FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 82-148
November 16, 1982

REGULATION L

MANAGEMENT OFFICIAL INTERLOCKS

TO ALL STATE MEMBER BANKS AND BANK HOLDING COMPANIES
IN THE ELEVENTH FEDERAL RESERVE DISTRICT:

The Board of Governors of the Federal Reserve System has announced amendments to Regulation L to reflect changes made by Congress to the Depository Institutions Management Interlocks Act.

The Interlocks Act prohibits certain interlocking relationships among officials of financial institutions, including depository holding companies and their affiliates.

The amendment permits--under a grandfather clause of the Act--a management official to continue in an interlocking relationship for the entire ten year grandfathered period provided by the Act, despite certain changes in circumstances, such as a merger of an institution involved in an interlock. The amendment also permits a management official serving both a depository and a nondepository institution to continue in both positions although the depository institution becomes a savings and loan holding company.

The Board has also requested comments on two proposed changes to Regulation L. One change would permit certain resumptions of previously terminated interlocks. A second change would ease the application of the current regulations. Comments should be directed to the Communications Division, 3rd Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, East, S.W., Washington, D.C., 20219, Attention C. Christine Jones, and refer to Docket No. 82-19 and Docket No. 82-20 respectively.

Attached are copies of the press release and the material submitted for publication in the Federal Register. Questions regarding the material contained in this circular should be directed to this Bank's Legal Department, Extension 6171.

Additional copies of this circular will be furnished upon request to the Department of Communications, Financial and Community Affiars, Extension 6289.

Sincerely yours,

William H. Wallace

William H. Wallace
First Vice President

FEDERAL RESERVE press release

For immediate release October 27, 1982

The Federal Reserve Board today made public the text of amendments to its Regulation L -- Interlocking Bank Relationships -- relating to changes made by Congress last year to the Depository Institution Management Interlocks Act. The Board also made public the text of two proposals for additional changes in Regulation L.

Board approval of these actions was announced on September 29. The announcement stated that the text of the official notices of the actions would be made public shortly. These notices are attached.

The Board's Regulation L applies to State member banks and to bank holding companies. The other federal regulators of financial institutions are making similar changes in their interlocks rules, applying to institutions they regulate.

Attachments

Federal Reserve System
[12 C.F.R. Part 212]

Department of the Treasury
Comptroller of the Currency
[12 C.F.R. Part 26]

Federal Deposit Insurance Corporation
[12 C.F.R. Part 348]

Federal Home Loan Bank Board
[12 C.F.R. Part 563f]

National Credit Union Administration
[12 C.F.R. Part 711]

DOCKET NO. 82- 21

Management Official Interlocks

FINAL RULE

AGENCIES: Board of Governors of the Federal Reserve System, Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, and National Credit Union Administration.

ACTION: Final Rule.

SUMMARY: The agencies are amending their respective regulations implementing the Depository Institution Management Interlocks Act to reflect recent changes enacted by Congress in the law. These changes permit a management official whose service in an interlocking relationship is grandfathered under the Act to continue such service for the duration of the ten year grandfather period provided in the Act notwithstanding changes in circumstances. The changes also permit a management official of a depository organization and a nondepository organization to continue such service after the nondepository organization becomes a diversified savings and loan holding company.

EFFECTIVE DATE: The amendments are effective October 26, 1982.

FOR FURTHER INFORMATION CONTACT: Bronwen Mason (202) 452-3564 or Melanie Fein (202) 452-3594, Board of Governors of the Federal Reserve System;

Jerome Edelstein or Rosemarie Oda (202) 447-1880, Office of the Comptroller of the Currency; Pamela E. F. LeCren or Barbara I. Gersten (202) 389-4171, Federal Deposit Insurance Corporation; David J. Bristol (202) 377-6461 or Kenneth F. Hall (202) 377-6466, Federal Home Loan Bank Board; or Steven R. Bisker (202) 357-1030, National Credit Union Administration.

SUPPLEMENTARY INFORMATION: The Depository Institution Management Interlocks Act ("Interlocks Act") was enacted as title II of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (Pub. L. No. 95-630, 12 U.S.C. § 3201 et seq.). The general purpose of the Interlocks Act, and the final regulations issued thereunder, is to foster competition among depository institutions, depository holding companies, and their affiliates by prohibiting management official interlocks between unaffiliated organizations depending upon their size and location. Final regulations implementing the Interlocks Act were published effective July 19, 1979 (44 FR 42152) and were subsequently amended effective May 9, 1980 (45 FR 14384).

Under section 206 of the Interlocks Act (12 U.S.C. § 3205) and the current regulations, certain persons are "grandfathered" in their positions as management officials for a period of ten years ending November 10, 1988. The occurrence of specified "changes in circumstances" as provided in the current regulations may result in the earlier termination of grandfathered interlocks.

Those changes in circumstances are defined to include certain mergers, acquisitions, consolidations, and the establishment of certain offices. Title III of Public Law 97-110, signed into law on December 26, 1981, amended section 206 to provide specifically that mergers, acquisitions, increases in total asset size, establishment of one or more offices, or change in management responsibilities shall not constitute changes in circumstances that will necessitate early termination of grandfathered interlocks. Due to this statutory change, the agencies are repealing the portion of their respective regulations that sets forth mergers, acquisitions, consolidations, and establishment of certain offices as changes in circumstances that will affect grandfathered interlocks and deleting other references to that provision. This action has the effect of repealing a final amendment to 12 C.F.R. § 563f.6(a)(1)(i) adopted by the Federal Home Loan Bank Board on December 4, 1981 (See 46 FR 61249 (1981)).

The amended regulation provides that persons who would have been required to terminate a grandfathered interlock based upon the provision of the regulations now being repealed but who have not yet terminated the interlock and persons who are continuing to serve in an interlocking position under an extension granted by one of the agencies may continue their interlocking service until November 10, 1988. The agencies will solicit comment on whether or not persons who have already terminated an interlock based upon the provision being repealed may resume their interlocking service.

The agencies also are amending their regulations to reflect the addition to section 206 by Public Law 97-110 of a new subparagraph (b). Subparagraph (b) permits an individual who serves as a management official of a depository organization and a nondepository organization to remain in that position regardless of the prohibitions of the Interlocks Act if the nondepository organization becomes a diversified savings and loan holding company as that term is defined by § 408(a)(1)(F) of the National Housing Act (12 U.S.C. § 1730a(a)(1)(F)). New subparagraph (b) ceases to operate as of November 10, 1988. The change in the law will be reflected in a new subparagraph (c) to the provision of the regulations dealing with permitted interlocking relationships.

It is the agencies' opinion that the amendment which added subparagraph (b) to section 206 is fully retroactive. Thus, a person who, prior to enactment of the amendment, resigned from either organization after the nondepository corporation became a diversified savings and loan holding company and such resignation was due to the Interlocks Act may resume his or her previous position. Persons who may continue to serve based upon the addition of subparagraph (b) to section 206 must terminate their interlocks no later than November 10, 1988 if they have not done so previously and the interlock is prohibited at that time.

The agencies are undecided on the issue of whether or not persons covered by section 206(b) may continue their interlocking service even though subsequent changes in circumstances occur. It is the agencies' intention to solicit comment on whether or not such interlocks may be affected by subsequent changes in circumstances. Until such time as comment is solicited and the issue fully considered by the agencies, no regulatory action will be taken regarding such interlocks in the event of subsequent changes in circumstances.

The agencies are not soliciting public comment with regard to these final amendments under authority of 5 U.S.C. § 553(b), which authorizes waiver of public comment in the case of interpretative rules. The amendments can be considered interpretative as they merely conform the existing regulations to Federal law. The amendments are made effective immediately pursuant to 5 U.S.C. § 553(d)(2), which authorizes waiver of a delayed effective date in the case of interpretative rules.

Regulatory Impact Analysis. Pursuant to section 3(g)(1) of Executive Order 12291 of February 17, 1981, it has been determined that the amendments do not constitute a major rule within the meaning of section 1(b) of the Executive

Order. The amendments eliminate restrictions imposed by regulations implementing the Depository Institution Management Interlocks Act, 12 U.S.C. § 3201 et seq. The amendments have no adverse effect on the operations of the depository institutions subject to them. As such, the amendments will not have an annual effect on the economy of $100 million or more, will not affect cost or prices for consumers, individual industries, government agencies or geographic regions, and will not have adverse effects on competition, employment, investment, productivity, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Index terms: Antitrust; Banks, banking; Savings and loans; Credit unions; Federal Deposit Insurance Corporation; Federal Reserve System; Comptroller of the Currency; Federal Home Loan Bank Board; National Credit Union Administration; Holding companies; Management official interlocks.

Accordingly, and pursuant to their respective authority under section 209 of the Depository Institution Management Interlocks Act (12 U.S.C. § 3207), the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration amend 12 C.F.R. Parts 212, 26, 348, 563f, and 711 respectively, as follows:

FEDERAL RESERVE BOARD

[12 C.F.R. PART 212]

MANAGEMENT OFFICIAL INTERLOCKS

FINAL RULE

12 C.F.R. Part 212 is amended as follows:

1. The authority citation for Part 212 reads as follows:

Authority: 12 U.S.C. § 3201 _et seq_.

2. Section 212.4(b)(5) is revised to read as follows:

Section 212.4 -- _Permitted interlocking relationships_.

*   *   *   *   *

(b) *   *   *

(5) _Loss of management officials due to change in circumstances_. If a depository organization experiences a change in circumstances described in paragraphs (a) and (b) of § 212.6, and the change requires the termination of service at the depository organization of 50 percent or more of the organization's directors or of 50 percent or more of the total management officials of the depository organization, such management officials may continue to serve in excess of the time periods provided in paragraphs 212.6(a) or 212.6(b): _Provided_ that: (i) Each management official so affected agrees to sever the prohibited interlocking relationship no later than 30 months after the change in circumstances; (ii) the appropriate Federal supervisory agency or agencies determine that the service by such management officials is necessary to provide management or operating expertise; (iii) the depository organization submits a proposal for the orderly termination of service by such management officials over the time period provided; and (iv) other conditions in addition to, or in lieu of, the foregoing may be imposed by the appropriate Federal supervisory agency or agenices in any specific case.

3. Section 212.4 is amended by adding paragraph (c) which reads as follows:

Section 212.4 -- _Permitted interlocking relationships_.

*   *   *   *   *

(c) _Diversified savings and loan holding company_. Notwithstanding Section 212.3, a person who serves as a management official of a depository organization and a nondepository organization is not prohibited from continuing the interlocking service when the nondepository organization becomes a diversified savings and loan holding company, as defined in Section 408(a)(1)(F) of the National Housing Act (12 U.S.C. § 1730a(a)(1)(F)). This subparagraph shall cease to operate on November 10, 1988.

4. Section 212.5 is revised to read as follows:

Section 212.5 -- Grandfathered interlocking relationships.

A person whose interlocking service in a position as a management official of two or more depository organizations began prior to November 10, 1978, and was not immediately prior to that date in violation of Section 8 of the Clayton Act (12 U.S.C. § 19) is not prohibited from continuing to serve in such interlocking positions until November 10, 1988. Any management official who has been required to terminate service in one or more such interlocking positions as a result of a change in circumstances defined in 12 C.F.R. Part 212.6(a) as it existed prior to [effective date of this amendment] (12 C.F.R. § 212.6(a) (1981)) but who has not terminated such service as of [effective date of this amendment] is not prohibited from continuing such service until November 10, 1988.

5. Section 212.6 is amended by deleting paragraphs (a)(1) and (2) and redesignating paragraphs (b)(1) and (2) as (a) and (b), respectively.

By order of the Board of Governors of the Federal Reserve System, effective October 12, 1982.

(signed) William W.Wiles

William W. Wiles
Secretary of the Board

[SEAL]

FEDERAL RESERVE SYSTEM
[12 C.F.R. PART 212]

DEPARTMENT OF THE TREASURY
COMPTROLLER OF THE CURRENCY
[12 C.F.R. PART 26]

FEDERAL DEPOSIT INSURANCE CORPORATION
[12 C.F.R. PART 348]

FEDERAL HOME LOAN BANK BOARD
[12 C.F.R. PART 563f]

NATIONAL CREDIT UNION ADMINISTRATION
[12 C.F.R. PART 711]

Docket No. 82 - 19

MANAGEMENT OFFICIAL INTERLOCKS
NOTICE OF PROPOSED RULEMAKING

AGENCIES: Board of Governors of the Federal Reserve System, Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, and National Credit Union Administration.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board and National Credit Union Administration are proposing to amend their regulations implementing the Depository Institutions Management Interlocks Act, 12 U.S.C. § 3201 *et seq.*, to permit a management official of a depository organization who terminated a grandfathered interlock because of a change in circumstances, as defined by the agencies, to resume the interlock for the duration of the grandfather period under the Act. The agencies are making this proposal to extend to such management officials the benefit of a statutory amendment to the Act, which permits management officials, currently serving in grandfathered interlocks, to continue such service until November 10, 1988, despite the occurrence of a change in circumstances.

DATE: Written comments should be received no later than November 26, 1982.

ADDRESS: Comments should be directed to: Docket No. [82 -19], Communications Division, 3rd Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, East, S.W.,Washington, D.C. 20219, Attention: C. Christine Jones,(202) 447-1800.

Comments will be available for public inspection and photocopying.

FOR FURTHER INFORMATION CONTACT: Bronwen Mason (202) 452-3564 or Melanie Fein (202) 452-3594, Board of Governors of the Federal Reserve System; Jerome Edelstein (202) 447-1880 or Rosemarie Oda (202) 447-1880, Office of the Comptroller of the Currency; Pamela E.F. LeCren (202) 389-4171, or Barbara I. Gersten (202) 389-4171, Federal Deposit Insurance Corporation; David J. Bristol (202) 377-6461 or Kenneth F. Hall (202) 377-6466, Federal Home Loan Bank Board; or Steven R. Bisker (202) 357-1030, National Credit Union Administration.

SUPPLEMENTARY INFORMATION: On December 26, 1981, Public Law 97-110 was signed into law amending the Depository Management Interlocks Act, 12 U.S.C. § 3201 et seq., to provide that mergers, acquisitions, consolidations and the establishment of offices do not constitute changes in circumstances which require termination of grandfathered interlocks. Consequently, in a final regulation being published in the Federal Register by the agencies, provisions which specified that those events constituted changes in circumstances requiring termination of grandfathered interlocks are rescinded. This action has the effect of permitting management officials currently serving in grandfathered interlocking positions to continue such service until November 10, 1988 despite the occurrence of a merger, consolidation, acquisition or the establishment of an office.

The final regulation does not address the question of whether management officials who terminated their interlocking service may resume such service. Under their rulemaking authority granted by § 209 of the Interlocks Act, 12 U.S.C. § 3207, the agencies propose to amend their respective regulations to permit such management officials to resume their interlocking service for the duration of the grandfather period. A management official who terminated a grandfathered interlock for some reason other than a change in circumstances enumerated in the regulations would not be permitted to resume the interlock. Similarly, any person who resigned from a grandfathered interlock or otherwise terminated such service for reasons other than a change in circumstances after enactment of the amendment would not be permitted to resume the interlocking service.

The agencies believe that this proposed amendment is consistent with the Congressional intent underlying the statutory amendment to afford an uninterrupted grandfather period for interlocks that were in existence when the Interlocks Act was enacted. This intent was expressed in a statement during Congressional consideration of the statutory amendment that management officials would be permitted to resume interlocking service for the duration of the grandfather period. 127 Cong. Rec. S. 15309 (daily ed. Dec. 15, 1981) (remarks of Senator Garn).

Interested persons are invited to comment on the proposed regulation for thirty days from the date of this publication. A thirty-day comment period, rather than a sixty-day period, has been established to avoid any unnecessary delay in permitting management officials to resume service. Because this proposal involves only one amendment, the agencies believe that thirty days provides ample opportunity for those interested in this regulation to comment.

Regulatory Flexibility Act Analysis. Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. § 601 et seq.), the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the Board of Directors of the National Credit Union Administration certify that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed amendment would ease the application of the existing regulations. The effect of the amendment is expected to be beneficial rather than adverse and small entities are generally expected to share the benefits of the amendment equally with larger institutions.

Regulatory Impact Analysis. Pursuant to Section 3(g)(1) of Executive Order 12291 of February 17, 1981, it has been determined that the proposed amendment does not constitute a major rule within the meaning of Section 1(b) of the Executive Order. The amendment would ease restrictions imposed by regulations implementing the Depository Institution Management Interlocks Act, 12 U.S.C. § 3201 et seq., and would have no adverse effect on the operations of the depository institutions subject to it. As such, the amendment would not have an annual effect on the economy of $100 million or more, would not affect cost or prices for consumers, individual industries, government agencies or geographic regions, and would not have adverse effects on competition, employment, investment, productivity, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Index Terms: Antitrust; Banks, banking; Savings and Loans; Credit Unions; Federal Deposit Insurance Corporation; Federal Home Loan Bank Board; Federal Reserve System; Office of the Comptroller of the Currency; National Credit Union Administration; Holding Companies; Management Official Interlocks.

Accordingly, pursuant to their respective authority under section 209 of the Depository Institution Management Interlocks Act (12 U.S.C. § 3207), the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration propose to amend 12 C.F.R. by amending Parts 212, 26, 348, 563f, and 711, respectively, as follows:

FEDERAL RESERVE BOARD

[12 C.F.R. PART 212]

MANAGEMENT OFFICIAL INTERLOCKS

PROPOSED RULE

12 C.F.R. Part 212 is proposed to be amended as follows:

1. The authority citation for Part 212 reads as follows:

Authority: 12 U.S.C. § 3201 et seq.

2. Section 212.5 is proposed to be revised to read as follows:

Section 212.5 -- Grandfathered interlocking relationships.

A person whose interlocking service in a position as a management official of two or more depository organizations began prior to November 10, 1978, and was not immediately prior to that date in violation of Section 8 of the Clayton Act (15 U.S.C. § 19) is not prohibited from continuing to serve in such interlocking positions until November 10, 1988. Any management official who has been required to terminate or who has terminated service in one or more such interlocking positions as a result of a change in circumstances defined in 12 C.F.R. § 212.6(a) (1981) is not prohibited from continuing or resuming such service until November 10, 1988.

By order of the Board of Governors of the Federal Reserve System, effective October 12, 1982.

(signed) William W. Wiles

William W. Wiles
Secretary of the Board

[SEAL]

No. 82-505

Date: July 29, 1982

FEDERAL RESERVE SYSTEM
[12 CFR Part 212]

DEPARTMENT OF THE TREASURY
COMPTROLLER OF THE CURRENCY
[12 CFR Part 26]

FEDERAL DEPOSIT INSURANCE CORPORATION
[12 CFR Part 348]

FEDERAL HOME LOAN BANK BOARD
[12 CFR Part 563f]

NATIONAL CREDIT UNION ADMINISTRATION
[12 CFR Part 711]

Docket No. 82-20

Management Official Interlocks

Notice of Proposed Rulemaking

AGENCIES: Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, and National Credit Union Administration.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Home Loan Bank Board propose to amend their regulations implementing the Depository Institution Management Interlocks Act, which generally prohibits certain management official interlocks between depository institutions, depository holding companies, and their affiliates. The proposed regulatory amendments would (1) simplify the procedures for obtaining exceptions to the Act and extensions of time to permit compliance with the Act, (2) ease the burden of the Act on depository institution holding companies by redefining the terms "office" and "total assets," (3) exclude management officials whose functions relate exclusively to retail merchandising and manufacturing, (4) broaden the circumstances under which the exception to the Act for disruptive management loss is available, (5) clarify the circumstances that require termination of non-grandfathered management official interlocks, and (6) provide that interlocks between depository organizations and nondepository organizations that become diversified savings and loan holding companies, or their subsidiaries, need not be broken until

November 10, 1988, despite the occurrence of changes in circumstances. These amendments will be of substantial interest to the banking, savings and loan, and credit union industries. Interested persons are invited to submit written data, views, or arguments regarding the proposed amendments for a period of 60 days.

DATE: Comments must be received by December 27, 1982.

ADDRESS: Please send your comments to Docket No. 82-20, Communications Division, Third Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219. Attn: C. Christine Jones ((202) 447-1800). All comments received will be made available for public inspection.

FOR FURTHER INFORMATION CONTACT: Bronwen Mason ((202) 452-3564) or Melanie Fein ((202) 452-3594), Board of Governors of the Federal Reserve System; Jerome Edelstein or Rosemarie Oda ((202) 447-1880), Office of the Comptroller of the Currency; Pamela E. F. LeCren or Barbara I. Gersten ((202) 389-4171), Federal Deposit Insurance Corporation; David J. Bristol ((202) 377-6461) or Kenneth F. Hall ((202) 377-6466), Federal Home Loan Bank Board; or Steven R. Bisker ((202) 357-1030), National Credit Union Administration.

SUPPLEMENTARY INFORMATION: The Depository Institution Management Interlocks Act ("Interlocks Act") was enacted as Title II of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (Pub. L. No. 95-630, 12 USC 3201 et seq.). The general purpose of the Interlocks Act, and the final regulations issued thereunder, is to foster competition among depository institutions, depository holding companies, and their affiliates. Final regulations implementing the Act were published on July 19, 1979 (44 Fed. Reg. 42152) and were subsequently amended effective May 9, 1980 (45 Fed. Reg. 24384). In addition, section 206 of the Act was amended by Congress on December 26, 1981 (International Banking Facility Deposit Insurance Act, Pub. L. No. 97-110, 95 Stat. 1513), and final and proposed regulations giving effect to the statutory amendment are being published in the Federal Register.

Under the Interlocks Act and the current regulations, a person is prohibited from serving as a management official of two or more unaffiliated depository organizations if those organizations, or their depository institution affiliates, have offices located in the same community ("community prohibition"). Similarly, a person may not serve as a management official of two unaffiliated depository organizations if one of the organizations has total assets of $20 million or more and both organizations, or their depository institution affiliates, one of which has total assets of $20 million or more, have offices located in the same Standard Metropolitan Statistical Area ("SMSA prohibition"). Finally, a person may not serve as a management official of two unaffiliated depository organizations or their depository and non-depository affiliates if one of the depository organizations has total assets in excess of $1 billion and the other has total assets in excess of $500 million ("major assets prohibition"). The regulations provide that certain exemptions from these prohibitions may be granted by the appropriate supervisory agencies upon request. In addition, section 206 of the Act, as amended on December 26, 1981, provides that interlocks between depository organizations that existed on November 10, 1978, are "grandfathered" for a period of ten years until November 10, 1988. As amended, section 206 also provides a limited ten-year exemption for management officials serving concurrently with a non-depository corporation and one or more depository organizations whose concurrent service would otherwise become prohibited as a result of the nondepository corporation becoming a diversified savings and loan holding company (as defined in 12 USC 1730a(a)(1)(F)).

The proposed amendments, if adopted, would relax restrictions of the current regulations and clarify the operation of certain provisions. The proposed amendments are based on the amendment to section 206 of the Act as well as on the agencies' experience in administering the regulations. Although the proposed amendments would ease the application of the current regulations, which are designed to foster competition among depository organizations, the agencies do not anticipate that the proposed changes will adversely affect competition. These proposals are in furtherance of the objectives of the Financial Institutions Regulation Simplification Act of 1980 (Title VIII, Pub. L. No. 96-221; 12 USC 3521 <u>et seq.</u>), which requires that regulations minimize whatever burdens are necessary. The changes would not establish any recordkeeping or reporting requirements. It is anticipated that depository institutions in general would benefit from the proposed amendments. The proposed amendments and a full explanation of their effect follows.

1. <u>Definition of "Management Official"--Exclusion of Certain Persons</u>. Under the current regulations, a person whose management functions relate exclusively to the business of retail merchandising or manufacturing is not a management official for purposes of the prohibition based on major assets. Such a person is, however, considered a management official for purposes of the community and SMSA prohibitions. It has come to the agencies' attention that providing an exclusion only from the major assets prohibition creates an inconsistent result. A holding company employee with management functions solely over manufacturing or retailing activities may serve as a management official of depository organizations located anywhere in the country except in the SMSA or community where the holding company or its depository institution affiliates are located. The agencies propose to amend the definition so that a person whose management functions relate exclusively to retail merchandising or manufacturing is not considered a management official for purposes of any of the general prohibitions of the regulation.

2. Definition of "Office." The proposed amendments would exclude from the definition of "office" an office of a depository holding company. The definitional change is necessary to reflect a substantive change in the prohibitions of the regulation discussed at length below under the heading "General Prohibitions."

3. Definition of "Total Assets"--Total Assets of Certain Holding Companies. The agencies propose to amend the definition of "total assets" to provide that the total assets of diversified savings and loan holding companies and bank holding companies exempt from the Bank Holding Company Act by virtue of § 4(d) of that Act ("diversified holding companies") equal only the assets of their depository institution affiliates. Currently, the total assets of a diversified holding company are defined to include the assets of the company's depository institution affiliates for purposes of the SMSA prohibition, and the assets of all affiliates for purposes of the major assets prohibition. Thus, a management official of a diversified holding company with assets exceeding $1 billion is prohibited from serving as a management official of a depository organization with assets exceeding $500 million, regardless of the size or location of the depository institution affiliate that causes the diversified holding company to be included as a depository organization under the regulations.

By amending the definition of total assets as proposed, the regulations would key the interlocks prohibitions to the size of the diversified holding company's depository institution affiliate rather than to the size of the holding company system. The agencies believe that focusing on the depository institution affiliate is appropriate because the primary business activities of diversified holding companies normally do not involve competition among depository organizations of the type that the Interlocks Act is intended to foster. In addition, the depository institution affiliate generally represents a very small part of the assets and income of the holding company. Thus, it has been the experience of the agencies in the case of diversified holding companies that the asset size of the holding company itself is not an accurate measure of the market in which its depository institution affiliate actually competes.

The effect of the proposed amended definition is illustrated by the following example: X is a management official of Holding Company A and wishes to serve as a management official of Bank B. Holding Company A is a diversified bank holding company with consolidated assets, including the assets of all of its affiliates, in excess of $1 billion. Its only depository institution affiliate is located in SMSA 1. Bank B's total assets exceed $1 billion and all of its offices are located in SMSA 2. Under the proposed amendment, the total assets of Holding Company A would equal the total assets of its depository institution affiliate. Thus, X's concurrent service would be prohibited only if the assets of A's depository institution affiliate exceeded $500 million.

The agencies also propose to make technical changes in the definition of "total assets" to reflect the changes proposed in the general prohibitions discussed below. Under the current regulations, the total assets of a depository holding company include or exclude the assets of its nondepository institution affiliates depending upon whether the SMSA or major assets prohibitions are to be applied. The proposed change would eliminate that distinction since the total assets of a depository holding company will be irrelevant for purposes of the SMSA prohibitions under the proposed amendments.

4. General Prohibitions. The agencies have proposed a revision to the general prohibitions section of the regulations that clarifies the language of the section and, in conjunction with the redefinition of "office," effects a substantive change in its application. The general prohibitions of the current regulations provide that a management interlock may be prohibited due to the location of a depository holding company regardless of whether its depository institution affiliates are located in the same community or SMSA as the holding company. For example, the regulations currently prohibit two depository holding companies located in the same community from sharing management officials even though neither has depository institution affiliates located in that community or in the same community anywhere in the country. The agencies believe that this prohibition is unduly harsh.

The proposed amendment would apply the community and SMSA prohibitions of the regulation solely with reference to the location and asset size of depository institutions and would eliminate from consideration the location or asset size of depository holding companies. This proposed change would permit a depository holding company to interlock with another depository holding company located in the same community or SMSA, unless the major assets prohibition would apply or unless both companies have depository institution affiliates located in that community or SMSA and, in the case of an SMSA, one or both of the affiliates have assets in excess of $20 million.

5. Exemption Relating to Diversified Savings and Loan Holding Companies.

On December 26, 1981, section 206 of the Interlocks Act was amended by adding a new subsection (b), effective as of November 10, 1978, the date of enactment of the Act. Subsection (b), which expires on November 10, 1988, provides that a person serving as a management official of a non-depository corporation and of a depository organization is not prohibited from continuing to serve with both entities as a result of the non-depository corporation becoming a diversified savings and loan holding company, as defined in section 408(a) of the National Housing Act (12 USC 1730a(a)(1)(F)). Without this express exemption, the transformation of the corporation into a depository organization would subject the official's dual service to the prohibitions of the Interlocks Act. Even if such dual service commenced prior to November 10, 1978, it would not be grandfathered under the Act since section 206 grants grandfather rights only to interlocks between depository organizations.

The agencies in a related action have amended their respective regulations to reflect the addition of subsection (b) to section 206 of the Interlocks Act. This proposal would further amend the regulations to provide that persons who were serving a depository organization and a nondepository organization when the latter became a diversified savings and loan holding company may maintain any interlocking service that existed when the corporation became a diversified savings and loan holding company until November 10, 1988, regardless of whether subsequent changes in circumstances occur that otherwise would require termination of such service. This proposed change reflects the agencies' view that section 206(b) of the Interlocks Act grants rights similar to those provided to grandfathered management officials by section 206(a), as amended by Congress. This interpretation is supported by the legislative history.

In addition, the proposal would permit interlocks between a depository organization and any nondepository subsidiaries of a nondepository organization that becomes a diversified savings and loan holding company to continue until November 10, 1988. If the agencies were to apply subsection (b) only to officials of the nondepository parent organization, inconsistencies would result since the exemption would then permit continued service by the management officials of the parent organization if the organization itself purchased the shares of a savings and loan, but would not permit the same officials to serve with a shell holding company set up by the parent organization to acquire the savings and loan. For example, if a management official were serving concurrently with Bank A, Nondepository Organization B, and Nondepository Organization C (a nondiversified shell holding company formed by B), and if C acquired a savings and loan association, the official would have to terminate his or her interlocking service with A and C even though none of the interlocks would have to be broken if B acquired the savings and loan directly. The effect of such an uneven application would be to discriminate against nondepository organizations that desired to acquire savings and loans through subsidiary holding companies, a result the agencies believe was not intended by Congress.

6. Agency Approval of Exceptions. The agencies have proposed a revision in the manner in which exceptions are granted under the regulations. Under the current regulations, an exception must be approved by both the federal supervisory agency of the institution in need of the exception and the supervisory agency of the other institution(s) involved in the interlock. Frequently, the primary

federal supervisor is not the same for each institution, and an applicant for the exception must apply to two or more different agencies. In the interests of simplifying the application of the regulations and affording prompt relief to institutions in need of management expertise, the agencies believe that approval by only the federal supervisory agency of the needy institution should be required for an exception to be granted. Approval by the other supervisory agencies involved would not be required. The proposed regulation would make clear that, if the depository institution seeking to qualify under one of the exceptions had no federal supervisory agency, the federal supervisory agency of the other institution involved in the proposed interlock would grant or deny the applied-for exception.

7. Extension for Disruptive Management Loss. The current regulations provide that the agencies may extend for a period of up to 30 months the compliance period for depository organizations losing 50 percent or more of their directors or total management officials as a result of changes in circumstances requiring the termination of management official interlocks. Based on the agencies' experience with this provision, the agencies propose the following changes:

(a) The current provision becomes operative when a depository institution faces the loss of 50 percent of either its directors or total management officials. Recognizing that the loss of a smaller percentage of management officials may also cause significant disruption to a depository organization, the agencies propose to reduce to 30 percent the percentage necessary to qualify for the extension.

(b) Under the existing regulations, the 30-month extension becomes available only when the depository organization facing disruptive management loss experiences a change in circumstances. It has come to the agencies' attention that a depository organization may experience a disruptive loss of management officials due to changes in circumstances involving other depository organizations but not the affected organization itself, or due to a series of changes in circumstances involving the organization and other depository organizations. Recognizing that these situations also may cause disruptive management loss, the agencies propose to make the 30-month extension available when any change in circumstances or combination of changes in circumstances results in the potential loss of 30 percent or more of an organization's directors or total management officials. Under the proposed amendments, changes in circumstances that occur within a 15-month period will be viewed in the aggregate in order to determine whether the requisite percentage exists. The 30-month period would be measured from the date of the first change in circumstances that occurred within the 15-month period.

The following example illustrates how the new provision would operate: Bank A, located in SMSA 1, has 10 directors. One of Bank A's directors serves as a director of Bank B in SMSA 2, one serves as director of Bank C in SMSA 3, and one serves as director of Bank D in SMSA 4. In Month 1, Bank B merges with a bank in SMSA 1. In Month 7, Bank A merges with a bank located in SMSA 4. In Month 13, Bank C merges with a bank in SMSA 1. As a result of these mergers, Bank A's interlocks with each of the other three banks become prohibited. Bank A's management officials may apply for an extension to terminate the prohibited interlocks, which would end 30 months from the first change in circumstances.

(c) Under the current regulations, an organization qualifying for the 30-month extension must experience a change in circumstances that "requires the termination of service" of its directors or management officials. When some of the directors whose interlocks become prohibited in fact intend to retain their positions with the depository organization experiencing the change in circumstances, the extension would not appear to be necessary to avoid unduly disrupting the affected organization. For this reason, the agencies propose to limit the availability of the extension by requiring applicants to submit a written statement demonstrating the likelihood of disruptive management loss. The agencies do not believe this requirement would impose an undue regulatory burden; its purpose would be simply to ensure that the 30-month extension is granted only to organizations truly in need of relief. For purposes of demonstrating the likelihood of management loss, the agencies propose to establish a rebuttable presumption that a director who is a full-time employee of the affected organization normally would not terminate interlocking service by resigning from that organization. The agencies believe that such a presumption is reasonable and would ease the regulatory burden in evaluating requests under this provision.

8. <u>Changes in Circumstances -- Nongrandfathered Interlocks</u>. The Interlocks Act authorizes the agencies to grant a period of time, not in excess of 15 months, for compliance with the Act following changes in circumstances that cause interlocks to become prohibited. The current regulations provide that a management official with a nongrandfathered interlock that becomes prohibited as a result of a voluntary change in circumstances may continue to serve until the next regularly scheduled annual shareholders meeting of the institutions involved following a change in circumstances, unless the agencies impose a shorter time period. The management official may request an extension of the grace period not in excess of 15 months from the date of the change in circumstances. If the management official's nongrandfathered service becomes prohibited due to an involuntary change in circumstances, however, such as natural growth or a change in community or SMSA boundaries, the maximum 15-month grace period applies.

In order to simplify the grace period provision, the agencies propose to provide the maximum 15-month grace period for all changes in circumstances, whether voluntary or involuntary. This change would eliminate the necessity for institutions to apply for extensions of time, which in most cases are only for several months. In view of this proposal, the distinction between voluntary and involuntary interlocks would no longer be necessary. Accordingly, the proposed amendments would eliminate the distinction.

Since adopting the regulations, it has been the agencies' experience that other changes in circumstances, such as the termination of an affiliate relationship between two or more depository organizations, may cause nongrandfathered interlocks to become prohibited. The list of changes in circumstances specified in the regulations was intended to reflect the most commonly occurring changes and, as indicated when the regulations were originally adopted, was not intended to be exhaustive. To clarify their intent in this regard, the agencies propose to amend the regulations to indicate that nongrandfathered interlocks that become prohibited due to changes in circumstances other than those enumerated in the regulation also will be eligible for a grace period. The amendment also would specifically include disaffiliation as a change in circumstances.

9. Effect on Clayton Act. The Board of Governors of the Federal Reserve System is proposing to make a technical change in its regulation by eliminating section 212.7 pertaining to the effect of the Interlocks Act on the Clayton Act. This section states that the Board of Governors regards the provisions of the first three paragraphs of section 8 of the Clayton Act to have been supplanted by the Interlocks Act. The other agencies' regulations do not include this provision since only the Board of Governors had jurisdiction over management interlocks under the Clayton Act prior to enactment of the Interlocks Act. The substance of the section will be incorporated into the authority section of the regulation. This proposed change is intended to make the agencies' regulations more uniform in appearance.

10. Regulatory Flexibility Act Analysis. Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. § 601 et seq.), the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration certify that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed amendments would ease the application of the existing regulations and do not have any particular effect on small entities. The effect of the amendments is expected to be beneficial rather than adverse and small entities are generally expected to share the benefits of the amendments equally with larger institutions.

11. Regulatory Impact Analysis. Pursuant to Section 3(g)(1) of Executive Order 12291 of February 17, 1981, it has been determined that the proposed amendments do not constitute a major rule within the meaning of Section 1(b) of the Executive Order. The amendments ease restrictions imposed by regulations implementing the Depository Institution Management Interlocks Act, 12 U.S.C. § 3201 et seq., in instances where the easing of such restrictions has no anticompetitive effect. The amendments have no adverse effect on the operations of the depository institutions subject to them. As such, the amendments will not have an annual effect on the economy of $100 million or more, will not affect costs or prices for consumers, individual industries, government agencies or geographic regions, and will not have adverse effects on competition, employment, investment, productivity, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Index terms: Antitrust; Banks, banking; Credit unions; Savings and loan associations; Federal Deposit Insurance Corporation; Federal Reserve System; Comptroller of the Currency; Federal Home Loan Bank Board; National Credit Union Administration; Holding companies; Management official interlocks.

Accordingly, pursuant to their respective authority under section 209 of the Depository Institution Management Interlocks Act (12 U.S.C. § 3207), the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration hereby propose to amend Title 12 of the Code of Federal Regulations by amending Parts 26, 212, 348, 563f, and 711, respectively, as follows:

FEDERAL RESERVE BOARD

[12 C.F.R. PART 212]

MANAGEMENT OFFICIAL INTERLOCKS

PROPOSED RULE

12 C.F.R. Part 212 is proposed to be amended as follows:

1. The authority citation for Part 212 reads as follows:

   Authority: 12 U.S.C. § 3201 _et seq_.

2. Section 212.2(h), (i) and (l) are proposed to be revised as follows:

   § 212.2 _Definitions_.

* * * * *

(h)(1) "Management official" means (i) an employee or officer with management functions (including a branch manager); (ii) a director (including an advisory director or honorary director); (iii) a trustee of a business organization under the control of trustees (_e.g._, a mutual savings bank); or (iv) any person who has a representative or nominee serving in any such capacity. (2) "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) persons described in the provisos of section 202(4) of the Interlocks Act (12 U.S.C. § 3201(4)).

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

* * * * *

(l) "Total assets" means assets measured on a consolidated basis as of the close of the organization's last fiscal year. The "total assets" of a depository holding company include the total assets of all of its affiliates, except that "total assets" of a diversified savings and loan holding company, as defined in section 408(a)(1)(F) of the National Housing Act (12 U.S.C. § 1730a(a)(1)(F)), or 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)), means only the total assets of its depository institution affiliate. The "total assets" of a United

States branch or agency of a foreign commercial bank means the total assets of such branch or agency itself exclusive of the assets of the other offices of the foreign commercial bank.

3. Section 212.3(a) and (b) are proposed to be revised as follows:

§ 212.3 General Prohibitions.

(a) Community. A management official of a depository organization may not serve at the same time as a management official of another organization not affiliated with it if:

(1) both are depository institutions and each has an office in the same community;

(2) offices of depository institution affiliates of both are located in the same community; or

(3) one is a depository institution that has an office in the same community as a depository institution affiliate of the other.

(b) Standard Metropolitan Statistical Area ("SMSA"). A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if:

(1) both are depository institutions, each has an office in the same SMSA, and either institution has total assets of $20 million or more;

(2) offices of depository institution affiliates of both are located in the same SMSA and either of the depository institution affiliates has total assets of $20 million or more; or

(3) one is a depository institution that has an office in the same SMSA as a depository institution affiliate of the other and either the depository institution or the depository institution affiliate has total assets of $20 million or more.

* * * * *

4. Section 212.4 is proposed to be amended by revising paragraph (b), subparagraphs (b)(1), (b)(2), (b)(3), and (b)(5), and paragraph (c) to read as follows:

§ 212.4 Permitted interlocking relationships.

* * * * *

(b) Interlocking relationships permitted by agency order. A management official or a prospective management official of a state member bank, bank holding company, or an affiliate of either, may enter into an otherwise prohibited interlocking relationship with a depository organization that falls within one of the classifications enumerated in this paragraph (b) if the federal supervisory agency (as specified in section 207 of the Interlocks Act) of the organization that falls within one of the classifications determines that the relationship meets the requirements set forth in this paragraph. If the depository organization that falls within one of the classifications set out below is not subject to the interlocks regulations of any of the federal supervisory agencies, then the Board shall determine whether the relationship meets the requirements of this paragraph.

(1) Organization in low income area; minority or women's organization. A person may serve at the same time as a management official of two or more depository organizations (or affiliates thereof) if one of the depository organizations is (A) located, or to be located, in a low income or other economically depressed area, or (B) controlled or managed by persons who are members of minority groups or by women, subject to the following conditions: (i) the relationship is necessary to provide management or operating expertise to the organization specified in (A) or (B) above; (ii) no interlocking relationship permitted by this subparagraph shall continue for more than five years; and (iii) other conditions in addition to, or in lieu of, the foregoing may be imposed by the appropriate Federal supervisory agency in any specific case.

(2) Newly-chartered organization. A person may serve at the same time as a management official of two or more depository organizations if one of the depository organizations (or an affiliate thereof) is a newly-chartered organization, subject to the following conditions: (i) the relationship is necessary to provide management or operating expertise to the newly-chartered organization; (ii) no interlocking relationship permitted by this subparagraph shall continue for more than two years after the newly-chartered organization commences business; and (iii) other conditions in addition to, or in lieu of, the foregoing may be imposed by the appropriate Federal supervisory agency in any specific case.

(3) Conditions endangering safety or soundness. A person may serve at the same time as a management official of two or more depository organizations (or affiliates thereof) if one of the depository organizations faces conditions endangering the organization's safety or soundness, subject to the following conditions: (i) the relationship is necessary to provide management or operating expertise to such organization facing conditions endangering safety or soundness; and (ii) other conditions in addition to, or in lieu of, the foregoing may be imposed by the appropriate Federal supervisory agency in any specific case.

*   *   *   *   *

(5) Loss of management officials due to changes in circumstances. If a depository organization is likely to lose 30 percent or more of its directors or of its total management officials due to a change in circumstances described in section 212.6 of this Part, the affected management officials may continue to serve in excess of the time periods specified in section 212.6, provided that: (i) the depository organization's prospective loss of management officials or directors will be disruptive to the internal management of the depository organization; (ii) the depository organization submits a written statement demonstrating that, absent a grant of relief in accordance with this subparagraph, 30 percent or more of either its directors or management officials are likely to sever their interlocking relationships with the depository organization; (iii) if the prospective losses of management officials resulted from more than one change in circumstances, such changes in circumstances must have occurred within a fifteen-month period; and (iv) the depository organization submits a proposal for the orderly termination of service by each such management official over a period not longer than 30 months after the change in circumstances which caused the person's service to become prohibited (but if the loss of management officials is the result of more than one change in circumstances, the 30-month period is measured from the first change in circumstances). Other conditions in addition to, or in lieu of, the foregoing may be imposed by the Federal supervisory agency. In evaluating written statements submitted pursuant to this subparagraph, the Federal supervisory agency will presume that a director who also is a paid, full-time employee of the depository organization, absent unusual circumstances, will not resign from the position of director with that depository organization. This presumption may, however, be rebutted by a showing that such unusual circumstances exist.

(c) Diversified savings and loan holding company. Notwithstanding section 212.3, a person who serves as a management official of a depository organization and of a non-depository organization (or its subsidiary affiliates) is not prohibited from continuing the interlocking service when the nondepository organization becomes a diversified savings and loan holding company as that term is defined in Section 408(a)(1)(F) of the National Housing Act (12 U.S.C. § 1730a(a)(1)(F)), and may continue to serve until November 10, 1988, despite the occurrence of any subsequent changes in circumstances.

5. Section 212.6 is proposed to be revised as follows:

§ 212.6 Changes in circumstances.

(a) Non-grandfathered interlocks. If a person's service as a management official is not grandfathered under section 212.5 of this Part, the person's service must be terminated if a change in circumstances causes such service to become prohibited. Such a change may include, but is not limited to, an increase in asset size of an organization due to natural growth, a change in SMSA or community boundaries or the designation of a new SMSA, an acquisition, merger or consolidation, the establishment of an office, or a disaffiliation.

(b) Grace period. If a person's non-grandfathered service as a management official becomes prohibited under paragraph (a) of this section, the person may continue to serve as a management official of all organizations involved in the prohibited interlocking relationship until 15 months after the date on which the change in circumstances that caused the interlock to become prohibited occurred, unless the appropriate Federal supervisory agency or agencies take affirmative action in an individual case to establish a shorter period.

By order of the Board of Governors of the Federal Reserve System, effective October 12, 1982.

(signed) William W. Wiles

William W. Wiles
Secretary of the Board

[SEAL]