circumstances, the question thus becomes how to define those circumstances.

The agencies believe that the definition adopted in these final rules is consistent with the legislative intent by insuring that only persons of demonstrated expertise and importance to the institution's safe and sound operations may serve pursuant to a Regulatory Standards exemption.

Depository Institution

The final rules make no substantive change to the definition of ''depository institution.'' Two commenters noted that several of the agencies interpret ''depository institution'' to include only those institutions that accept deposits (see, *e.g.*, Board Staff Opinion of March 29, 1983, I F.R.R.S. 3–838; OCC No-Objection Letter No. 93–01, October, 1993; FDIC Interpretive Letter No. 85–27), and requested that the agencies clarify that these interpretations will not be affected by the final rules. The OCC, Board, and FDIC note that the final rules change neither the definition of ''depository institution'' nor the application of that definition, and that the interpretations cited remain accurate statements of the positions of these agencies.

Low- and Moderate-income Areas

The final rules define this term as a census tract (or, if an area is not in a census tract, a block numbering area delineated by the United States Bureau of the Census) in which the median family income is less than 100 percent of the area median income. This term is used in the Management Consignment exemption that permits an otherwise impermissible interlock if the interlock would improve the provision of credit to a low- and moderate-income area. The final rules clarify that the agencies will evaluate whether an area is low- or moderate-income by comparing the median family income for the census tract to be helped (or, if there is no census tract, the block numbering area delineated by the United States Bureau of the Census) with the area median income. Income data will be derived from the most recent decennial census.

One commenter requested that the agencies use a cutoff of 120 percent of the area median income for determining whether an area is ''low- or moderate-income.'' This commenter suggested that this higher cutoff would be consistent with the flexibility vested in the agencies to implement the Management Consignment exemption in a way designed to make it easier for institutions to serve economically disadvantaged areas.

The agencies agree that a cutoff above 80 percent of the area median income is appropriate, given that ''low-income'' is defined in Title I, Subtitle A of the CDRI Act (titled ''Community Development Banking and Financial Institutions'') to mean not more than 80 percent of the area median income. 12 U.S.C. 4702(17). The agencies believe that Congress, by using the term ''moderate-income'' in addition to ''low-income'' in section 338(b) of the CDRI Act (which created the Management Consignment exemption), intended for that term to apply to an area where the median family income exceeds the cutoff for low income established elsewhere in the CDRI Act.

The agencies disagree, however, that a cutoff above 100 percent of area median income is appropriate. The agencies continue to believe that the 100 percent cutoff proposed best effectuates the Congressional purpose of facilitating the flow of credit to economically disadvantaged areas. Moreover, the threshold adopted is a commonly used definition for ''moderate-income'' in other statutory provisions.[3]

Management Official

The final rules define ''management official'' to include a senior executive officer, a director, a branch manager, a trustee of an organization under the control of trustees, or any person who has a representative or nominee serving in such capacity. The definition excludes (1) A person whose management functions relate either exclusively to the business of retail merchandising or manufacturing or principally to business outside the United States of a foreign commercial bank and (2) a person excluded by section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)).

The final rules remove the phrase ''an employee or officer with management functions,'' which appeared in the former rule. In its place, the agencies have used the term ''senior executive officer'' as defined by each agency in its regulation pertaining to the prior notice of changes in senior executive officers, which implement section 32 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831i) as added by section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. No. 101–73, 103 Stat. 183). The agencies have made this change to eliminate the uncertainty and attendant compliance burden created by the ambiguous term ''management functions.'' The final rules incorporate specific illustrative examples of positions at depository organizations that will be treated as senior executive officers. See 12 CFR 5.51(c)(3) (OCC); 12 CFR 225.71(a) (Board); 12 CFR 303.14(a)(3) (FDIC); and 12 CFR 574.9(a)(2) (OTS). The agencies believe that these definitions will allow depository organizations to identify impermissible interlocks with greater certainty and thus will enhance compliance.

One commenter requested that the agencies amend the rules to expand the exemption that exists for individuals whose management functions relate to the business of retail merchandising or manufacturing. In response to this request, the agencies carefully reviewed their respective rules and concluded that the rules as drafted are sufficiently broad to address the concerns expressed by the commenter. This commenter also requested that the agencies clarify the procedures by which someone may confirm that an organization complies

[3] *See, e.g.*, 12 U.S.C. 4502(10) (defining ''moderate-income'' in the context of the statute addressing government sponsored enterprises).

with the regulation. The agencies note that an organization may request from the appropriate regulator at any time confirmation that a given interlock complies with applicable law. The agencies have elected not to impose any procedural requirements in the regulation on this type of request.

Relevant Metropolitan Statistical Area (RMSA)

The final rules, like the former rules, define ''relevant metropolitan statistical area (RMSA)'' as an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated primary MSAs. However, unlike the former rules, the final rules clarify that this definition will be used to the extent that the Office of Management and Budget (OMB) defines and applies the terms MSA, primary MSA, and consolidated MSA. This change reflects the fact that OMB defines ''consolidated MSA'' to include two or more primary MSAs. Given that a consolidated MSA, by OMB's definition, is comprised of primary MSAs, the reference to a consolidated MSA in the Interlocks Act and the agencies' regulations is inappropriate. The final rules enable the agencies to implement the statute in a way that complies with both the spirit and the letter of the Interlocks Act.

Representative or Nominee

The final rules define ''representative or nominee'' as someone who serves as a management official and has an obligation to act on behalf of someone else. The final rules remove the rest of the definition that appeared in the former rule, however, and insert in lieu thereof a statement that the appropriate agency will find that someone has an obligation to act on behalf of someone else only if there is an agreement (express or implied) to act on behalf of another. This change clarifies that the determination of whether someone serves a representative or nominee will depend on whether there is a basis to conclude that an agreement exists to act on someone's behalf.

Prohibitions

The former rules prohibited interlocks in the following three instances. First, no two unaffiliated depository organizations may have an interlock if they (or their depository institution affiliates) have depository institution offices in the same community. Second, a depository organization may not have an interlock with any unaffiliated depository organization if either depository organization has assets of $20 million or more and the depository organizations (or depository institution affiliates of either) have depository institution offices in the same RMSA.[4] Third, if a depository organization has total assets exceeding $1 billion, it (and its affiliates) may not have an interlock with any depository organization with total assets exceeding $500 million (or affiliate thereof), regardless of location.

The final rules amend the restriction applicable to institutions with assets equal to or exceeding $20 million to better conform to the purposes of the Interlocks Act. Whereas the former rules prohibited interlocks in an RMSA if one of the organizations has total assets of $20 million or more, the final rules apply the RMSA-wide prohibition only if both organizations have total assets of $20 million or more. Interlocks within a community involving unaffiliated depository organizations will continue to be prohibited, regardless of the size of the organizations.

The agencies believe that this change is consistent with both the language and the intent of the Interlocks Act. While the statute uses the plural ''depository institutions'' in section 203(1) of the Interlocks Act (12 U.S.C. 3202(1)), in context, the wording is ambiguous and neither the statute nor its legislative history compels the conclusion that the interlock must involve two institutions with less than $20 million in assets before the less restrictive prohibition applies.

The Interlocks Act seeks to prohibit interlocks that could enable two institutions to engage in anticompetitive behavior. However, an institution with total assets of less than $20 million is likely to derive most of its business from the community in which it is located and is unlikely to compete with institutions that do not have offices in that community. Therefore, an interlock involving one institution with assets under $20 million and another institution with assets of at least $20 million not in the same community is not likely to lead to the anticompetitive conduct that the Interlocks Act is designed to prohibit.

The agencies believe, moreover, that the change will promote rather than inhibit competition. Expanding the pool of managerial talent for institutions with assets under $20 million could enhance the ability of smaller institutions to compete by improving the management of these institutions.

Every comment on this change either supported the change without qualification or supported the change and asked the agencies go even farther. A few commenters suggested that the agencies should raise the asset thresholds discussed earlier and/or provide blanket exceptions for institutions with total assets below certain levels. The agencies note that the Interlocks Act, which establishes the thresholds at which the various prohibitions apply, does not vest the agencies with authority to change these levels or to exempt classes of organizations from the statute's prohibitions. Accordingly, the agencies have not adopted the changes proposed by these commenters.

Interlocking Relationships Expressly Permitted by Statute

The final rules state the exemptions found in 12 U.S.C. 3204 (1)–(8).[5] The final rules reorder the exemptions set forth in the current regulations in order to conform the list of exemptions to the list set forth in the Interlocks Act.

Regulatory Standards Exemption

The final rules set forth the requirements that a depository organization must satisfy in order to obtain a Regulatory Standards exemption. The rules implement the requirement regarding certification by allowing a depository organization's board of directors (or the organizers of a depository organization that is being formed) to certify to the appropriate agency that no other qualified candidate has been found after undertaking reasonable efforts to locate qualified candidates who are not prohibited from service under the Interlocks Act. If read narrowly, the Interlocks Act could require a depository organization to evaluate every person in a given locale that might be qualified and interested. This would create a requirement that, in practice, would be impossible to satisfy. Given that Congress would not have included an exemption that would have no practical application, the agencies believe that the ''reasonable efforts'' standard is consistent with the legislative intent.

[4] A community as that term is defined in the rules is smaller than an RMSA. There may be several communities in one RMSA.

[5] The Interlocks Act contains an additional exemption for savings associations and savings and loan holding companies that have issued stock in connection with a qualified stock issuance pursuant to section 10(q) of the Home Owners' Loan Act (12 U.S.C. 1467a(q)). See 12 U.S.C. 3204(9). The OTS therefore will continue to list an additional exemption in its interlocks regulation that the other agencies do not list. Another exemption provides for interlocks as a result of an emergency acquisition of a savings association authorized in accordance with section 13(k) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)) if the FDIC has given its approval to the interlock. The FDIC will continue to list an additional exemption in its management interlocks regulation that the other agencies do not list.

The final rules also set forth presumptions that the agencies will apply when reviewing an application for a Regulatory Standards exemption. First, each agency will presume that an interlock will not have an anticompetitive effect if it involves institutions that, if merged, would not trigger a challenge from the agencies on competitive grounds. This presumption is unavailable, however, for interlocks subject to the Major Assets prohibition.

Generally, the agencies will not object to a merger on competitive grounds if the post-merger Herfindahl-Hirschman Index (HHI) for the market is less than 1800 and the merger increases the HHI by 200 points or less. This presumption will enable applicants to avoid the unnecessary burden of submitting a competitive analysis in several instances. The agencies have found this HHI benchmark to be a useful guide to evaluating anticompetitive effects of interlocks.[6] However, the agencies may decide that this presumption should not be conclusive in appropriate circumstances, such as when approval of an interlock request would lead to several institutions being linked by overlapping management.

Second, the agencies will presume that a person is critical to an institution's safe and sound operations if the agencies also approved that individual under section 914 of FIRREA and the institution in question either was a newly chartered institution, failed to meet minimum capital requirements, or otherwise was in a ''troubled condition'' as defined in the reviewing agency's section 914 regulation at the time the section 914 filing was approved.[7]

The final rules also address the duration of an interlock permitted under the Regulatory Standards exemption. The statute does not require that these interlocks terminate. In light of this open-ended grant of authority, the agencies have not adopted a specific term for a permitted exemption. Instead, an agency may require an institution to terminate the interlock if the agency determines that the management official in question either no longer is critical to the safe and sound operations of the affected organization or that continued service will produce an anticompetitive effect. The agencies will provide affected organizations an opportunity to submit information before they make a final determination to require termination of an interlock.

One commenter suggested that the agencies clarify that the 15-month grace period that applies when an interlock must be terminated due to a change in circumstances also applies in the case of a Regulatory Standards exemption that must be terminated. The agencies agree with the commenter that it is appropriate in most cases to grant a grace period following the termination of a Regulatory Standards exemption in order to minimize the disruption of the affected institution that otherwise might be caused by the loss of a management official.

There may be circumstances, however, where immediate termination of a regulatory standards exemption would be appropriate. For instance, if an organization obtains an exemption on the basis of misleading information, the organization's primary regulator will require the organization to take appropriate steps to immediately remedy the situation. The final rules thus provide for the possibility of a grace period, with the caveat that the agencies may, under appropriate circumstances, order the immediate termination of a Regulatory Standards exemption.

Another commenter suggested that the agencies limit the term of a Regulatory Standards exemption when the exemption is granted. This commenter opined that depository organizations would benefit from the greater certainty by avoiding questions concerning whether a director must vacate his or her position on a board. The agencies believe that the procedures in the final rules for terminating a Regulatory Standards exemption will provide an affected organization with ample certainty concerning the permissibility of continued service.

Grandfathered Interlocking Relationships—Removed

Section 338(a) of the CDRI Act authorizes the agencies to extend a grandfathered interlock for an additional five years if the management official in question satisfies the statutory criteria for obtaining an extension.

The final rules remove the sections addressing the grandfather exemption because they are unnecessary and redundant in light of the statute. Individuals who wished to extend their exemption already have applied for and received an exemption if they met the statutory criteria.

Management Consignment Exemption

The final rules implement the Management Consignment exemption, set forth in section 209(c) of the Interlocks Act (12 U.S.C. 3207(c)), by restating the statutory criteria with three clarifications. First, the final rules state that the agencies consider a ''newly chartered institution'' to be an institution that has been chartered for less than two years at the time it files an application for exemption. This standard is consistent with certain other banking agency thresholds for determining when an institution is considered newly chartered (see, *e.g.*, 12 CFR 5.51(d), 225.72(a)(1); 303.14(b)).

Second, the final rules clarify that the exemption available for ''minority- and women-owned institutions'' is available for an institution that is owned either by minorities or women. In analyzing the exemptions to the Interlocks Act that the Federal banking agencies have approved, the House Conference Report to the CDRI Act (H.R. Conf. Rep. No. 652, 103d Cong., 2d Sess. 181 (1994)) (Conference Report) states that the types of institutions that have received exemptions include those that are ''owned by women or minorities.'' These exemptions ultimately were codified in the Interlocks Act. Accordingly, the agencies have concluded that Congress intended the Management Consignment exemption to assist institutions owned by women and/or by minorities, but did not intend to require the institution to be owned by both.

Third, the final rules permit an interlock if the interlock would strengthen the management of either a newly chartered institution or an institution that is in an unsafe or unsound condition. Section 209(c)(1)(C) of the Interlocks Act (12 U.S.C. 3207(c)(1)(C)) permits an exemption if the interlock would ''strengthen the management of newly chartered institutions that are in an unsafe or unsound condition.'' However, this provision contains what appears on its face to be an error, given that an exemption limited to situations involving newly chartered institutions that also are in an unsafe and unsound condition would have no practical utility. The chartering agencies do not approve an application for a bank or thrift charter unless the applicant seeking a charter can demonstrate that the proposed new financial institution will operate in a safe and sound manner for the foreseeable future. While there may be an extraordinary instance where

[6] See, *e.g.*, the OCC's Bank Merger Competitive Analysis Screen (OCC Advisory Letter 95–4, July 18, 1995); Department of Justice Merger Guidelines (49 FR 26823, June 29, 1984) (applied by the Board); FDIC Statement of Policy: Bank Merger Transactions (54 FR 39045, Sept. 22, 1989).

[7] This presumption also applies to individuals whose service as a senior executive officer is approved by the OCC pursuant to the standard conditions imposed on newly chartered national banks and to individuals whose service as a management official is approved by the FDIC as a condition of a grant of deposit insurance prior to the opening of the depository institution.

a newly chartered institution immediately experiences unforeseen problems so severe that they threaten the safety and soundness of that institution, there is nothing in the legislative history to suggest that Congress intended to limit the Management Consignment exemption to such rare instances.

Moreover, the legislative history of the CDRI Act suggests that the agencies are to apply the Management Consignment exemption in cases involving either newly chartered institutions or institutions that are in an unsafe or unsound condition. The Conference Report notes that the agencies have used their exemptive authority to grant exemptions in limited cases where institutions ''are particularly in need of management guidance and expertise to operate in a safe and sound manner.'' *Id.* The Conference Report goes on to state that ''Examples of exceptions permissible under an agency management official consignment program include improving the provision of credit to low- and moderate-income areas, increasing the competitive position of minority- and women-owned institutions, and strengthening the [sic] management of newly chartered institutions or institutions that are in an unsafe or unsound condition.'' *Id.* at 182 (emphasis added).

Finally, Congress used the exemptions in the agencies' current rules as the model for the Management Consignment exemption. See *id.* at 181–182. These exemptions distinguish newly chartered institutions from institutions that are in an unsafe or unsound condition. The reference in the CDRI Act's legislative history to the current regulatory exemptions suggests that Congress intended to codify these exemptions.

For these reasons, the agencies will permit Management Consignment exemptions if the management official will strengthen either a newly chartered institution or an institution that is in an unsafe or unsound condition.

The final rules set forth two presumptions that the agencies will apply in connection with an application for an exemption under the Management Consignment exemption. First, the agencies will presume that an individual is capable of strengthening the management of an institution that has been chartered for less than two years if the reviewing agency approved the individual to serve as a management official of that institution pursuant to section 914 of FIRREA.[8] Second, the agencies will presume that an individual is capable of strengthening the management of an institution that is in an unsafe or unsound condition if the reviewing agency approved the individual to serve under section 914 as a management official of that institution at a time when the institution was not in compliance with minimum capital requirements or otherwise was in a ''troubled condition.''

The agencies believe that presumptions of suitability are less valid when applied to the other Management Consignment exemptions because there is no reason to conclude that a management official approved under section 914 necessarily will improve the flow of credit to low- and moderate-income areas or increase the competitive position of minority- or women-owned institutions. Moreover, the final rules do not contain a presumption regarding effects on competition, given that this is not a factor to be considered by the agencies when reviewing an application for a Management Consignment exemption.

The final rules set forth the limits on the duration of a Management Consignment exemption. The Interlocks Act limits a Management Consignment exemption to two years, with a possible extension for up to an additional two years if the applicant satisfies at least one of the criteria for obtaining a Management Consignment exemption. The final rules implement this limitation by requiring interested parties to submit an application for an extension at least 30 days before the expiration of the initial term of the exemption and by clarifying that the presumptions that apply to initial applications also apply to extension applications.

One commenter suggested that the agencies should be consistent in how they address the duration of a Management Consignment exemption with how the agencies address the duration of a Regulatory Standards exemption, and permit a Management Consignment exemption to last until the appropriate agency orders the interlock terminated. The statute is clear, however, that a Management Consignment exemption may not last more than one initial two-year term and one extension of up to an additional two years in appropriate circumstances. Accordingly, the agencies have not adopted the approach suggested by the commenter.

Change in Circumstances

The final rules provide a 15-month grace period for nongrandfathered interlocks that become impermissible due to a change in circumstances. This period may be shortened by the agencies under appropriate circumstances.

Paperwork Reduction Act

OCC: The collection of information requirements contained in this final rule have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1557–0196. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557–0196), Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division (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), 26.5(a)(1), 26.5(a)(2), 26.6(a), and 26.6(c). This information is required by the Interlocks Act, and will be used by the OCC to evaluate compliance with the requirements of the Interlocks Act by national banks and District banks. The collections of information are required to obtain a benefit.

Respondents are not required to respond to the foregoing collection of information unless it displays a currently valid OMB control number. The likely respondents are national banks and District banks.

Estimated average annual burden hours per respondent: 3 hours.

Estimated number of respondents: 100.

Start-up costs to respondents: 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 final rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0046, 7100–0134, 7100–0171, 7100–0266), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the

[8] This presumption also applies to an individual whose service as a senior executive officer of a national bank is approved pursuant to the standard conditions imposed by the OCC on newly chartered national banks and to an individual whose service as a management official is approved by the FDIC as a condition of a grant of deposit insurance prior to the opening of the depository institution.

Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this final rule are found in 12 CFR 212.4(h)(1)(i), 212.5(a)(1), 212.5(a)(2), 212.6(a), and 212.6(c). This information is required to evidence compliance with the requirements of the Interlocks Act as amended by section 338 of the CDRI Act. The respondents are state member banks and subsidiary depository institutions of bank holding companies.

Currently, information on management official interlocks is gathered as a part of the following applications: membership in the Federal Reserve System (OMB No. 7100–0046); state member bank mergers (OMB No. 7100–0266); changes in bank control (OMB No. 7100–0134); and bank holding company acquisitions of depository institutions (OMB No. 7100–0171). The estimated portion of burden for each application that is attributable to management interlocks averages 4 hours, and the burden ranges from as much as 6 hours to as little as 0.5 hours. It is estimated that 822 applications are filed annually, with an estimate of 3,288 hours of annual burden. Based on an hourly cost of $20, the annual cost to the public is estimated to be $65,760. The Federal Reserve believes that the final rule will have a minimal effect on respondent burden.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, these information collections unless they display currently valid OMB control numbers.

No issues of confidentiality under the provisions of the Freedom of Information Act normally arise for the applications.

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 3064–0118 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (3604–0118), Washington, DC 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.

The collection of information requirements in this final rule are found in 12 CFR 348.4(i)(1)(i), 348.5(a)(1), 348.5(a)(2), 348.6(a), and 348.6(c). This information is required by the Interlocks Act as amended by section 338 of the CDRI Act, and will be used by the FDIC to evaluate compliance with the requirements of the Interlocks Act by insured nonmember banks. The likely respondents are insured nonmember banks.

Estimated number of respondents: 6 applicants per year.

Estimated average annual burden per respondent: 4 hours.

Estimated annual frequency of recordkeeping: Not applicable (one-time application).

Estimated total annual recordkeeping burden: 24 hours.

OTS: The collection of information requirements contained in this rule have been reviewed and approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550–0051), Washington, DC 20503, with copies to the Business Transactions Division (1550–0051), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC.

The collection of information requirements in this final rule are found in 12 CFR 563f.4(h)(1)(i), 563f.5(a)(1), 563f.5(a)(2), 563f.6(a), and 563f.6(c). This information is required by the Interlocks Act, and will be used by the OTS to evaluate compliance with the requirements of the Interlocks Act by savings associations. The collections of information are required to obtain a benefit.

Respondents are not required to respond to the foregoing collection of information unless it displays a currently valid OMB control number. The likely respondents are savings associations.

Estimated average annual burden hours per respondent: 4 hours.

Estimated number of respondents: 8.

Start-up costs to respondents: None.

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 succinct statement explaining the reasons 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 (1) have significant secondary or incidental effects on a substantial number of small entities or (2) create any additional burden on small entities. The changes to the exemptions are required by the Interlocks Act. The agencies have added presumptions that will streamline and simplify the application procedures for obtaining an exemption from the Interlocks Act prohibitions, and have defined key terms used in the provisions implementing these exemptions in a way that is intended to eliminate any unnecessary burden. As noted in the preamble discussion of the changes made by the final rule, the agencies have made substantive changes that will permit more flexibility to institutions with total assets of less than $20 million, clarified the circumstances under which someone will be deemed to be a ''representative or nominee,'' and amended the definition of ''senior management official'' so as to provide greater clarity and to conform this definition with definitions of similar terms used in other regulations.

The impact of these changes will be to minimize, to the extent possible, the costs of complying with this final rule.

Executive Order 12866

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

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.

List of Subjects

12 CFR Part 26

Antitrust, Banks, banking, Holding companies, Management official interlocks, National banks.

12 CFR Part 212

Antitrust, Banks, banking, Holding companies, Management official interlocks.

12 CFR Part 348

Antitrust, Banks, banking, Holding companies.

12 CFR Part 563f

Antitrust, Holding companies, Management official interlocks, 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 revises part 26 of chapter I of title 12 of the Code of Federal Regulations to read as follows:

PART 26—MANAGEMENT OFFICIAL INTERLOCKS

Sec.
26.1 Authority, purpose, and scope.
26.2 Definitions.
26.3 Prohibitions.
26.4 Interlocking relationships permitted by statute.
26.5 Regulatory Standards exemption.
26.6 Management Consignment exemption.
26.7 Change in circumstances.
26.8 Enforcement.

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

§ 26.1 Authority, purpose, and scope.

(a) *Authority*. This part is issued under the provisions of the Depository Institution Management Interlocks Act (Interlocks Act) (12 U.S.C. 3201 *et seq.*), as amended, and the OCC's general rulemaking authority in 12 U.S.C. 93a.

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

(c) *Scope*. This part applies to management officials of national banks, District banks, and affiliates of either.

§ 26.2 Definitions.

For purposes of this part, the following definitions apply:

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

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

(b) *Anticompetitive effect* means a monopoly or substantial lessening of competition.

(c) *Area median income* means:

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

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

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

(e) *Contiguous or adjacent cities, towns, or villages* means cities, towns, or villages whose borders touch each other or whose borders are within 10 road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is the boundary line of that city, town, or village for the purpose of this definition.

(f) *Critical* means important to restoring or maintaining a depository organization's safe and sound operations.

(g) *Depository holding company* means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act (12 U.S.C. 3201)) having its principal office located in the United States.

(h) *Depository institution* means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered under the laws of the United States and having a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a depository institution.

(i) *Depository institution affiliate* means a depository institution that is an affiliate of a depository organization.

(j) *Depository organization* means a depository institution or a depository holding company.

(k) *District bank* means any State bank operating under the Code of Law of the District of Columbia.

(l) *Low- and moderate-income areas* means census tracts (or, if an area is not in a census tract, block numbering areas delineated by the United States Bureau of the Census) where the median family income is less than 100 percent of the area median income.

(m) *Management official.* (1) The term *management official* means:

(i) A director;

(ii) An advisory or honorary director of a depository institution with total assets of $100 million or more;

(iii) A senior executive officer as that term is defined in 12 CFR 5.51(c)(3);

(iv) A branch manager;

(v) A trustee of a depository organization under the control of trustees; and

(vi) Any person who has a representative or nominee serving in any of the capacities in this paragaph (m)(1).

(2) The term *management official* does not include:

(i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;

(ii) A person whose management functions relate principally to the business outside the United States of a foreign commercial bank; or

(iii) A person described in the provisos of section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)) (referring to an officer of a State-chartered savings bank, cooperative bank, or trust company that neither makes real estate mortgage loans nor accepts savings).

(n) *Office* means a principal or branch office of a depository institution located in the United States. *Office* does not include a representative office of a foreign commercial bank, an electronic terminal, or a loan production office.

(o) *Person* means a natural person, corporation, or other business entity.

(p) *Relevant metropolitan statistical area (RMSA)* means an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated primary MSAs to the extent that these terms are defined and applied by the Office of Management and Budget.

(q) *Representative or nominee* means a natural person who serves as a management official and has an obligation to act on behalf of another person with respect to management responsibilities. The OCC will find that a person has an obligation to act on behalf of another person only if the first person has an agreement, express or implied, to act on behalf of the second person with respect to management responsibilities. The OCC will determine, after giving the affected persons an opportunity to respond, whether a person is a *representative or nominee.*

(r) *Total assets.* (1) The term *total assets* means assets measured on a consolidated basis and reported in the most recent fiscal year-end Consolidated Report of Condition and Income.

(2) The term *total assets* does not include:

(i) Assets of a diversified savings and loan holding company as defined by section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) other than the assets of its depository institution affiliate;

(ii) Assets of a bank holding company that is exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. 1843(d)) other than the assets of its depository institution affiliate; or

(iii) Assets of offices of a foreign commercial bank other than the assets of its United States branch or agency.

(s) *United States* means the United States of America, any State or territory of the United States of America, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

§ 26.3 Prohibitions.

(a) *Community.* 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 community.

(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 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 $1 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $500 million (or any affiliate thereof), regardless of the location of the two depository organizations.

§ 26.4 Interlocking relationships permitted by statute.

The prohibitions of § 26.3 do not apply in the case of any one or more of the following organizations or to a subsidiary thereof:

(a) A depository organization that has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function;

(b) A corporation operating under section 25 or section 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.* and 12 U.S.C. 611 *et seq.*, respectively) (Edge Corporations and Agreement Corporations);

(c) A credit union being served by a management official of another credit union;

(d) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(e) A State-chartered savings and loan guaranty corporation;

(f) A Federal Home Loan Bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;

(g) A depository organization that is closed or is in danger of closing as determined by the appropriate Federal depository institutions regulatory agency and is acquired by another depository organization. This exemption lasts for five years, beginning on the date the depository organization is acquired; and

(h)(1) A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of such company who also is a director of an unaffiliated depository organization if:

(i) Both the diversified savings and loan holding company and the unaffiliated depository organization notify their appropriate Federal depository institutions regulatory agency at least 60 days before the dual service is proposed to begin; and

(ii) The appropriate regulatory agency does not disapprove the dual service before the end of the 60-day period.

(2) The OCC may disapprove a notice of proposed service if it finds that:

(i) The service cannot be structured or limited so as to preclude an anticompetitive effect in financial services in any part of the United States;

(ii) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) The notificant failed to furnish all the information required by the OCC.

(3) The OCC may require that any interlock permitted under this paragraph (h) be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period.

§ 26.5 Regulatory Standards exemption.

(a) *Criteria.* The OCC may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 26.3 if:

(1) The board of directors of the depository organization (or the organizers of a depository organization being formed) that seeks the exemption provides a resolution to the OCC certifying that the organization, after the exercise of reasonable efforts, is unable to locate any other candidate from the community or RMSA, as appropriate, who:

(i) Possesses the level of expertise required by the depository organization and who is not prohibited from service by the Interlocks Act; and

(ii) Is willing to serve as a management official; and

(2) The OCC, after reviewing an application submitted by the depository organization seeking the exemption, determines that:

(i) The management official is critical to the safe and sound operations of the affected depository organization; and

(ii) Service by the management official will not produce an anticompetitive effect with respect to the depository organization.

(b) *Presumptions.* The OCC applies the following presumptions when reviewing any application for a Regulatory Standards exemption:

(1) An interlock will not have an anticompetitive effect if it involves depository organizations that, if merged, would not cause the post-merger Herfindahl-Hirschman Index (HHI) to exceed 1800 and would not cause the HHI to increase by more than 200 points. This presumption does not

apply to depository organizations subject to the Major Assets prohibition of § 26.3(c).

(2) A proposed management official is critical to the safe and sound operations of a depository institution if:

(i) That official is approved by the OCC to serve as a director or senior executive officer of that institution pursuant to 12 CFR 5.51 or pursuant to conditions imposed on a newly chartered national bank; and

(ii) The institution had operated for less than two years, was not in compliance with minimum capital requirements, or otherwise was in a ''troubled condition'' as defined in 12 CFR 5.51 at the time the service under that section was approved.

(c) *Duration of interlock.* An interlock permitted under this section may continue until the OCC notifies the affected depository organizations otherwise. The OCC may require a national bank to terminate any interlock permitted under this section if the OCC concludes, after giving the affected persons the opportunity to respond, that the determinations under paragraph (a)(2) of this section no longer may be made. A management official may continue serving the depository organization involved in the interlock for a period of 15 months following the date of the order to terminate the interlock. The OCC may shorten this period under appropriate circumstances.

§ 26.6 Management Consignment exemption.

(a) *Criteria.* The OCC may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 26.3 if the OCC, after reviewing an application submitted by the depository organization seeking an exemption, determines that the interlock would:

(1) Improve the provision of credit to low- and moderate-income areas;

(2) Increase the competitive position of a minority- or women-owned depository organization;

(3) Strengthen the management of a depository institution that has been chartered for less than two years at the time an application is filed under this part; or

(4) Strengthen the management of a depository institution that is in an unsafe or unsound condition as determined by the OCC on a case-by-case basis.

(b) *Presumptions.* The OCC applies the following presumptions when reviewing any application for a Management Consignment exemption:

(1) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(3) of this section if that official is approved by the OCC to serve as a director or senior executive officer of that institution pursuant to 12 CFR 5.51 or pursuant to conditions imposed on a newly chartered national bank and the institution had operated for less than two years at the time the service under 12 CFR 5.51 was approved; and

(2) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(4) of this section if that official is approved by the OCC to serve as a director or senior executive officer of that institution pursuant to 12 CFR 5.51 and the institution was not in compliance with minimum capital requirements or otherwise was in a ''troubled condition'' as defined under 12 CFR 5.51 at the time service under that section was approved.

(c) *Duration of interlock.* An interlock granted under this section may continue for a period of two years from the date of approval. The OCC may extend this period for one additional two-year period if the depository organization applies for an extension at least 30 days before the current exemption expires and satisfies one of the criteria specified in paragraph (a) of this section. The provisions set forth in paragraph (b) of this section also apply to applications for extensions.

§ 26.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption to the Interlocks Act if a change in circumstances causes the service to become prohibited under that Act. A change in circumstances may include, but is not limited to, an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an acquisition, a merger, a consolidation, or any reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

(b) *Transition period.* A management official described in paragraph (a) of this section may continue to serve the depository organization involved in the interlock for 15 months following the date of the change in circumstances. The OCC may shorten this period under appropriate circumstances.

§ 26.8 Enforcement.

Except as provided in this section, the OCC administers and enforces the Interlocks Act with respect to national banks, District banks, and affiliates of either, and may refer any case of a prohibited interlocking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of a national bank or a District bank is subject to the primary regulation of another Federal depository organization supervisory agency, then the OCC does not administer and enforce the Interlocks Act with respect to that affiliate.

Dated: July 22, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board revises part 212 of chapter II of title 12 of the Code of Federal Regulations to read as follows:

PART 212—MANAGEMENT OFFICIAL INTERLOCKS

Sec.

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

§ 212.1 Authority, purpose, and scope.

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

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

(c) *Scope.* This part applies to management officials of state member banks, bank holding companies, and their affiliates.

§ 212.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate.* (1) The term *affiliate* has the meaning given in section 202 of the Interlocks Act (12 U.S.C. 3201). For purposes of that section 202, shares held

by an individual include shares held by members of his or her immediate family. ''Immediate family'' means spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.

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

(b) *Anticompetitive effect* means a monopoly or substantial lessening of competition.

(c) *Area median income* means:

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

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

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

(e) *Contiguous or adjacent cities, towns, or villages* means cities, towns, or villages whose borders touch each other or whose borders are within 10 road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is the boundary line of that city, town, or village for the purpose of this definition.

(f) *Critical,* as used in § 212.5, means important to restoring or maintaining a depository organization's safe and sound operations.

(g) *Depository holding company* means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act (12 U.S.C. 3201)) having its principal office located in the United States.

(h) *Depository institution* means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered under the laws of the United States and having a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a depository institution.

(i) *Depository institution affiliate* means a depository institution that is an affiliate of a depository organization.

(j) *Depository organization* means a depository institution or a depository holding company.

(k) *Low- and moderate-income areas* means census tracts (or, if an area is not in a census tract, block numbering areas delineated by the United States Bureau of the Census) where the median family income is less than 100 percent of the area median income.

(l) *Management official.* (1) The term *management official* means:

(i) A director;

(ii) An advisory or honorary director of a depository institution with total assets of $100 million or more;

(iii) A senior executive officer as that term is defined in 12 CFR 225.71(a);

(iv) A branch manager;

(v) A trustee of a depository organization under the control of trustees; and

(vi) Any person who has a representative or nominee, as defined in paragraph (p) of this section, serving in any of the capacities in this paragraph (l)(1).

(2) The term *management official* does not include:

(i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;

(ii) A person whose management functions relate principally to a foreign commercial bank's business outside the United States; or

(iii) A person described in the provisos of section 202(4) of the Interlocks Act (referring to an officer of a State-chartered savings bank, cooperative bank, or trust company that neither makes real estate mortgage loans nor accepts savings).

(m) *Office* means a principal or branch office of a depository institution located in the United States. *Office* does not include a representative office of a foreign commercial bank, an electronic terminal, a loan production office, or any office of a depository holding company.

(n) *Person* means a natural person, corporation, or other business entity.

(o) *Relevant metropolitan statistical area (RMSA)* means an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated Primary MSAs to the extent that these terms are defined and applied by the Office of Management and Budget.

(p) *Representative or nominee* means a natural person who serves as a management official and has an obligation to act on behalf of another person with respect to management responsibilities. The Board will find that a person has an obligation to act on behalf of another person only if the first person has an agreement, express or implied, to act on behalf of the second person with respect to management responsibilities. The Board will determine, after giving the affected persons an opportunity to respond, whether a person is a *representative or nominee.*

(q) *Total assets.* (1) The term *total assets* means assets measured on a consolidated basis and reported in the most recent fiscal year-end Consolidated Report of Condition and Income.

(2) The term *total assets* does not include:

(i) Assets of a diversified savings and loan holding company as defined by section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) other than the assets of its depository institution affiliate;

(ii) Assets of a bank holding company that is exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. 1843(d)) other than the assets of its depository institution affiliate; or

(iii) Assets of offices of a foreign commercial bank other than the assets of its United States branch or agency.

(r) *United States* means the United States of America, any State or territory of the United States of America, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

§ 212.3 Prohibitions.

(a) *Community.* 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 community.

(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 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 $1 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $500 million (or any affiliate thereof), regardless of the location of the two depository organizations.

§ 212.4 Interlocking relationships permitted by statute.

The prohibitions of § 212.3 do not apply in the case of any one or more of the following organizations or to a subsidiary thereof:

(a) A depository organization that has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function;

(b) A corporation operating under section 25 or section 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.* and 12 U.S.C. 611 *et seq.*, respectively) (Edge Corporations and Agreement Corporations);

(c) A credit union being served by a management official of another credit union;

(d) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(e) A State-chartered savings and loan guaranty corporation;

(f) A Federal Home Loan Bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;

(g) A depository organization that is closed or is in danger of closing as determined by the appropriate Federal depository institution's regulatory agency and is acquired by another depository organization. This exemption lasts for five years, beginning on the date the depository organization is acquired; and

(h)(1) A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of such company who also is a director of an unaffiliated depository organization if:

(i) Both the diversified savings and loan holding company and the unaffiliated depository organization notify their appropriate Federal depository institutions regulatory agency at least 60 days before the dual service is proposed to begin; and

(ii) The appropriate regulatory agency does not disapprove the dual service before the end of the 60-day period.

(2) The Board may disapprove a notice of proposed service if it finds that:

(i) The service cannot be structured or limited so as to preclude an anticompetitive effect in financial services in any part of the United States;

(ii) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) The notificant failed to furnish all the information required by the Board.

(3) The Board may require that any interlock permitted under this paragraph (h) be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period.

§ 212.5 Regulatory Standards exemption.

(a) *Criteria.* The Board may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 212.3 if:

(1) The board of directors of the depository organization (or the organizers of a depository organization being formed) that seeks the exemption provides a resolution to the Board certifying that the organization, after the exercise of reasonable efforts, is unable to locate any other candidate from the community or RMSA, as appropriate, who:

(i) Possesses the level of expertise required by the depository organization and who is not prohibited from service by the Interlocks Act; and

(ii) Is willing to serve as a management official; and

(2) The Board, after reviewing an application submitted by the depository organization seeking the exemption, determines that:

(i) The management official is critical to the safe and sound operations of the affected depository organization; and

(ii) Service by the management official will not produce an anticompetitive effect with respect to the depository organization.

(b) *Presumptions.* The Board applies the following presumptions when reviewing any application for a Regulatory Standards exemption:

(1) An interlock will not have an anticompetitive effect if it involves depository organizations that, if merged, would not cause the post-merger Herfindahl-Hirschman Index (HHI) to exceed 1800 and would not cause the HHI to increase by more than 200 points. This presumption does not apply to depository organizations subject to the Major Assets prohibition of § 212.3(c).

(2) A proposed management official is critical to the safe and sound operations of a depository institution if:

(i) That official is approved by the Board to serve as a director or senior executive officer of that institution pursuant to 12 CFR 225.71; and

(ii) The institution had operated for less than two years, was not in compliance with minimum capital requirements, or otherwise was in a ''troubled condition'' as defined in 12 CFR 225.71 at the time the service under that section was approved.

(c) *Duration of interlock.* An interlock permitted under this section may continue until the Board notifies the affected depository organizations otherwise. The Board may require termination of any interlock permitted under this section if the Board concludes, after giving the affected persons the opportunity to respond, that the determinations under paragraph (a)(2) of this section no longer may be made. A management official may continue serving the depository organization involved in the interlock for a period of 15 months following the date of the order to terminate the interlock. The Board may shorten this period under appropriate circumstances.

§ 212.6 Management Consignment exemption.

(a) *Criteria.* The Board may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 212.3 if the Board, after reviewing an application submitted by the depository organization seeking an exemption, determines that the interlock would:

(1) Improve the provision of credit to low- and moderate-income areas;

(2) Increase the competitive position of a minority- or women-owned depository organization;

(3) Strengthen the management of a depository institution that has been chartered for less than two years at the time an application is filed under this part; or

(4) Strengthen the management of a depository institution that is in an unsafe or unsound condition as determined by the Board on a case-by-case basis.

(b) *Presumptions.* The Board applies the following presumptions in reviewing any application for a Management Consignment exemption:

(1) A proposed management official is capable of strengthening the management of a depository institution

described in paragraph (a)(3) of this section if that official is approved by the Board to serve as a director or senior executive officer of that institution pursuant to 12 CFR 225.71 and the institution had operated for less than two years at the time the service was approved; and

(2) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(4) of this section if the official is approved by the Board to serve as a director or senior executive officer of the institution pursuant to 12 CFR 225.71 and the institution was not in compliance with minimum capital requirements or otherwise was in a ''troubled condition'' as defined under 12 CFR 225.71 at the time service was approved.

(c) *Duration of interlock.* An interlock granted under this section may continue for a period of two years from the date of approval. The Board may extend this period for one additional two-year period if the depository organization applies for an extension at least 30 days before the current exemption expires and satisfies one of the criteria specified in paragraph (a) of this section. The provisions set forth in paragraph (b) of this section also apply to applications for extensions.

§ 212.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption to the Interlocks Act if a change in circumstances causes the service to become prohibited under that Act. A change in circumstances may include, but is not limited to, an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an acquisition, a merger, a consolidation, or any reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

(b) *Transition period.* A management official described in paragraph (a) of this section may continue to serve the state member bank or bank holding company involved in the interlock for 15 months following the date of the change in circumstances. The Board may shorten this period under appropriate circumstances.

§ 212.8 Enforcement.

Except as provided in this section, the Board administers and enforces the Interlocks Act with respect to state member banks, bank holding companies, and affiliates of either, and may refer any case of a prohibited interlocking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of a state member bank or a bank holding company is subject to the primary regulation of another Federal depository organization supervisory agency, then the Board does not administer and enforce the Interlocks Act with respect to that affiliate.

§ 212.9 Effect of Interlocks Act on Clayton Act.

The Board regards the provisions of the first three paragraphs of section 8 of the Clayton Act (15 U.S.C. 19) to have been supplanted by the revised and more comprehensive prohibitions on management official interlocks between depository organizations in the Interlocks Act.

Dated: July 10, 1996.

William W. Wiles,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, pursuant to its authority under section 209 of the Depository Institution Management Interlocks Act (12 U.S.C. 3207), the Board of Directors of the FDIC revises part 348 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 348—MANAGEMENT OFFICIAL INTERLOCKS

Sec.

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

§ 348.1 Authority, purpose, and scope.

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

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

(c) *Scope.* This part applies to management officials of insured nonmember banks and their affiliates.

§ 348.2 Definitions.

For purposes of this part, the following definitions apply:

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

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

(b) *Anticompetitive effect* means a monopoly or substantial lessening of competition.

(c) *Area median income* means:

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

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

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

(e) *Contiguous or adjacent cities, towns, or villages* means cities, towns, or villages whose borders touch each other or whose borders are within 10 road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is the boundary line of that city, town, or village for the purpose of this definition.

(f) *Critical* means important to restoring or maintaining a depository

organization's safe and sound operations.

(g) *Depository holding company* means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act (12 U.S.C. 3201)) having its principal office located in the United States.

(h) *Depository institution* means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered under the laws of the United States and having a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a depository institution.

(i) *Depository institution affiliate* means a depository institution that is an affiliate of a depository organization.

(j) *Depository organization* means a depository institution or a depository holding company.

(k) *Low- and moderate-income areas* means census tracts (or, if an area is not in a census tract, block numbering areas delineated by the United States Bureau of the Census) where the median family income is less than 100 percent of the area median income.

(l) *Management official.* (1) The term *management official* means:

(i) A director;

(ii) An advisory or honorary director of a depository institution with total assets of $100 million or more;

(iii) A senior executive officer as that term is defined in 12 CFR 303.14(a)(3);

(iv) A branch manager;

(v) A trustee of a depository organization under the control of trustees; and

(vi) Any person who has a representative or nominee serving in any of the capacities in this paragraph (l)(1).

(2) The term *management official* does not include:

(i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;

(ii) A person whose management functions relate principally to the business outside the United States of a foreign commercial bank; or

(iii) A person described in the provisos of section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)) (referring to an officer of a State-chartered savings bank, cooperative bank, or trust company that neither makes real estate mortgage loans nor accepts savings).

(m) *Office* means a principal or branch office of a depository institution located in the United States. *Office* does not include a representative office of a foreign commercial bank, an electronic terminal, or a loan production office.

(n) *Person* means a natural person, corporation, or other business entity.

(o) *Relevant metropolitan statistical area (RMSA)* means an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated Primary MSAs to the extent that these terms are defined and applied by the Office of Management and Budget.

(p) *Representative or nominee* means a natural person who serves as a management official and has an obligation to act on behalf of another person with respect to management responsibilities. The FDIC will find that a person has an obligation to act on behalf of another person only if the first person has an agreement, express or implied, to act on behalf of the second person with respect to management responsibilities. The FDIC will determine, after giving the affected persons an opportunity to respond, whether a person is a *representative or nominee.*

(q) *Total assets.* (1) The term *total assets* includes assets measured on a consolidated basis and reported in the most recent fiscal year-end Consolidated Report of Condition and Income.

(2) The term *total assets* does not include:

(i) Assets of a diversified savings and loan holding company as defined by section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) other than the assets of its depository institution affiliate;

(ii) Assets of a bank holding company that are exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. 1843(d)) other than the assets of its depository institution affiliate; or

(iii) Assets of offices of a foreign commercial bank other than the assets of its United States branch or agency.

(r) *United States* means the United States of America, any State or territory of the United States of America, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

§ 348.3 Prohibitions.

(a) *Community.* 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 community.

(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 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 $1 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $500 million (or any affiliate thereof), regardless of the location of the two depository organizations.

§ 348.4 Interlocking relationships permitted by statute.

The prohibitions of § 348.3 do not apply in the case of any one or more of the following organizations or to a subsidiary thereof:

(a) A depository organization that has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function;

(b) A corporation operating under section 25 or section 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.* and 12 U.S.C. 611 *et seq.*, respectively) (Edge Corporations and Agreement Corporations);

(c) A credit union being served by a management official of another credit union;

(d) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(e) A State-chartered savings and loan guaranty corporation;

(f) A Federal Home Loan bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;

(g) A depository organization that is closed or is in danger of closing as determined by the appropriate Federal depository institutions regulatory agency and is acquired by another depository organization. This exemption lasts for five years, beginning on the date the depository organization is acquired;

(h) A savings association whose acquisition has been authorized on an emergency basis in accordance with section 13(k) of the Federal Deposit

Insurance Act (12 U.S.C. 1823(k)) with resulting dual service by a management official that would otherwise be prohibited under the Interlocks Act which may continue for up to 10 years from the date of the acquisition provided that the FDIC has given its approval for the continuation of such service; and

(i)(1) A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of such company who is also a director of an unaffiliated depository organization if:

(i) Both the diversified savings and loan holding company and the unaffiliated depository organization notify their appropriate Federal depository institutions regulatory agency at least 60 days before the dual service is proposed to begin; and

(ii) The appropriate regulatory agency does not disapprove the dual service before the end of the 60-day period.

(2) The FDIC may disapprove a notice of proposed service if it finds that:

(i) The service cannot be structured or limited so as to preclude an anticompetitive effect in financial services in any part of the United States;

(ii) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) The notificant failed to furnish all the information required by the FDIC.

(3) The FDIC may require that any interlock permitted under this paragraph (h) be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period.

§ 348.5 Regulatory Standards exemption.

(a) *Criteria*. The FDIC may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 348.3 if:

(1) The board of directors of the depository organization (or the organizers of a depository organization being formed) that seeks the exemption provides a resolution to the FDIC certifying that the organization, after the exercise of reasonable efforts, is unable to locate any other candidate from the community or RMSA, as appropriate, who:

(i) Possesses the level of expertise required by the depository organization and who is not prohibited from service by the Interlocks Act; and

(ii) Is willing to serve as a management official; and

(2) The FDIC, after reviewing an application submitted by the depository organization seeking the exemption, determines that:

(i) The management official is critical to the safe and sound operations of the affected depository organization; and

(ii) Service by the management official will not produce an anticompetitive effect with respect to the depository organization.

(b) *Presumptions*. The FDIC applies the following presumptions when reviewing any application for a Regulatory Standards exemption:

(1) An interlock will not have an anticompetitive effect if it involves depository organizations that, if merged, would not cause the post-merger Herfindahl-Hirschman Index (HHI) to exceed 1800 and would not cause the HHI to increase by more than 200 points. This presumption shall not apply to depository organizations subject to the Major Assets prohibition of § 348.3(c).

(2) A proposed management official is critical to the safe and sound operations of a depository institution if:

(i) That official is approved by the FDIC to serve as a director or a senior executive officer of that institution pursuant to 12 CFR 303.14; and

(ii) The institution had operated for less than two years, was not in compliance with minimum capital requirements, or otherwise was in a ''troubled condition'' as defined by 12 CFR 303.14(a)(4) at the time the service under that section was approved.

(c) *Duration of interlock*. An interlock permitted under this section may continue until the FDIC notifies the affected depository organizations otherwise. The FDIC may require termination of any interlock permitted under this section if the FDIC concludes, after giving the affected persons the opportunity to respond, that the determinations under paragraph (a)(2) of this section no longer may be made. A management official may continue serving the depository organization involved in the interlock for a period of 15 months following the date of the order to terminate the interlock. The FDIC may shorten this period under appropriate circumstances.

§ 348.6 Management Consignment exemption.

(a) *Criteria*. The FDIC may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 348.3 if the FDIC, after reviewing an application submitted by the depository organization seeking an exemption, determines that the interlock would:

(1) Improve the provision of credit to low- and moderate-income areas;

(2) Increase the competitive position of a minority- or women-owned depository organization;

(3) Strengthen the management of a depository institution that has been chartered for less than two years at the time an application is filed under this part; or

(4) Strengthen the management of a depository institution that is in an unsafe or unsound condition as determined by the FDIC on a case-by-case basis.

(b) *Presumptions*. The FDIC applies the following presumptions when reviewing any application for a Management Consignment exemption:

(1) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(3) of this section if that official is approved by the FDIC to serve as a director or a senior executive officer of that institution pursuant to 12 CFR 303.14 and the institution had operated for less than two years at the time the service under 12 CFR 303.14 was approved; and

(2) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(4) of this section if that official is approved by the FDIC to serve as a director or a senior executive officer of that institution pursuant to 12 CFR 303.14 and the institution was not in compliance with minimum capital requirements or otherwise was in a ''troubled condition'' as defined under 12 CFR 303.14 at the time service under that section was approved.

(c) *Duration of interlock*. An interlock granted under this section may continue for a period of two years from the date of approval. The FDIC may extend this period for one additional two-year period if the depository organization applies for an extension at least 30 days before the current exemption expires and satisfies one of the criteria specified in paragraph (a) of this section. The provisions set forth in paragraph (b) of this section also apply to applications for extensions.

§ 348.7 Change in circumstances.

(a) *Termination*. A management official shall terminate his or her service or apply for an exemption to the Interlocks Act if a change in circumstances causes the service to become prohibited under that Act. A change in circumstances may include, but is not limited to, an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an acquisition, a merger, a consolidation,

or any reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

(b) *Transition period.* A management official described in paragraph (a) of this section may continue to serve the insured nonmember bank involved in the interlock for 15 months following the date of the change in circumstances. The FDIC may shorten this period under appropriate circumstances.

§ 348.8 Enforcement.

Except as provided in this section, the FDIC administers and enforces the Interlocks Act with respect to insured nonmember banks and their affiliates and may refer any case of a prohibited interlocking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of an insured nonmember bank is subject to the primary regulation of another federal depository organization supervisory agency, then the FDIC does not administer and enforce the Interlocks Act with respect to that affiliate.

Dated at Washington, DC, this 16th day of July, 1996.

By order of the Board of Directors.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Deputy Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the joint preamble, the OTS revises part 563f of chapter V of title 12 of the Code of Federal Regulations to read as follows:

PART 563f—MANAGEMENT OFFICIAL INTERLOCKS

Sec.

Authority: 12 U.S.C. 3201–3208.

§ 563f.1 Authority, purpose, and scope.

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

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

(c) *Scope.* This part applies to management officials of savings associations, savings and loan holding companies, and affiliates of either.

§ 563f.2 Definitions.

For purposes of this part, the following definitions apply:

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

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

(b) *Anticompetitive effect* means a monopoly or substantial lessening of competition.

(c) *Area median income* means:

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

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

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

(e) *Contiguous or adjacent cities, towns, or villages* means cities, towns, or villages whose borders touch each other or whose borders are within 10 road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is the boundary line of that city, town, or village for the purpose of this definition.

(f) *Critical* means important to restoring or maintaining a depository organization's safe and sound operations.

(g) *Depository holding company* means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act (12 U.S.C. 3201)) having its principal office located in the United States.

(h) *Depository institution* means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered under the laws of the United States and having a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a depository institution.

(i) *Depository institution affiliate* means a depository institution that is an affiliate of a depository organization.

(j) *Depository organization* means a depository institution or a depository holding company.

(k) *Low- and moderate-income areas* means census tracts (or, if an area is not in a census tract, block numbering areas delineated by the United States Bureau of the Census) where the median family income is less than 100 percent of the area median income.

(l) *Management official.* (1) The term *management official* means:

(i) A director;

(ii) An advisory or honorary director of a depository institution with total assets of $100 million or more;

(iii) A senior executive officer as that term is defined in 12 CFR 574.9(a)(2);

(iv) A branch manager;

(v) A trustee of a depository organization under the control of trustees; and

(vi) Any person who has a representative or nominee serving in any of the capacities in this paragraph (l)(1).

(2) The term *management official* does not include:

(i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;

(ii) A person whose management functions relate principally to the

business outside the United States of a foreign commercial bank; or

(iii) A person described in the provisos of section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)) (referring to an officer of a State-chartered savings bank, cooperative bank, or trust company that neither makes real estate mortgage loans nor accepts savings).

(m) *Office* means a principal or branch office of a depository institution located in the United States. *Office* does not include a representative office of a foreign commercial bank, an electronic terminal, or a loan production office.

(n) *Person* means a natural person, corporation, or other business entity.

(o) *Relevant metropolitan statistical area (RMSA)* means an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated Primary MSAs to the extent that these terms are defined and applied by the Office of Management and Budget.

(p) *Representative or nominee* means a natural person who serves as a management official and has an obligation to act on behalf of another person with respect to management responsibilities. The OTS will find that a person has an obligation to act on behalf of another person only if the first person has an agreement, express or implied, to act on behalf of the second person with respect to management responsibilities. The OTS will determine, after giving the affected persons an opportunity to respond, whether a person is a *representative or nominee*.

(q) *Savings association* means:

(1) Any Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2));

(2) Any state savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3)) the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(3) Any corporation (other than a bank as defined in section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)(1)) the deposits of which are insured by the Federal Deposit Insurance Corporation, that the Board of Directors of the Federal Deposit Insurance Corporation and the Director of the Office of Thrift Supervision jointly determine to be operating in substantially the same manner as a savings association.

(r) *Total assets*. (1) The term *total assets* means assets measured on a consolidated basis and reported in the most recent fiscal year-end Consolidated Report of Condition and Income.

(2) The term *total assets* does not include:

(i) Assets of a diversified savings and loan holding company as defined by section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) other than the assets of its depository institution affiliate;

(ii) Assets of a bank holding company that is exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. 1843(d)) other than the assets of its depository institution affiliate; or

(iii) Assets of offices of a foreign commercial bank other than the assets of its United States branch or agency.

(s) *United States* means the United States of America, any State or territory of the United States of America, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

§ 563f.3 Prohibitions.

(a) *Community*. 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 community.

(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 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 $1 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $500 million (or any affiliate thereof), regardless of the location of the two depository organizations.

§ 563f.4 Interlocking relationships permitted by statute.

The prohibitions of § 563f.3 do not apply in the case of any one or more of the following organizations or to a subsidiary thereof:

(a) A depository organization that has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function;

(b) A corporation operating under section 25 or section 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq*. and 12 U.S.C. 611 *et seq*., respectively) (Edge Corporations and Agreement Corporations);

(c) A credit union being served by a management official of another credit union;

(d) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(e) A State-chartered savings and loan guaranty corporation;

(f) A Federal Home Loan Bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;

(g) A depository organization that is closed or is in danger of closing as determined by the appropriate Federal depository institutions regulatory agency and is acquired by another depository organization. This exemption lasts for five years, beginning on the date the depository organization is acquired;

(h)(1) A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of such company who also is a director of an unaffiliated depository organization if:

(i) Both the diversified savings and loan holding company and the unaffiliated depository organization notify their appropriate Federal depository institutions regulatory agency at least 60 days before the dual service is proposed to begin; and

(ii) The appropriate regulatory agency does not disapprove the dual service before the end of the 60-day period.

(2) The OTS may disapprove a notice of proposed service if it finds that:

(i) The service cannot be structured or limited so as to preclude an anticompetitive effect in financial services in any part of the United States;

(ii) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) The notificant failed to furnish all the information required by the OTS.

(3) The OTS may require that any interlock permitted under this paragraph (h) be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period; and

(i) Any savings association or any savings and loan holding company (as defined in section 10(a)(1)(D) of the Home Owners' Loan Act) which has

issued stock in connection with a qualified stock issuance pursuant to section 10(q) of such Act, except that this paragraph (i) shall apply only with regard to service by a single management official of such savings association or holding company, or any subsidiary of such savings association or holding company, by a single management official of the savings and loan holding company which purchased the stock issued in connection with such qualified stock issuance, and shall apply only when the OTS has determined that such service is consistent with the purposes of the Interlocks Act and the Home Owners' Loan Act.

§ 563f.5 Regulatory Standards exemption.

(a) *Criteria.* The OTS may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 563f.3 if:

(1) The board of directors of the depository organization (or the organizers of a depository organization being formed) that seeks the exemption provides a resolution to the OTS certifying that the organization, after the exercise of reasonable efforts, is unable to locate any other candidate from the community or RMSA, as appropriate, who:

(i) Possesses the level of expertise required by the depository organization and who is not prohibited from service by the Interlocks Act; and

(ii) Is willing to serve as a management official; and

(2) The OTS, after reviewing an application submitted by the depository organization seeking the exemption, determines that:

(i) The management official is critical to the safe and sound operations of the affected depository organization; and

(ii) Service by the management official will not produce an anticompetitive effect with respect to the depository organization.

(b) *Presumptions.* The OTS applies the following presumptions when reviewing any application for a Regulatory Standards exemption:

(1) An interlock will not have an anticompetitive effect if it involves depository organizations that, if merged, would not cause the post-merger Herfindahl-Hirschman Index (HHI) to exceed 1800 and would not cause the HHI to increase by more than 200 points. This presumption shall not apply to depository organizations subject to the Major Assets prohibition of § 563f.3(c).

(2) A proposed management official is critical to the safe and sound operations of a depository institution if:

(i) That official is approved by the OTS to serve as a director or senior executive officer of that institution pursuant to 12 CFR 574.9; and

(ii) The institution had operated for less than two years, was not in compliance with minimum capital requirements, or otherwise was in a ''troubled condition'' as defined in 12 CFR 574.9 at the time the service under that section was approved.

(c) *Duration of interlock.* An interlock permitted under this section may continue until the OTS notifies the affected depository organizations otherwise. The OTS may require termination of any interlock permitted under this section if the OTS concludes, after giving the affected persons the opportunity to respond, that the determinations under paragraph (a)(2) of this section no longer may be made. A management official may continue serving the depository organization involved in the interlock for a period of 15 months following the date of the order to terminate the interlock, unless the order terminating the interlock provides otherwise.

§ 563f.6 Management Consignment exemption.

(a) *Criteria.* The OTS may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 563f.3 if the OTS, after reviewing an application submitted by the depository organization seeking an exemption, determines that the interlock would:

(1) Improve the provision of credit to low- and moderate-income areas;

(2) Increase the competitive position of a minority- or women-owned depository organization;

(3) Strengthen the management of a depository institution that has been chartered for less than three years at the time an application is filed under this part; or

(4) Strengthen the management of a depository institution that is in an unsafe or unsound condition as determined by the OTS on a case-by-case basis.

(b) *Presumptions.* The OTS applies the following presumptions when reviewing any application for a Management Consignment exemption:

(1) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(3) of this section if that official is approved by the OTS to serve as a director or senior executive officer of that institution pursuant to 12 CFR 574.9 and the institution had operated for less than two years at the time the service under 12 CFR 574.9 was approved; and

(2) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(4) of this section if that official is approved by the OTS to serve as a director or senior executive officer of that institution pursuant to 12 CFR 574.9 and the institution was not in compliance with minimum capital requirements or otherwise was in a ''troubled condition'' as defined under 12 CFR 574.9 at the time service under that section was approved.

(c) *Duration of interlock.* An interlock granted under this section may continue for a period of two years from the date of approval. The OTS may extend this period for one additional two-year period if the depository organization applies for an extension at least 30 days before the current exemption expires and satisfies one of the criteria specified in paragraph (a) of this section. The provisions set forth in paragraph (b) of this section also apply to applications for extensions.

§ 563f.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption to the Interlocks Act if a change in circumstances causes the service to become prohibited under that Act. A change in circumstances may include, but is not limited to, an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an acquisition, a merger, a consolidation, or any reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

(b) *Transition period.* A management official described in paragraph (a) of this section may continue to serve the depository organization involved in the interlock for 15 months following the date of the change in circumstances. The OTS may shorten this period under appropriate circumstances.

§ 563f.8 Enforcement.

Except as provided in this section, the OTS administers and enforces the Interlocks Act with respect to savings associations, savings and loan holding companies, and affiliates of either, and may refer any case of a prohibited interlocking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of a savings association or savings and loan holding company is subject to the primary regulation of another Federal depository organization

supervisory agency, then the OTS does not administer and enforce the Interlocks Act with respect to that affiliate.

§ 563f.9 Interlocking relationships permitted pursuant to Federal Deposit Insurance Act.

A management official or prospective management official of a depository organization may enter into an otherwise prohibited interlocking relationship with another depository organization for a period of up to 10 years if such relationship is approved by the Federal Deposit Insurance Corporation pursuant to section 13(k)(1)(A)(v) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1823(k)(1)(A)(v)).

Dated: July 1, 1996.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 96–19400 Filed 8–1–96; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 931

[No. 96–48]

Modification of Definition of Deposits in Banks or Trust Companies

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Board of Directors of the Federal Housing Finance Board (Finance Board) has adopted a final rule to modify the definition of ''deposits in banks or trust companies'' in the Finance Board's regulations. The final rule will: Make clear that the term ''banks'' includes savings associations; and expressly include federal funds transactions as eligible to fulfill the liquidity requirement imposed on the Federal Home Loan Banks (FHLBanks) by section 11(g) of the Federal Home Loan Bank Act (Bank Act).

EFFECTIVE DATE: September 3, 1996.

FOR FURTHER INFORMATION CONTACT: Janice A. Kaye, Attorney-Advisor, Office of General Counsel, (202) 408–2505, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Under section 11(e)(1) of the Bank Act, the FHLBanks have the power to accept deposits from their members, other FHLBanks, or instrumentalities of the United States. See 12 U.S.C. 1431(e)(1). To ensure that each FHLBank has sufficient liquid assets to meet deposit withdrawal demands, section 11(g) of the Bank Act imposes a liquidity requirement. *See id.* section 1431(g). The liquidity requirement provides that each FHLBank must invest, upon such terms and conditions as the Board of Directors of the Finance Board may prescribe, an amount equal to the current deposits the FHLBank holds in specified types of assets. *Id.* Among the specified assets are ''deposits in banks or trust companies.'' *Id.* section 1431(g)(2).

The phrase ''deposits in banks or trust companies'' appeared in, and has not been changed since enactment of, the Bank Act in 1932. See ch. 522, sec. 11, 47 Stat. 733 (July 22, 1932). The legislative history of section 11(g) of the Bank Act does not discuss use of the phrase, but suggests only that the purpose of the liquidity requirement is to ensure that the FHLBanks have sufficient liquid assets to meet their advance and deposit withdrawal demands. See *Bank Act: Hearings on S. 2959 Before a Subcomm. of the Senate Comm. on Banking and Currency,* 72d Cong., 1st Sess. 36 (Jan. 14, 1932) (statement of John O'Brien, Assistant Legislative Counsel). Although the legislative history of section 11(g) is limited, a legal opinion issued several years after enactment of the Bank Act by the General Counsel of the Federal Home Loan Bank Board (Bank Board), the Finance Board's predecessor agency, stated that ''Congress, in using the phrase 'deposits in banks or trust companies' * * * intended to refer to those financial institutions which accept deposits in their regular course of business.'' [1] The Bank Board General Counsel based his determination on the plain meaning of the term ''banks'' at that time. *Id.* at 2–3. To decide if a financial institution is a ''bank'' for purposes of section 11(g)(2), ''the principal test or criterion * * * is whether the financial institution accepts deposits as one of the primary purposes for which it was created.'' *Id.* at 2. Since savings associations did not accept deposits at that time,[2] the Bank Board General Counsel concluded that ''savings associations did not fall within the strict meaning of 'banks.' '' Bank Board General Counsel opinion at 3.

In 1978, the Bank Board defined by regulation the phrase ''deposits in banks or trust companies'' to include a deposit in another FHLBank, a demand account with a Federal Reserve Bank, or a deposit in a depository designated by a FHLBank's board of directors that is a member of the Federal Reserve System (FRS) or the Federal Deposit Insurance Corporation (FDIC). See 43 FR 46835, 46836 (Oct. 11, 1978), codified at 12 CFR 521.5 (superseded). When the Bank Board adopted this definition, deposits in federal and some state savings associations were insured by the former Federal Savings and Loan Insurance Corporation (FSLIC), and deposits in banks (and some savings banks) were insured by the FDIC. The Bank Board's regulation provided that only deposits in FDIC-insured institutions were eligible investments for purposes of the ''deposits in banks or trust companies'' provision of section 11(g) of the Bank Act. Since, generally speaking, only banks were members of (or, more precisely, insured by) the FDIC, deposits in FSLIC-insured savings associations could not be counted toward the liquidity requirement under the regulation. When Congress abolished the Bank Board and FSLIC in 1989, *see* Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, sec. 401, 103 Stat. 183 (Aug. 9, 1989), the Finance Board transferred the definition of ''deposits in banks or trust companies,'' without any change in substantive or technical matters, to § 931.5 of its regulations. See 54 FR 36757 (Aug. 28, 1989), codified at 12 CFR 931.5.

On September 22, 1993, the Board of Directors of the Finance Board approved for publication a proposed rule to modify the definition of ''deposits in banks or trust companies'' in § 931.5 of its regulations. The notice of proposed rulemaking (Notice) was published in the Federal Register on September 29, 1993, with a 60-day public comment period that closed on November 29, 1993. See 58 FR 50867 (Sept. 29, 1993). The Notice proposed to make two changes to the definition of ''deposits in banks or trust companies.'' First, it

[1] *See* Bank Board General Counsel opinion 015 (Dec. 7, 1936) at 1–2. The Bank Board General Counsel concluded that ''Congress * * * intended to limit the trust companies authorized to receive [FHLBank] deposits to those which actually receive deposits as part of their regular course of business.'' *Id.* at 4.

[2] See *e.g.,* Home Owners' Loan Act of 1933 (HOLA), ch. 64, sec. 5(b), 48 Stat. 132 (June 13, 1993) (savings and loan associations ''shall raise their capital only in the form of payments on such shares as are authorized in their charger * * * no deposits shall be accepted''); Horace Russell, *Savings and Loan Associations* 166–67, n.21 (1956) (''savings and loan associations * * * issue savings accounts, sometimes called share accounts and sometimes share savings accounts * * * by federal law, the use of the word 'deposit' by savings and loan associations is prohibited''); *Indep Bankers Ass'n of Am.* v. *Clarke,* 917 F.2d 1126, 1128 (8th Cir. 1990) (''traditionally, of course, and originally, savings and loan associations * * * did not accept demand deposits'').