

## Part 711 Management Official Interlocks

### § 711.1 Authority, Purpose and Scope.

- (a) Authority. This part is issued under the provisions of the Depository Institution Management Interlocks Act (Interlocks Act) (12 U.S.C. 3201 *et seq.*).
- (b) Purpose. The purpose of the Interlocks Act and this part is to foster competition by generally prohibiting a management official from serving two non-affiliated depository organizations in situations where the management interlock likely would have an anti-competitive effect.
- (c) Scope. This part applies to management officials of federally insured credit unions. Section 711.4(c) exempts a management official of a credit union from the prohibitions of the Interlocks Act when the individual serves as a management official of another credit union. Therefore, the Interlocks Act prohibitions contained in this part only apply to a management official of a credit union when that individual also serves as a management official of another type of depository organization (usually a bank or thrift).

### § 711.2 Definitions.

For purposes of this part, the following definitions apply:

- (a) *Affiliate*.
  - (1) The term affiliate has the meaning given in section 202 of the Interlocks Act (12 U.S.C. 3201). For purposes of that section 202, shares held by an individual include shares held by members of his or her immediate family. "Immediate family" means spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.
  - (2) For purposes of section 202(3)(B) of the Interlocks Act (12 U.S.C. 3201(3)(B)), an affiliate relationship involving a depository institution based on common ownership does not exist if the appropriate federal supervisory agency determines, after giving the affected persons the opportunity to respond, that the asserted affiliation was established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the appropriate Federal supervisory agency considers, among other things, whether a person, including members of his or her immediate family, whose shares are necessary to constitute the group owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate to that person's ownership of shares in the other organization.
- (b) *Area median income* means:
  - (1) The median family income for the metropolitan statistical area (MSA), if a depository organization is located in an MSA; or
  - (2) The statewide non-metropolitan median family income, if a depository organization is located outside an MSA.
- (c) *Community* means a city, town, or village, and contiguous or adjacent cities, towns, or villages.

- (d) Contiguous or adjacent cities, towns, or villages means 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 for the purpose of this definition.
- (e) *Depository holding company* means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act (12 U.S.C. 3201) having its principal office located in the United States.
- (f) *Depository institution* means a commercial bank (including a private 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 a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a depository institution.
- (g) *Depository institution affiliate* means a depository institution that is an affiliate of a depository organization.
- (h) *Depository organization* means a depository institution or a depository holding company.
- (i) *District bank* means any State bank operating under the Code of Law of the District of Columbia.
- (j) *Low and moderate income areas* means census tracts (or, if an area is not in a census tract, block numbering areas delineated by the United States Bureau of the Census) where the median family income is less than 100 percent of the area median income.
- (k) *Management official*.
  - (1) The term management official means:
    - (i) A director;
    - (ii) An advisory or honorary director of a depository institution with total assets of \$100 million or more;
    - (iii) A senior executive officer as that term is defined in 12 CFR 701.14(b)(2), or a person holding an equivalent position regardless of title;
    - (iv) A branch manager;
    - (v) A trustee of a depository organization under the control of trustees; and
    - (vi) Any person who has a representative or nominee serving in any of the capacities in this paragraph (m)(1).
  - (2) The term 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) A person described in the provisions of section 202(4) of the Interlocks Act (12 U.S.C. 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).

- (l) *Office* means a principal or branch office of a depository institution located in the United States. Office does not include a representative office of a foreign commercial bank, an electronic terminal, or a loan production office.
- (m) *Person* means a natural person, corporation, or other business entity.
- (n) *Relevant metropolitan statistical area (RMSA)* means an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated primary MSAs to the extent that these terms are defined and applied by the Office of Management and Budget.
- (o) *Representative or nominee* means 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. NCUA will find that a person has an obligation to act on behalf of another person only if the first person has an agreement, express or implied, to act on behalf of the second person with respect to management responsibilities. NCUA will determine, after giving the affected persons an opportunity to respond, whether a person is a representative or nominee.
- (p) *Total assets*.
  - (1) The term *total assets* means assets measured on a consolidated basis and reported in the most recent fiscal year-end Consolidated Report of Condition and Income.
  - (2) The term *total assets* does not include:
    - (i) Assets of a diversified savings and loan holding company as defined by section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) other than the assets of its depository institution affiliate;
    - (ii) Assets 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)) other than the assets of its depository institution affiliate; or
    - (iii) Assets of offices of a foreign commercial bank other than the assets of its United States branch or agency.
- (q) *United States* includes any State or territory of the United States of America, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

### **§ 711.3 Prohibitions.**

- (a) *Community*. A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same community.
- (b) *RMSA*. A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same RMSA and each depository organization has total assets of \$20 million or more.
- (c) *Major Assets*. A management official of a depository organization with total assets exceeding \$2.5 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding \$1.5 billion (or any affiliate thereof), regardless of the location of the two depository organizations. The NCUA will adjust these thresholds, as necessary,

based on year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest \$100 million. The NCUA will announce the revised thresholds by publishing a notice in the **Federal Register**.

#### **§ 711.4 Interlocking Relationships Permitted by Statute.**

The prohibitions of § 711.3 do not apply in the case of any one or more of the following organizations or to a subsidiary thereof:

- (a) A depository organization that has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function;
- (b) A corporation operating under section 25 or section 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.* and 12 U.S.C. 611 *et seq.*, respectively) (Edge Corporations and Agreement Corporations);
- (c) A credit union being served by a management official of another credit union;
- (d) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;
- (e) A State-chartered savings and loan guaranty corporation;
- (f) A Federal Home Loan Bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;
- (g) A depository organization that is closed or is in danger of closing as determined by the appropriate Federal depository institutions regulatory agency and is acquired by another depository organization. This exemption lasts for five years, beginning on the date the depository organization is acquired; and
- (h)
  - (1) A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of such company who also is a director of an unaffiliated depository organization if:
    - (i) Both the diversified savings and loan holding company and the unaffiliated depository organization notify their appropriate Federal depository institutions regulatory agency at least 60 days before the dual service is proposed to begin; and
    - (ii) The appropriate regulatory agency does not disapprove the dual service before the end of the 60 day period.
  - (2) The NCUA Board or its designee may disapprove a notice of proposed service if it finds that:
    - (i) The service cannot be structured or limited so as to preclude an anti-competitive effect in financial services in any part of the United States;
    - (ii) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or
    - (iii) The notificant failed to furnish all the information required by NCUA.
  - (3) The NCUA Board or its designee may require that any interlock permitted under this paragraph (h) 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.

### **§ 711.5 Small Market Share Exemption.**

- (a) Exemption. A management interlock that is prohibited by § 711.3(a) or § 711.3(b) is permissible, provided:
- (1) The interlock is not prohibited by § 711.3(c); and
  - (2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20% of the deposits, in each RMSA or community in which the depository organizations (or their depository institution affiliates) are located. The amount of deposits will be determined by reference to the most recent annual Summary of Deposits published by the FDIC. This information is available on the Internet at <http://www.fdic.gov>.
- (b) Confirmation and records. Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

### **§ 711.6 General Exemption.**

- (a) Exemption. NCUA may, by agency order issued following receipt of an application, exempt an interlock from the prohibitions in § 711.3, if NCUA finds that the interlock would not result in a monopoly or substantial lessening of competition, and would not present other safety and soundness concerns.
- (b) Presumptions. In reviewing applications for an exemption under this section, NCUA will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:
- (1) Primarily serves, low and moderate income areas;
  - (2) Is controlled or managed by persons who are members of a minority group or women;
  - (3) Is a depository institution that has been chartered for less than two years; or
  - (4) Is deemed to be in “troubled condition” as defined in § 701.14(b)(3) of this chapter.
- (c) Duration. Unless a shorter expiration period is provided in the NCUA approval, an exemption permitted by paragraph (a) of this section may continue so long as it would not result in a monopoly or substantial lessening of competition, or be unsafe or unsound. If the NCUA grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided in the approval.

### **§ 711.7 Change in Circumstances.**

- (a) Termination. A management official shall terminate his or her service if a change in circumstances causes the service to become prohibited. A change in circumstances may include, but is not limited to, an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a

depository organization that causes a previously permissible interlock to become prohibited.

- (b) Transition period. A management official described in paragraph (a) of this section may continue to serve the depository organization involved in the interlock for 15 months following the date of the change in circumstances. NCUA may shorten this period under appropriate circumstances.

**§ 711.8 Enforcement.**

Except as provided in this section, NCUA administers and enforces the Interlocks Act with respect to federally insured credit unions, and may refer any case of a prohibited interlocking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part.