

legislative intent by insuring that only persons of demonstrated expertise and importance to the institution will be allowed to serve pursuant to a Regulatory Standards exemption.

#### *Low- and Moderate-Income Areas*

The current regulations permit interlocks under certain circumstances involving a depository organization located "in a low income or other economically depressed area." However, the current rules do not define "low income" or "economically depressed."

Section 209(c)(1)(A) of the Interlocks Act (12 U.S.C. 3207(c)(1)(A)) authorizes the appropriate agency to permit interlocks pursuant to the Management Consignment exemption if the agency determines that the proposed service would "improve the provision of credit to low- and moderate-income areas." The proposed regulations define "low- and moderate-income areas" as areas where the median family income is less than 100 percent of the area median income. This definition is consistent with Title I, Subtitle A of the CDRI Act (the Community Development Banking and Financial Institutions Act of 1994) (12 U.S.C. 4701-4718), which, like the Management Consignment exemption affecting institutions in low- and moderate-income areas, is intended to assist the flow of credit into economically depressed areas. Section 103(17) of the CDRI Act (12 U.S.C. 4702(17)) defines "low income" to mean not more than 80 percent of the area median income. The agencies believe that Congress, by using the term "low- and moderate-income" in the Management Consignment exemption, intended for that term to apply to an area where the median family income exceeds 80 percent of the median income for the area. The agencies have selected 100 percent of the area median income as the cutoff for defining "low- and moderate-income areas" because they believe that a higher threshold would permit interlocks that would not improve the provision of credit to low- and moderate-income areas.

#### *Management Official*

The current regulations define "management official" to include an employee or officer "with management functions" (including a branch manager), a director, 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 proposed regulations adopt the definition of "management official" set forth in the current rules, except that the phrase "an employee or officer with management functions" is removed. It is replaced by the term "senior executive officer" as defined by each of the agencies in their regulations 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).

The agencies are proposing this change to eliminate the uncertainty and attendant compliance burden created by the ambiguous term "management functions." The proposals 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. The agencies request comment on the advisability of defining "management official" by using "senior executive officer" rather than "employee or officer with management functions."

The current definition of "management official" exempts those individuals whose management functions relate to retail merchandising or manufacturing. Stated another way, the current exemption applies to a category of persons whose responsibilities are unrelated to the business of a deposit-taking institution.

The agencies specifically ask commenters to address whether the agencies should exempt a broader category of management officials whose duties are unrelated to the provision of financial services by a depository institution or depository holding company, and if so, how the agencies should define that category of excluded officials.

#### *Relevant Metropolitan Statistical Area (RMSA)*

The current regulations define "relevant metropolitan statistical area" as an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated primary MSAs as defined

by the Office of Management and Budget (OMB). This definition is derived from section 203(1) of the Interlocks Act (12 U.S.C. 3202(1)).

The proposed regulations define "relevant metropolitan statistical area (RMSA)" as an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated primary MSAs, to the extent that the OMB defines and applies these terms. This change reflects the fact that the OMB defines "consolidated MSA" to include two or more primary MSAs. Given that consolidated MSAs, by the OMB's definition, are comprised of primary MSAs, the reference to consolidated MSAs in the Interlocks Act and the agencies' regulations is inappropriate. The proposed change enables 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 current regulations define "representative or nominee" as a person who serves as a management official and has an express or implied obligation to act on behalf of another person with respect to management responsibilities. The current definition goes on to state that the determination of whether someone is a representative or nominee depends on the facts of a particular case and that certain relationships (such as family, employment, and so on) may evidence an express or implied obligation to act.

The proposed regulations also define "representative or nominee" as someone who serves as a management official and has an obligation to act on behalf of someone else. The proposed definition deletes the rest of the current definition, however, and inserts 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. The agencies propose this change to clarify that the determination that a representative or nominee situation exists will depend on whether there is a basis to conclude that an agreement exists to act on someone's behalf. The agencies note that the current definition provides specific guidance for determining when a representative or nominee relationship might be found to exist, and request comment on whether the current definition, the proposed definition, or another definition is preferable.

#### *Prohibitions*

The current regulations prohibit interlocks in the following three