account any anticompetitive effects that might stem from a previously existing interlock. Accordingly, the agencies are requesting comments as to how other interlocks involving depository organizations should be viewed in applying this presumption.

The second presumption to be applied by the agencies is 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.[6]

The agencies invite comment on the utility of the proposed presumptions and on whether other presumptions also should apply.

The proposed regulations 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 are not proposing a specific term for a permitted exemption. Instead, the agencies may require an institution to terminate the interlock if an 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.

Grandfathered Interlocking Relationships—Removed

The current regulations restate the grandfather provisions set forth in section 206 of the Interlocks Act (12 U.S.C. 3205). 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 satisfied the statutory criteria for obtaining an extension.

The proposed regulations 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. The grandfathered exemptions will expire on November 10, 1998, unless Congress amends the Interlocks Act again to provide another opportunity for an extension.

Management Consignment Exemption

The current regulations set forth a number of instances in which the agencies may permit an exemption to the Interlocks Act. However, the statutory provisions authorizing the agencies to grant exemptions have been amended, thereby requiring that the current regulations be amended as well. The Management Consignment exemption set forth in section 209(c) of the Interlocks Act (12 U.S.C. 3207(c)) is modelled after certain exemptions that appear in the agencies' current regulations.

The proposed regulations implement the Management Consignment exemption, and restate the statutory criteria, with three clarifications. First, the proposed 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 proposal clarifies that the exemption available for ''minority- and women-owned institutions'' is available for an institution that is owned either by minorities or women. In noting the types of exemptions 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 proposal permits 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 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 he [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 propose to permit exemptions pursuant

[6] 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.