

After the changes made by the CDRI Act, a person subject to the Interlocks Act's restrictions seeking an exemption from those restrictions must qualify either for a "regulatory standards" exemption (the Regulatory Standards exemption) or an exemption under a "management official consignment program" (the 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 improve the provision of credit to low- and moderate-income areas, increase the competitive position of a minority- or woman-owned institution, or 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 newly chartered institutions or institutions that are in an unsafe or unsound condition.)

The proposal reflects these statutory changes, and streamlines and clarifies the interlocks regulations in various respects. These changes are discussed in the text that follows. The agencies invite comments on all aspects of this proposal.

Discussion

The following is a section-by-section discussion of the proposed revisions.

Authority, Purpose, and Scope

This section in the agencies' current regulations 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 currently identifies the types of

institutions to which each agency's regulation applies.

The proposed rule restates these provisions and, in the OCC proposed 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 proposed § 26.2(k).)

Definitions

Each of the agencies' current regulations sets forth definitions of key terms used in the regulation.

The proposed regulations change some of the current definitions. A discussion of the substantive differences between the current rules and proposals follows.

Anticompetitive Effect

The current regulations neither use nor define the term "anticompetitive effect."

The proposed regulations define the term to mean "a monopoly or substantial lessening of competition." This term is used in the Regulatory Standards exemption. Under that 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 proposed definition preserves the free flow of credit and other banking services that the Interlocks Act is designed to protect. Another benefit of the proposed definition is that it is familiar to the banking industry, given that it is derived from the Bank Merger Act (12 U.S.C. 1828(c)). This enables the agencies to accomplish the legislative purpose of the Interlocks Act without imposing unnecessary regulatory burdens.

Area Median Income

The current regulations do not use the term "area median income," and, therefore, do not define this term.

The proposed regulations define "area median income" as the median family

income for the metropolitan statistical area (MSA) in which an institution is located or the statewide nonmetropolitan median family income if an institution is located outside an MSA. This term is used in the definition of "low- and moderate-income areas," which in turn is used in the implementation of the Management Consignment exemption.

Contiguous or Adjacent Cities, Towns, or Villages

The current regulations define "adjacent cities, towns, or villages" as cities, towns, or villages whose borders are within 10 road miles from each other. They also define "contiguous cities, towns, or villages" as cities, towns, or villages whose borders touch. The statute and regulations apply these terms to prohibit interlocks involving small institutions that are located in contiguous or adjacent cities, towns, or villages.

The proposed regulations combine these two definitions, given that contiguous cities, towns, or villages necessarily are within 10 miles of each other.

Critical

The current regulations neither use nor define "critical."

The proposed regulations define the term in connection with 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 define "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 practically 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.

This proposal addresses the issue by stating that the agencies will consider a person to be critical to a depository organization if the person will play an important role in helping the institution either address current problems or maintain safe and sound operations going forward. The agencies believe that this approach is consistent with the