union enforces the lien, following the member's default, can it then bar the member from making withdrawals. When enforced, the statutory lien applies to all funds then in the account(s); due to prior withdrawals, those funds may amount to less than the outstanding balance of the indebtedness.

F. Withdrawal of Current Interpretive Ruling and Policy Statement

Concurrent with adoption of the proposed rule regarding the statutory lien, the NCUA Board will withdraw the current IRPS 82–5 regarding the statutory lien, 47 FR 57483 (December 27, 1982).

G. Regulatory Procedures

1. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The proposed rule on the statutory lien would reduce existing regulatory burdens. Therefore, the NCUA Board has determined and certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, a Regulatory Flexibility Analysis is not required.

2. Paperwork Reduction Act

The proposed rule has no information collection requirements. Therefore, no Paperwork Reduction Act analysis is required.

3. Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed rule does not apply to State-chartered credit unions and, thus, would not effect State interests. Therefore, no analysis is required.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Insurance, Liens, Mortgages, Reporting and recordkeeping requirements, Surety bonds, Statutory liens.

By the National Credit Union Administration Board on October 22, 1998.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, it is proposed that 12 CFR chapter VII be amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Part 701 is amended to add § 701.39 to read as follows:

§ 701.39 Statutory lien.

(a) *What is a statutory lien?* (1) *Definition.* A statutory lien is the power granted by section 107(11) of the Federal Credit Union Act (the Act), 12 U.S.C. 1757(11), to a federal credit union to impress (*i.e.,* to establish) a security interest in a member's shares and dividends equal to the amount of that member's indebtedness to the credit union, as that amount varies from time to time.

(2) *Superior claim.* A statutory lien gives the federal credit union priority over all other creditors when claims are asserted against the member's account(s).

(3) *Preemption.* A statutory lien pursuant to section 107(11) of the Act, 12 U.S.C. 1757(11), preempts state laws governing the right of a creditor to impress and enforce a lien, as well as the common law right of set-off.

(4) *Member's indebtedness.* A statutory lien may be applied to a member's account(s) only to satisfy a member's outstanding indebtedness to the credit union, such as loan principal and interest and other charges attributable to the indebtedness. For purposes of this section, a member is considered to be indebted to the credit union if he or she is the maker, co-maker or guarantor of a note or equivalent instrument establishing indebtedness to the credit union.

(5) *Exemptions.* To the extent provided by federal law—(i) A statutory lien may not be impressed on a member's Individual Retirement Account;

(ii) A statutory lien cannot be enforced to offset a member's indebtedness arising from a consumer credit transaction under a credit card plan;

(iii) A statutory lien cannot be enforced against the account of a member who is the subject of bankruptcy proceeding when a ''stay'' order of the bankruptcy court, issued pursuant to 11 U.S.C. 362, is in effect.

(b) *How is a statutory lien impressed?* A credit union can impress a statutory lien on a member's account(s)—

(1) *Account records.* By noting the existence of the lien on the credit union's records of the member's account(s) and providing written notice thereof to the member at the time the loan is granted; or

(2) *Loan documents.* In the case of a loan, by reciting in a loan document signed by the borrower that a statutory lien is impressed on his or her shares; or

(3) *By-Law.* Through a duly adopted credit union by-law or board policy establishing a statutory lien on member accounts, provided that written notice of such by-law or board policy is given to the borrower at the time the loan is granted.

(c) *How is a statutory lien enforced?* (1) *Application of funds.* A federal credit union may enforce its statutory lien on a member's account by debiting the balance of funds in the account and applying it to offset the member's outstanding indebtedness, including unpaid loan principal and interest, and fees and charges attributable to the indebtedness.

(2) *Default required.* A federal credit union may enforce its statutory lien on a member's accounts only when the member is in default on his indebtedness to the credit union.

(3) *Judgment not required.* A federal credit union need not obtain a court judgment on the member's debt prior to enforcing its statutory lien on the member's account.

[FR Doc. 98–28877 Filed 10–28–98; 8:45 am]
BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 711

Management Official Interlocks

AGENCY: National Credit Union Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Credit Union Administration (NCUA) proposes to revise its rule regarding management interlocks. The proposal conforms the interlocks rule to recent statutory changes, and was drafted through a coordinated effort among the following other federal financial regulatory agencies; the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision

(OTS). The proposal also modernizes and clarifies the rule, and reduces unnecessary regulatory burdens where feasible, consistent with statutory requirements.

DATES: Comments must be received on or before January 27, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

The Depository Institution Management Interlocks Act (12 U.S.C. 3201–3208) (the Interlocks Act) generally prohibits financial institution management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies (depository organizations). The Interlocks Act exempts interlocking arrangements between credit unions and, therefore, in the case of credit unions, only restricts interlocks between credit unions and other institutions—banks and thrifts and their holding companies.

The scope of the prohibition depends on the size and location of the involved organizations. For instance, the Interlocks Act prohibits unaffiliated depository organizations, regardless of size, from establishing an interlock if both organizations have an office in the same community (the community prohibition). Unaffiliated depository organizations may not form an interlock if both organizations have total assets of $20 million or more and are located in the same Relevant Metropolitan Statistical Area (RMSA) (the RMSA prohibition). The Interlocks Act also prohibits unaffiliated depository organizations, regardless of location, from establishing an interlock if each organization has total assets exceeding specified thresholds (the major assets prohibition).

Section 2210 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPR Act) amended §§ 204, 206, and 209 of the Interlocks Act (12 U.S.C. 3203, 3205 and 3207).[1]

Section 2210(a) of EGRPR Act amended the Interlocks Act by changing the thresholds for the major assets prohibition under 12 U.S.C. 3203. Prior to the EGRPR Act, management officials of depository organizations with total assets exceeding $1 billion were prohibited from serving as management officials of unaffiliated depository organizations with assets exceeding $500 million, regardless of the location of the organizations or their depository institution affiliates.[2] The EGRPR Act raised the thresholds to $2.5 billion and $1.5 billion, respectively. The revision also authorized NCUA to adjust the thresholds by regulation, as necessary to allow for inflation or market conditions.

Section 2210(b) of the EGRPR Act permanently extended the grandfather and diversified savings and loan holding company exemptions in 12 U.S.C. 3205. Prior to the EGRPR Act, these exemptions were subject to a 20-year time limit beginning November 10, 1978. The EGRPR Act amended § 3205(a) to permit persons who began dual service as management officials of more than one depository organization before November 10, 1978, to continue such service indefinitely. Similarly, § 3205(b) was amended to permit a person who serves as a management official of a depository organization and of a company that is not a depository holding company to continue to serve as an official of both entities indefinitely if the non-depository organization becomes a diversified savings and loan holding company. The EGRPR Act also repealed § 3205(c). That provision, which mandated agency review of grandfathered interlocks before March 1995, became outdated.

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

II. Discussion of Proposed Regulations

The proposal reflects these statutory changes. This proposal also renews an earlier proposal for a small market share exemption that had been advanced by the FRB, OCC and FDIC before enactment of the CDRI Act. NCUA invites comments on all aspects of this proposal.

A. Definitions

Current NCUA regulations define key terms implementing the Interlocks Act. A number of these definitions were added or revised in 1996 to implement the CDRI Act. With the repeal of the specific exemptive standards in the CDRI Act, two of these definitions have become unnecessary and would be removed.

Anticompetitive Effect

The current rule defines ''anticompetitive effect'' as a ''monopoly or substantial lessening of competition.'' Under the new statutory scheme, the substance of this definition is the sole criterion for gauging whether to grant an exemption under NCUA's general exemptive authority. Because the proposed regulations would employ this phrase in only one provision, a separate definition is unnecessary.

Critical

The current regulations use the term ''critical'' in connection with the Regulatory Standards exemption created by the CDRI Act. Since the EGRPR Act eliminates the Regulatory Standards exemption, a regulatory definition of ''critical'' is unnecessary.

B. Major Assets Prohibition

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

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[1] The OCC, the Board, the FDIC, and the OTS, (collectively, the Agencies) have recently proposed rules similar to NCUA to implement the EGRPR Act. 63 FR 43052 (August 11, 1998).

[2] The Agencies, and NCUAA, define ''total assets'' of diversified savings and loan holding companies and bank holding companies exempt from § 4 of the Bank Holding Company Act to include only the assets of their depository institution affiliates. *See* 12 CFR 26.2(r), 212.2(q), 348.2(q), 711.2(r), and 563f.2(r).

[3] NCUA adopted final regulations implementing the management interlocks provision of CDRI Act, effective October 1, 1996. *See* 61 FR 50702 (September 27, 1996). The Agencies also adopted final regulations implementing the management interlocks provisions of the CDRI Act, effective October 1, 1996. *See* 61 FR 40293 (August 2, 1996).

The proposal would amend the regulations to reflect the new threshold amounts and add a mechanism providing for periodic adjustments of the thresholds. The adjustment would be based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (the Consumer Price Index). In years when changes in the Consumer Price Index would change the thresholds by more than $100 million, NCUA will announce the change by notice published in the **Federal Register** in December. NCUA also invites comment on the types of market changes that may warrant subsequent adjustments to the major assets prohibition.

C. Regulatory Standards and Management Consignment Exemptions

The current regulations contain Regulatory Standards and Management Consignment exemptions, which were predicated on § 3207 of the CDRI Act. The EGRPR Act removed the exemptions from the Interlocks Act and substituted a general authority for NCUA to create exemptions by regulation. Accordingly, these regulatory exemptions would be removed by the proposed rule.

D. General Exemptive Authority

Section 2210(c) of the EGRPR Act authorizes NCUA to adopt regulations permitting service by a management official that would otherwise be prohibited by the Interlocks Act, if such service would not result in ''a monopoly or substantial lessening of competition.'' To implement this authority, NCUA is proposing to exempt otherwise prohibited management interlocks where the dual service would not result in a monopoly or substantial lessening of competition and would not otherwise threaten safety and soundness. The process for obtaining such exemptions will be set out in an NCUA directive to credit unions.

Since 1979, when regulations implementing the Interlocks Act were first promulgated, NCUA has recognized that interlocks involving certain classes of depository organizations present a reduced risk to competition, and that, by enlarging the pool of management available to such organizations, competition could be enhanced. Thus, in the initial interlocks rules published in 1979, NCUA reserved the authority to permit interlocks to strengthen newly-chartered organizations, troubled organizations, organizations in low- or moderate-income areas and organizations controlled or managed by minorities or women. The authority to permit interlocks in such circumstances was deemed ''necessary for the promotion of competition over the long term.'' *See* 44 FR 42161, 42165 (July 19, 1979). Prior to the CDRI Act, these exemptions were granted to meet the need for qualified management. The Management Consignment exemption under the CDRI Act was generally available to the same four classes of organizations, but on a more limited basis.

With the EGRPR Act's restoration of the broad exemptive authority under the Interlocks Act, NCUA again has authority to grant exemptions that will not adversely affect competition. NCUA believes that interlocks involving the four classes of organizations previously identified may provide management expertise needed to enhance the ability of the organizations to compete. Accordingly, NCUA proposes to establish a rebuttable presumption that an interlock would not result in a monopoly or substantial lessening of competition, if: (1) the depository organization is located in, and primarily serves, low- or moderate-income areas; (2) the depository organization is controlled or managed by members of a minority group or women; (3) the depository institution is newly-chartered; or (4) the depository institution, or in the case of a depository organization, a depository institution under its control, is deemed to be in ''troubled condition'' under regulations implementing § 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 1831i).

A claim that factors exist giving rise to a presumption does not preclude NCUA from denying a request for an exemption if NCUA finds, based on available materials, that the presumption is rebutted. That is, an exemption request may be denied if NCUA determines that the interlock would result in a monopoly or substantial lessening of competition. The presumptions are designed to provide greater flexibility to classes of organizations that may have greater need for seasoned management, but the presumptions are rebuttable because NCUA recognizes that such needs can only be met in a manner that is consistent with the statute.

The definitions of ''area median income'' and ''low- and moderate-income areas'' added to the regulations in 1996 to implement the CDRI Act amendments are being retained to provide guidance as to when an organization would qualify for one of the presumptions. Interlocks that are based on the presence of a rebuttable presumption would be allowed to continue for three years, unless otherwise provided in the approval order. Nothing in the proposed rule would prevent an organization from applying for an extension of an interlock exemption granted under a presumption if the factors continued to apply. The organizations would also be free to utilize any other exemption that may be available.

NCUA proposes that any other interlock approved under this section be allowed to continue unless it becomes anticompetitive, unsafe or unsound, or is subject to a condition requiring termination at a specific time.

E. Small Market Share Exemption

In 1994, the OCC, FDIC, and FRB published notices of proposed rulemaking seeking comment on a proposed market share exemption. The proposed exemption would have been available for interlocks involving institutions that, on a combined basis, would control less than 20% of the deposits in a community or relevant MSA. These agencies published small market share exemption proposals pursuant to the broad exemptive authority vested in the agencies prior to the CDRI Act. Because the CDRI Act restricted the agencies' broad rulemaking authority, the OCC, FDIC, and FRB withdrew their proposals.[4] The broad exemptive authority under the EGRPR Act again authorizes the small market share exemption. Accordingly, NCUA joins the Agencies in renewing the proposal for the small market share exemption.

The Interlocks Act, by discouraging common management among financial institutions, seeks to prevent unaffiliated institutions from having an adverse impact on competition in the products and services they offer. Where depository institutions dominate a large portion of the market, these risks are significant. When a particular market is served by many institutions, however, the risks diminish that depository institutions with interlocking relationships can adversely affect the available products and services available in their markets.

NCUA believes that the combination of the shares and deposits of two institutions provides a meaningful assessment of the capacity of the two institutions to control credit and related

[4] *See* OCC, 59 FR 29740 (June 9, 1994), FDIC, 59 FR 18764 (April 20, 1994), and FRB, 59 FR 7909 (February 17, 1994) for proposals prior to CDRI Act. Following enactment of the CDRI Act these proposals were withdrawn; 60 FR 67424 (December 29, 1995) for withdrawal by OCC and FRB; and 60 FR 7139 (February 7, 1995) for withdrawal by the FDIC.

services in their market. Accordingly, NCUA proposes to exempt interlocking service involving two unaffiliated depository organizations that together control no more than 20% of the shares and deposits in any RMSA or community, as appropriate. Organizations claiming the exemption would be required to determine the market share in each RMSA and community in which both depository organizations (or affiliates) are located.

Determination of the relevant market in which to apply the 20% market share standards would be made in accordance with the rules for determining the relevant market under other provisions of NCUA's interlocks regulations. The rules are structured to apply the community prohibition to interlocks between organizations operating within a community and to apply the RMSA prohibition to interlocks between organizations operating within a RMSA. The small market share exemption would not be available for interlocks subject to the major assets prohibition.

The exemptions would continue to apply as long as the organizations meet the applicable conditions. Any event that causes the level of deposits controlled to exceed 20% of deposits in any RMSA or community, such as expansion or a merger, would be considered to be a change in circumstances. Accordingly, the depository organizations would have 15 months, under NCUA's regulation, to address the prohibited interlock by termination or otherwise. The Agency with jurisdiction over the organization may establish a shorter period. Conforming changes relating to termination have been made to NCUA's change of circumstances provisions.

NCUA believes that the small market share exemption may be considered pro-competitive. The exemption is intended to enlarge the pool of management talent upon which depository institutions may draw, resulting in more competitive, better-managed institutions without causing significant anticompetitive effects.

No prior NCUA approval would be required in order to claim the proposed small market share exemption. Management is responsible for compliance with the terms of the exemption and for maintaining sufficient supporting documentation. To determine their eligibility for the exemptions, depository organizations would need to obtain appropriate share and deposit data from NCUA and appropriate deposit data from the FDIC. This information is available upon request to the agencies or on the Internet at http://www.ncua.gov or http://www.fdic.gov.

In order to understand the following discussion, it is important to understand that credit unions offer both share accounts and deposit accounts. Federal credit unions may only establish and maintain share accounts for members, except for public unit accounts and certain nonmember deposits at low-income designated credit unions. Some state-chartered credit unions may establish and maintain both share accounts and deposit accounts. Differences between share and deposit accounts are discussed in NCUA's Truth in Savings rules, 12 CFR part 707, app. C, comments 707.2(i)1–5 and 707.2(p)1–3. These differences are important in obtaining pertinent information to document the small market share exemption.

As NCUA does not report total credit union shares or deposits held in federally insured credit unions by RMSA or community, affected depository institutions must create their own custom reports from information on the NCUA Website. Credit union share and deposit information is available under the heading ''Credit Union Data'' on NCUA's first Website page. Entry into the ''Credit Union Data'' icon will lead the user into the ''Custom Reports'' icon. Entry into the ''Custom Reports'' icon will allow the user to collect total share information by city or state by adding the ''total shares-total'' and ''total shares and deposits-total'' of all credit unions listed at that locale. ''Total shares-total'' will capture the share accounts of federal credit unions and federally insured, state-chartered credit unions only accepting share accounts. ''Total shares and deposits-total'' will capture the share and deposit accounts of federally insured, state-chartered credit unions accepting both share accounts and deposit accounts. Since NCUA does not provide share and deposit totals by community, RMSA, or branch, each credit union will need to provide a reasonable, good faith estimate as to total credit union shares and deposits in a community, RMSA, or branch. The credit union totals will need to be added to information about bank and thrift deposits obtained from the FDIC, and the percentages calculated and maintained in the credit union's records to act as proof documenting the use of the small market share exemption.

The most recently available share and deposit data will be used to determine whether organizations are entitled to the exemptions. All credit unions file call report information semi-annually. Credit unions over $50 million in assets report and file call report information quarterly. FDIC publishes its deposit total information annually. A credit union seeking the exception is entitled to rely upon the share and deposit data that has been compiled for the previous year, until more recent data has been distributed.

NCUA requests comments on all aspects of the proposed small market share exemption. In particular, NCUA requests comments regarding the following issues:

1. Whether 20 % of the deposits in a community or RMSA is an appropriate limit for the application of the exemptions.

2. Whether deposit data collected by the FDIC in connection with the Report of Condition and Income and NCUA in connection with the Financial and Statistical Report, NCUA 5300, for federal credit unions, and the Call Report, NCUA 5300S, for federally insured, state chartered credit unions should be used to determine eligibility for the exemptions, and whether alternative sources of information concerning deposit share should be acceptable for determining availability of the exemptions.

3. Whether calculation of a depository organization's eligibility for exemption from the community prohibition will create undue burdens, and, if so, how the burdens could be reduced (for example, by basing the exemption on the total asset size of the institutions involved).

4. Whether there is a significant risk that depository organizations would create ''hub and spoke'' interlocks to evade the Interlocks Act, whereby several directors of one depository organization serve as directors of different unaffiliated depository organizations.

Paperwork Reduction Act

NCUA invites comment on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of NCUA's functions, including whether the information has practical utility;

(2) The accuracy of NCUA's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, minutes, and purchase of services to provide information.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Alex Hunt, Desk Officer for NCUA. Comments must also be sent to NCUA, 1775 Duke Street, Alexandria, VA 22314–3428; Attention: James L. Baylen, Paperwork Reduction Act Coordinator, Telephone No. (703) 518–6410; Fax No. (703) 518–6433; E–Mail Address: OAMAIL@NCUA.GOV. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, at NCUA's Central Office, 6th Floor, Law Library, 1775 Duke Street, Alexandria, VA between the hours of 9 a.m. and 1 p.m., Monday through Friday of each week except federal holidays, and by appointment through the Law Librarian at (703) 518–6540.

The collection of information requirements in this proposed rule are found in 12 CFR 711.4(h)(1)(i), 711.5(a)(1), 711.5(a)(2), 711.5(b), 711.6(a), and 711.6(c). This information is required to evidence compliance with the requirements of the Interlocks Act by federal credit unions and federally insured, state-chartered credit unions. The likely respondents are federal credit unions and federally insured, state-chartered credit unions.

In the past several years, NCUA has received approximately one management interlock application each year. The following estimates are provided:

Estimated average annual burden hours per respondent: 3 hours.

Estimated number of respondents: 1.

Start-up costs to respondents: None.

NCUA 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.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), NCUA hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. NCUA expects that this proposal 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. These conclusions are based on the fact that the proposed regulations relax the criteria for obtaining an exemption from the interlocks prohibitions, and specifically address the needs of small entities by creating the small market share exemption. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

The NCUA Board has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed rule would, as does the current rule, apply to all federally insured credit unions, including federally insured state-chartered credit unions. However, since the proposed rule reduces regulatory burdens, NCUA has determined that the proposed rule does not constitute a ''significant regulatory action'' for purposes of the Executive Order. NCUA welcomes comment on means and methods to coordinate with the state credit union supervisors regarding achievement of shared goals involving viability, flexibility, parity, conformity, and safety and soundness regarding management interlocks.

List of Subjects in 12 CFR Part 711

Antitrust, Credit unions, Holding companies, Management official interlocks.

By the National Credit Union Administration Board on October 22, 1998.

Becky Baker,

Secretary of the Board.

For the reasons set out in the preamble, the NCUA proposes to amend part 711 of chapter VII of title 12 of the Code of Federal Regulations to read as follows:

PART 711—MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 711 continues to read as follows:

Authority: 12 U.S.C. 3201–3208.

§ 711.2 [Amended]

1. Section 711.2 is amended by removing paragraphs (b) and (f) and redesignating paragraphs (c) through (s) as paragraphs (b) through (q), respectively.

2. Section 711.3 is amended by revising paragraph (c) to read as follows:

§ 711.3 Prohibitions.

* * * * *

(c) *Major assets.* A management official of a depository organization with total assets exceeding $2.5 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 $1.5 billion (or any affiliate thereof), regardless of the location of the two depository organizations. The NCUA will adjust these thresholds, as necessary, based on year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest $100 million. The NCUA will announce the revised thresholds by publishing a notice in the **Federal Register**.

3. Section 711.5 is revised to read as follows:

§ 711.5 Small market share exemption.

(a) *Exemption.* A management interlock that is prohibited by § 711.3(a) or § 711.3(b) is permissible, provided:

(1) The interlock is not prohibited by § 711.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20% of the deposits, in each RMSA or community in which the depository organizations (or their depository institution affiliates) are located. The amount of shares or deposits will be determined by reference to the most recent annual Summary of Deposits published by the FDIC or in information provided by NCUA for the RMSA or community. This information is available on the Internet at http://www.ncua.gov or http://www.fdic.gov.

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

4. Section 711.6 is revised to read as follows:

§ 711.6 General exemption.

(a) *Exemption.* NCUA may, by agency order issued following receipt of an application, exempt an interlock from

the prohibitions in § 711.3, if NCUA finds that the interlock would not result in a monopoly or substantial lessening of competition, and would not present other safety and soundness concerns.

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

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

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

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

(4) Is deemed to be in ''troubled condition'' as defined in § 701.14(b)(3) of this chapter.

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

5. Section 711.7 is amended by revising paragraph (a) to read as follows:

§ 711.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service if a change in circumstances causes the service to become prohibited. 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 increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

* * * * *

[FR Doc. 98–28879 Filed 10–28–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 714

Leasing

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The NCUA Board is proposing to update and redesignate its long-standing policy statement on leasing, Interpretive Ruling and Policy Statement (IRPS) 83–3, as an NCUA regulation. IRPS 83–3 authorizes federal credit unions to engage in either direct or indirect leasing and either open-end or closed-end leasing of personal property to their members if such lease financing arrangements are the functional equivalent of secured loans. In addition, the proposed regulation formalizes NCUA's position, stated in legal opinion letters, that a federal credit union does not have to own the lease property in indirect leasing if certain requirements are satisfied.

DATES: Comments must be received on or before January 27, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Nicole Sippial Williams, Staff Attorney, Division of Operations, Office of the General Counsel, at the above address or by telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

As part of its regulatory review program, NCUA reviewed its Interpretive Rulings and Policy Statements (IRPS) to determine their current effectiveness. As a result of this review, the NCUA Board determined that a number of the IRPS should be withdrawn because they were outdated or unnecessary, and that certain IRPS should be redesignated as NCUA regulations to clarify and more effectively communicate NCUA's position on issues affecting federal credit unions (FCUs). 62 FR 11773 (March 13, 1997). Thereafter, twenty-eight (28) IRPS were withdrawn. 62 FR 50245 (September 25, 1997). This was NCUA's first step in its ongoing project to update and streamline its IRPS.

At this time, NCUA is in the second phase of the IRPS project, that is, the redesignation of certain IRPS as NCUA regulations. Among those IRPS that the NCUA Board determined would be better suited as a regulation is IRPS 83–3, Federal Credit Union Leasing of Personal Property to Members. 62 FR 11773 (March 13, 1997). The NCUA Board's goal in redesignating this IRPS is to increase regulatory effectiveness by establishing a rule that sets forth NCUA's current position on leasing and by making it easier for an FCU to locate the rule and its requirements.

In 1983, the NCUA Board issued IRPS 83–3 (48 FR 52568, Nov. 21, 1983) stating that FCUs can lease personal property to their members if the leasing of the personal property is the functional equivalent of secured lending. The NCUA Board did not want FCUs to assume burdens or subject themselves to risks greater than those ordinarily incident to secured lending. The NCUA Board determined that for leasing to be the functional equivalent of lending, a lease had to be a net, full payout lease with a residual value not exceeding 25% unless guaranteed. In addition, an FCU had to retain salvage powers over the leased property and maintain a contingent liability insurance policy with an endorsement for leasing.

The NCUA Board further stated that FCUs could engage in either direct or indirect leasing and either open-end or closed-end leasing. That is, an FCU could either purchase property from a vendor for the purpose of leasing such property to a member or purchase the lease and the leased property after the lease has been executed between the vendor and the member. Further, an FCU could either require a member to assume the risk and responsibility for any difference in the relied upon residual value and the actual value of the property at lease end or assume such risk itself.

After IRPS 83–3 was issued, NCUA received a number of inquires regarding whether an FCU must own the leased property. NCUA responded through legal opinion letters that, in states requiring an entity engaged in leasing to be a licensed dealer, which involved posting a bond and complying with other state regulatory requirements, an FCU did not have to own the leased property. However, the FCU had to be named as the sole lienholder on the lease property and granted an unconditional, irrevocable power of attorney.

Thereafter, the leasing industry argued that irrespective of state limitations, an FCU should be able to