

COMPTROLLER'S LICENSING MANUAL

Management Interlocks



January 2017

Contents

- Introduction..... 1**

- Key Policies..... 2**
 - Prohibitions..... 2
 - Exemptions 2
 - Statutory Exemptions..... 2
 - Regulatory Exemptions..... 3
 - Background Investigations 5
 - Decision Criteria 5

- Application Process..... 6**
 - General..... 6
 - General Exemption Filings 6
 - Presumptions of No Adverse Effect on Competition Filings 7
 - Diversified Savings and Loan Holding Companies..... 7
 - Change in Circumstances..... 7
 - Additional Information Requests..... 8

- Glossary 9**

- References 12**

Introduction

This booklet of the *Comptroller's Licensing Manual* summarizes the Office of the Comptroller of the Currency's (OCC) policies and procedures pertaining to management interlocks. Throughout this booklet, national banks and federal savings associations are referred to collectively as banks, except when it is necessary to distinguish between the two.

Specifically, this booklet

- explains when a prohibited interlock is created.
- summarizes interlock exemptions for persons and organizations.
- outlines the OCC's filing requirements for persons and organizations seeking interlock exemptions.
- includes a glossary of terms, a reference section of statutes and regulations, and web links to sample filing forms.

The purpose of the Depository Institution Management Interlocks Act, 12 USC 3201–3208, (Interlocks Act) is to foster competition by generally prohibiting a management official of a depository organization¹ from simultaneously serving as a management official of an unaffiliated depository organization in situations where the management interlock likely would have an anticompetitive effect. There are certain statutory and regulatory exemptions to these general interlock prohibitions. Some of these exemptions are self-executing. In other cases, the exemption applies only after the OCC approves an application.

Banks interested in establishing a management interlock should review the OCC's regulation, 12 CFR 26, before submitting a filing for an interlock exemption.

¹ A "depository organization" is defined as a depository holding company (refer to 12 CFR 26.2(e)) or a depository institution (refer to 12 CFR 26.2(f)). Pursuant to 12 USC 5364, nonbank financial companies supervised by the Board of Governors of the Federal Reserve System (Federal Reserve) are treated as bank holding companies for purposes of the Interlocks Act.

Key Policies

Prohibitions

The Interlocks Act and the OCC's implementing regulation generally prohibit management interlocks in the following three situations, unless the interlock is otherwise exempted:

- **Community prohibition:** If both unaffiliated depository organizations, or any of their depository institution affiliates, have a principal or branch office² in the same community, they may not have a management interlock regardless of their size.
- **Relevant metropolitan statistical area (RMSA) prohibition:** If each unaffiliated depository organization has total assets of \$50 million or more, and both depository organizations, or any of their depository institution affiliates, have offices in the same RMSA, they may not have a management interlock.
- **Major assets prohibition:** If a depository organization has total assets exceeding \$2.5 billion, a management official of that depository organization, or any of its affiliates, may not serve at the same time as a management official of any unaffiliated depository organization with total assets exceeding \$1.5 billion, or any affiliate of such depository organization, regardless of their locations. The OCC and the other federal financial regulatory authorities³ may periodically adjust the thresholds for the major assets prohibition by publishing a notice or final rule in the *Federal Register*.

Exemptions

Statutory Exemptions

The Interlocks Act includes several specific exemptions from the general interlocks prohibitions. Under these statutory exemptions (codified in 12 USC 3204 and 3205, and listed in 12 CFR 26.4), the Interlocks Act permits a management interlock for the following organizations and persons:

- A depository organization that is placed formally in liquidation, under receivership or conservatorship, or in similar circumstances.
- A corporation operating under section 25 or 25A of the Federal Reserve Act (Edge Act and Agreement Corporations).
- A credit union being served by a management official of another credit union.
- A depository organization that does not conduct business in the United States, except as incidental to its activities outside of the United States.
- A state-chartered savings and loan guaranty corporation.

² Principal office for a national bank means its main office. Principal office for a federal savings association means its home office.

³ The other federal financial regulatory authorities are the Federal Reserve, the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA).

- A Federal Home Loan Bank or any other bank organized solely to serve depository institutions (for example, a bankers' bank) or solely to provide securities clearing services and related services for depository institutions and securities companies.
- A depository organization that is closed or that the appropriate federal depository institution's regulatory authority finds to be in danger of closing and is acquired by another depository organization. This exemption lasts five years from the date of acquisition.
- A diversified savings and loan holding company for which a director serves simultaneously as a director of an unaffiliated depository organization, if (1) both the diversified savings and loan holding company and the unaffiliated depository organization notify their appropriate regulatory agencies at least 60 days before beginning the dual service; and (2) the appropriate regulatory agency does not disapprove the dual service before the end of the 60-day period.
- Any savings association that has issued stock in connection with a qualified stock issuance pursuant to 12 USC 1467a(q).
- An otherwise prohibited interlocking relationship with a federal savings association for a period of up to 10 years if the FDIC approves such relationship pursuant to 12 USC 1823(k)(1)(A)(v).
- A person whose continuing dual service as a management official of more than one depository organization began before November 10, 1978.⁴

Regulatory Exemptions

The Interlocks Act also provides general authority for the OCC to establish other exemptions through its regulations. The OCC has used this authority to establish the small market share exemption and the general exemption as discussed further below.

Small Market Share Exemption

Under the small market share exemption (12 CFR 26.5), a management interlock involving two unaffiliated depository organizations is permitted if (1) the interlock is not prohibited by the major assets prohibition;⁵ and (2) the depository organizations and their depository institution affiliates hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both organizations, or their depository institution affiliates, have offices. OCC approval is *not* required to claim the small market share exemption.

Depository organizations seeking to establish a management interlock relying on the small market share exemption must determine their eligibility by using deposit share data published by the FDIC in its Summary of Deposits for the RMSA or community. The FDIC Summary of Deposits is published on www.fdic.gov under the Industry Analysis/Bank Data and Statistics Tabs.

⁴ This statutory exemption is at 12 USC 3205(a); it is not included in the statutory exemptions listed in 12 CFR 26.4.

⁵ Refer to 12 CFR 26.3(c).

Although no filing with the OCC is required for the small market share exemption, each depository organization using this exemption must maintain records to support its determination of eligibility for the exemption and must reconfirm that determination annually. A bank may meet this record requirement by documenting the determination of eligibility in the board of directors' minutes. The OCC confirms the bank's determination of eligibility through the supervisory process.

The small market share exemption continues to apply as long as the depository organizations meet the applicable conditions. Any event (such as an expansion, merger, or growth) that causes the level of deposits to exceed 20 percent of the total deposits in an RMSA or community, as applicable, requires the management official to either terminate his or her service or apply to the OCC for an exemption.

General Exemption

Under its general exemption authority (12 CFR 26.6(a)), the OCC may permit an exemption of an otherwise prohibited management interlock if it finds that the interlock would not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns.

To request an exemption for an interlock under the general exemption provision, the applicant must submit an application to the OCC demonstrating that the proposed management interlock would not result in a monopoly or a substantial lessening of competition and would not present safety and soundness concerns. If the OCC approves the interlock exemption without applying any presumptions (see discussion below) and without an expiration date, then the interlock exemption continues as long as the circumstances at the depository organizations do not change; that is, so long as the interlock would not result in a monopoly, substantial lessening of competition, or an unsafe or unsound condition.

Presumption of No Adverse Effect on Competition (12 CFR 26.6(b))

When a general exemption is sought, the OCC's regulations provide that the agency will apply a rebuttable presumption that a management interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add the management official

- primarily serves low- and moderate-income areas;
- is controlled or managed by members of a minority group, or women;
- is a depository institution that has been chartered for less than two years; or
- is deemed to be in "troubled condition" by the OCC.

A bank that intends to rely on one of these presumptions must submit an application demonstrating that (1) the management interlock would not present a safety and soundness concern to the bank; and (2) the depository organization fits into one of the four categories listed above. The OCC may request any additional information it needs to render its decision.

If the OCC grants an interlock exemption relying on a presumption listed at 12 CFR 26.6(b), the interlock may continue for three years, unless the OCC specifies otherwise in writing. A bank may file for an extension of such an interlock or, alternatively, use any other exemption for which it qualifies.

Background Investigations

The OCC investigates the character, competence, experience, and integrity of each person who is the subject of a request for a management interlock exemption. To conduct background investigations, the OCC requires the bank to submit the biographical portion of the [Interagency Biographical and Financial Report](#) on the management official creating the interlock. The OCC may grant a waiver of this requirement if the agency obtains a written record with sufficient information regarding the management official's recent management history with a regulated depository institution.

If the person is serving as a management official of a state-chartered bank, a state-chartered savings association, or a credit union, the OCC will contact other financial regulatory agencies (i.e., the FDIC, the Federal Reserve, the NCUA, or the appropriate state financial regulator) and inquire into that agency's experience with the proposed management official.

Decision Criteria

The OCC may reject a request for a management interlock exemption under its general exemption authority, located at 12 CFR 26.6(a), if the agency finds that the interlock would

- result in a monopoly or substantial lessening of competition; or
- present safety and soundness concerns.

The OCC may disapprove a notice for a proposed management interlock under the diversified savings and loan holding company exemption, located at 12 CFR 26.4(h)(2),⁶ if the agency finds that

- the service cannot be structured or limited so as to preclude an anticompetitive effect in financial services in any part of the United States;
- the service would lead to substantial conflicts of interest or unsafe or unsound practices; or
- the notificant fails to furnish all the information required by the OCC.

⁶ For more information on diversified savings and loan holding companies, see further discussion later in this booklet.

Application Process

General

A bank must submit an application to the appropriate OCC licensing office for a general exemption under 12 CFR 26.6(a). A statutory exemption involving a diversified savings and loan holding company requires filing of a notice with the appropriate OCC licensing office under 12 CFR 26.4(h)(1)(i). After determining that sufficient information is provided, the OCC makes its decision on the management interlock filing.

General Exemption Filings

A bank filing an [application](#) for a general exemption must include the following information:

- Identity (name, position) of all management officials to whom the filing pertains and the full legal name and home office/headquarters of the depository organizations the officials serve or propose to serve.
- The biographical portion of the [Interagency Biographical and Financial Report](#) on the management official creating the interlock, unless the OCC grants a waiver because of recent management experience in another depository institution. Refer to the [“Background Investigations”](#) booklet of the *Comptroller’s Licensing Manual*.
- A description of the product lines, geographic locations, market areas, and principal competitors for each affected depository organization. Specifically identify any product lines or market areas in which the depository organizations compete.
- Market share data, such as the Herfindahl-Hirschman Indexes (HHI), and other information demonstrating that the interlock will not result in a monopoly or substantial lessening of competition. This information also should include any expansion, merger, or growth plans of either depository organization that could have anticompetitive effects or cause decreased competition or increased market overlap in any of the affected market areas or product lines.
- Information regarding any other interlocks among the affected depository organizations.
- Information demonstrating that the interlock would not adversely affect the bank’s safety and soundness.
- If applicable, copies of filings and/or information regarding the status of any interlock exemption request submitted to any other federal or state banking agency.
- Certification that the bank’s board of directors, shareholders, or a designated official have authorized the filing of the application.

Generally, the entity for which the individual proposes to commence service as a management official (and, thus, create the interlock) would file the request for a general exemption.

Presumptions of No Adverse Effect on Competition Filings

A bank that seeks an exemption under the OCC's general exemption authority and believes it fits within one of the presumptions set forth in 12 CFR 26.6(b) must submit an application containing all relevant information, as set forth in the "General Exemption Filings" section of this booklet, but the bank may exclude an analysis on competitive factors. In addition, the application should include information demonstrating that the bank

- primarily serves low- and moderate-income areas;
- is controlled or managed by women or minorities or both;
- has been chartered for less than two years; or
- is in "troubled condition" as defined in 12 CFR 5.51(c)(7).

Diversified Savings and Loan Holding Companies

A bank filing a notice for an exemption pursuant to 12 CFR 26.4(h) must include the information required under the "General Exemption Filings" section and information demonstrating the following:

- The holding company in question is diversified as defined in the Home Owners' Loan Act and implementing regulations.
- The interlock would not cause an anticompetitive effect in financial services in any part of the United States.
- The interlock would not lead to substantial conflicts of interest. The filing should include information concerning any relationships or transactions between the diversified savings and loan holding company and its subsidiaries and the subject depository organization.
- The interlock would not lead to unsafe or unsound practices.

Each entity involved in the proposed interlock must file a notice with its appropriate federal banking agency.

Change in Circumstances

Pursuant to 12 CFR 26.7, a management official must terminate his or her service with a depository organization or apply for an exemption if a change in circumstances causes the service to become a prohibited management interlock. Depository organizations must address the prohibited interlock within 15 months of the change or such shorter period as the OCC directs. The following changes in circumstances may cause a previously permissible interlock to become prohibited:

- An increase in an organization's asset size. Refer to the discussion of asset size in the "Prohibitions" section of this booklet;
- A change in the delineation of the RMSA or community resulting in the same management official serving two depository organizations in the same RMSA or community;

- The establishment of an office resulting in the same management official serving two depository organizations in the same RMSA or community;
- An increase in the aggregate deposits of the depository organization. Refer to the discussion of small market share in the “Regulatory Exemptions” section of this booklet; or
- An acquisition, a merger, a consolidation, or any reorganization of the ownership structure of a depository organization. Refer to the [“Business Combinations”](#) booklet of the *Comptroller’s Licensing Manual*.

Pursuant to 12 CFR 26.4(h)(3), the OCC may require that any interlock permitted by the diversified savings and loan holding company exemption be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period.

Additional Information Requests

The OCC notifies the filer if additional information is required to make the decision and includes a due date for response. The OCC may disapprove an application if the applicant fails to provide the requested information.

If the filer cannot submit the additional information on or before the deadline, it should contact the OCC as soon as possible. Generally, the OCC considers a filing abandoned if the additional information is not received within 30 days. At that time, the OCC notifies the filer that the OCC has stopped processing the filing.

Glossary

Affiliate: An affiliate of a depository institution, as defined in 12 USC 3201(3), generally is any company controlled by the same stockholders, including members of the same immediate family, who control the depository organization. Refer to 12 USC 3201(3) and 12 CFR 26.2(a) for the complete definition of an affiliate.

Anticompetitive effect: A monopoly or substantial lessening of competition.

Area median income: The median family income for the metropolitan statistical area (MSA) in which a depository organization is located or the statewide nonmetropolitan median family income if the depository organization is located outside an MSA.

Community: A city, town, or village, and contiguous or adjacent cities, towns, or villages.

Contiguous or adjacent cities, towns, or villages: Cities, towns, or villages whose borders touch each other or whose borders are within 10 road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is the boundary line of that city, town, or village.

Depository holding company: A bank holding company or a savings and loan holding company having its principal office located in the United States. Generally, a company qualifies as a depository holding company if it owns, controls, or has power to vote at least 25 percent of the voting shares of a bank or savings association; controls the election of a majority of directors or trustees of the bank or savings association; or otherwise is found to exercise a controlling influence over the management or policies of the bank or savings association. A depository holding company also includes a company that would be a bank holding company as defined in 12 USC 1841(a) but for the exemption contained in 12 USC 1841(a)(5)(f) and a nonbank financial company supervised by the Federal Reserve.

Depository institution: A commercial bank, a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union chartered under the laws of the United States and having its principal office located in the United States. Additionally, a branch or agency office of a foreign commercial bank located in the United States is a depository institution.

Depository institution affiliate: A depository institution that is an affiliate of a depository organization.

Depository organization: A depository institution or a depository holding company.

Diversified savings and loan holding company: Any savings and loan holding company whose subsidiary savings association and related activities as permitted under 12 USC 1467a(c)(2) represented, on either an actual or a pro forma basis, less than 50 percent of its consolidated net worth at the close of its preceding fiscal year and of its consolidated net earnings for such fiscal year.

Immediate family: A spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust. Shares held by a person include shares held by members of his or her immediate family.

Interlock: An interlock exists when a management official simultaneously serves two unaffiliated depository organizations.

Low- and moderate-income area: A census tract (or, if an area is not in a census tract, a block numbering area delineated by the U.S. Bureau of the Census) in which the median family income is less than 100 percent of the area median income.

Management official: For Interlocks Act purposes, a management official includes a senior executive officer, as that term is defined in 12 CFR 5.51(c)(4) (see **senior executive officer**), a director, an advisory or honorary director of a depository institution with total assets of \$100 million or more, a branch manager, a trustee of a depository organization under the control of trustees, and any person who has a representative or nominee serving in any of those capacities. The term “management official” does not include a person whose management functions relate exclusively to the business of retail merchandising or manufacturing, a person whose management functions relate principally to the business outside the United States of a foreign commercial bank, or a person described in the provisos of section 202(4) of the Interlocks Act (12 USC 3201(4)) (referring to an officer of a state-chartered savings bank, cooperative bank, or trust company that neither makes real estate mortgage loans nor accepts savings).

Newly chartered institution: An institution that has been chartered for less than two years from the time it files a request for exemption.

Office: A principal or branch office of a depository institution located in the United States, but not a representative office of a foreign commercial bank, an electronic terminal, or a loan production office.

Relevant metropolitan statistical area (RMSA): An MSA, a primary MSA, or a consolidated MSA that is not composed of designated primary MSAs to the extent these terms are defined and applied by the Office of Management and Budget.

Representative or nominee: A natural person who serves as a management official and has an obligation to act on behalf of another person with respect to management responsibilities.

Senior executive officer: A president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, and any other person the OCC identifies in writing to the bank who exercises significant influence over, or participates in, major policymaking decisions of the bank without regard to title, salary, or compensation. The term also includes employees of entities retained by a bank to perform such functions in lieu of directly hiring the persons, and, with respect to a federal branch operated by a foreign bank, the person functioning as the chief managing official of the federal branch.

Total assets: Assets measured on a consolidated basis and reported in the most recent fiscal year-end Consolidated Reports of Condition and Income. Note that for diversified savings and loan holding companies, total assets include only the assets of the depository institution. For a foreign bank, total assets include only assets of its U.S. branch or agency. Refer to 12 CFR 26.2(o) for a complete definition of total assets.

Troubled condition: A bank is designated to be in troubled condition if it (1) has a composite CAMELS rating of 4 or 5; (2) is subject to a cease-and-desist order, a consent order, or a formal written agreement, unless otherwise informed in writing by the OCC; or (3) has been informed in writing by the OCC that, based on information pertaining to such bank, it has been designated in troubled condition.

References

Changes in Directors and Senior Executive Officers

Law 12 USC 1831i
Regulation 12 CFR 5.51

Depository Institution Management Interlocks Act

Law 12 USC 3201–3208
Regulation 12 CFR 26

Dodd–Frank Wall Street Reform and Consumer Protection Act

Law 12 USC 5364

Home Owners’ Loan Act

Law 12 USC 1467a