Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 711

Management Official Interlocks

AGENCY: National Credit Union Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Credit Union Administration (NCUA) is proposing to revise its rules regarding management interlocks between credit unions and other financial institutions. The proposal conforms the interlocks rules to recent statutory changes, modernizes and clarifies the rules, and reduces unnecessary regulatory burdens where feasible, consistent with statutory requirements.

DATES: Comments must be received by May 24, 1996.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. Post comments on NCUA's electronic bulletin board by dialing (703) 518–6480. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Jeffrey Mooney, Staff Attorney (703/518–6563), Office of General Counsel, or Kimberly Iverson, Program Officer (703/518–6375), Office of Examination and Insurance.

SUPPLEMENTARY INFORMATION:

Background

Summary of Statutory Changes

The Depository Institution Management Interlocks Act (12 U.S.C. 3201 *et seq.*) (Interlocks Act) prohibits certain management interlocks between depository institutions. The Interlocks Act exempts interlocking arrangements between credit unions and therefore, in the case of credit unions, only restricts interlocks between credit unions and other institutions—banks and thrifts.

The Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act) amended the Interlocks Act by removing the NCUA's and the other banking agencies'[1] broad authority to exempt otherwise impermissible interlocks and replacing it with the authority to exempt interlocks under more narrow circumstances. The CDRI Act also required a depository organization with a ''grandfathered'' interlock to apply for an extension of the grandfather period if the organization wanted to keep the interlock in place.[2]

After the changes made by the CDRI Act, a person subject to the Interlocks Act's restrictions seeking an exemption from those restrictions must qualify either for a ''regulatory standards'' exemption or an exemption under a ''management official consignment program'' (the Management Consignment exemption). An applicant seeking a regulatory standards exemption must submit a board resolution certifying that no other candidate from the relevant community has the necessary expertise to serve as a management official, is willing to serve, and is not otherwise prohibited by the Interlocks Act from serving. Before granting the exemption request, the NCUA must find that the individual is critical to the institution's safe and sound operations, that the interlock will not produce an anticompetitive effect, and that the management official meets any additional requirements imposed by the agency. Under the Management Consignment exemption, the NCUA or appropriate agency may permit an interlock that otherwise would be prohibited by the Interlocks Act if the agency determines that the interlock would improve the provision of credit to low- and moderate-income areas, increase the competitive position of a minority- or woman-owned institution, or strengthen the management of a newly chartered institution or an institution that is in an unsafe or unsound condition. (*See* text following ''Management Consignment exemption'' in this preamble for a discussion regarding interlocks involving newly chartered institutions or institutions that are in an unsafe or unsound condition).

The proposal reflects these statutory changes, and streamlines and clarifies the interlocks regulations in various respects. These changes are discussed in the text that follows. The NCUA invites comments on all aspects of this proposal.

The following is a section-by-section discussion of the proposed rule changes.

Authority, Purpose, and Scope

This section identifies the Interlocks Act as the statutory authority for the management interlocks regulation. There are no significant changes from the current authority, purpose and scope rule. It also states that the purpose of the rules governing management interlocks is to foster competition between unaffiliated institutions. Finally, this section currently identifies the types of institutions to which NCUA's regulation applies.

Definitions

The NCUA's current regulation sets forth definitions of key terms used in the regulation. The proposed regulation changes some of the current definitions. A discussion of the substantive differences between the current rule and proposal follows.

Anticompetitive Effect

The current regulation neither uses nor defines the term ''anticompetitive effect.'' The proposed regulation defines the term to mean ''a monopoly or substantial lessening of competition.'' This term is used in the regulatory standards exemption. Under that exemption, the NCUA may approve a request for an exemption to the Interlocks Act if, among other things, the NCUA finds that continuation of service by the management official does not produce an anticompetitive effect with respect to the affected credit union. The statute does not define the term ''anticompetitive effect,'' nor does the legislative history to the CDRI Act point to a particular definition.

[1] The NCUA participated in an interagency effort to revise the management interlocks regulations. The other banking agencies, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve Board and the Federal Deposit Insurance Corporation have already published proposed revisions to their respective management interlocks regulations in a joint notice of proposed rulemaking. (See 60 FR 67424, December 29, 1995).

[2] The NCUA did not receive any requests for extensions, therefore, the provision regarding extending the grandfather period is moot for purposes of this regulation.

The context of the regulatory standards exemption suggests, however, that the NCUA and other agencies should apply the term ''anticompetitive effect'' in a manner that permits interlocks that present no substantial lessening of competition. By prohibiting an interlock that would result in a monopoly or substantial lessening of competition, the proposed definition preserves the free flow of credit and other banking services that the Interlocks Act is designed to protect. While the proposed definition is familiar to the banking industry since it is derived from the Bank Merger Act (12 U.S.C. 1828(c)), it is not used by the credit union industry. Therefore, NCUA requests comment on whether another definition would be more appropriate for interlocks between credit unions and other types of depository institutions.

Area Median Income

The current regulation does not use the term ''area median income,'' and, therefore, does not define this term. The proposed regulation defines ''area median income'' as the median family income for the metropolitan statistical area (MSA) in which an institution is located or the statewide nonmetropolitan median family income if an institution is located outside an MSA. This term is used in the definition of ''low- and moderate-income areas,'' which in turn is used in the implementation of the Management Consignment exemption.

Contiguous or Adjacent Cities, Towns, or Villages

The current regulation defines ''adjacent cities, towns, or villages'' as cities, towns, or villages whose borders are within 10 road miles from each other. It also defines ''contiguous cities, towns, or villages'' as cities, towns, or villages whose borders touch. The statute and regulation apply these terms to prohibit interlocks involving small institutions that are located in contiguous or adjacent cities, towns, or villages. The proposed regulation combines these two definitions, given that contiguous cities, towns, or villages necessarily are within 10 miles of each other.

Critical

The current regulation neither uses nor defines ''critical.'' The proposed regulation defines the term in connection with the regulatory standards exemption. Under that exemption, the NCUA must find that a proposed management official is critical to the safe and sound operations of the affected institution. 12 U.S.C. 3207(b)(2)(A).

Neither the statute nor its legislative history define ''critical.'' The NCUA is concerned that a narrow interpretation of this term would nullify the regulatory standards exemption. If someone were ''critical'' to the safe and sound operations of an institution only if the institution would fail but for the service of the person in question, the exemption would have little relevance because the standard would be practically impossible to meet. Given that Congress clearly intended for the regulatory standards exemption to permit interlocks under some circumstances, the question thus becomes how to define those circumstances.

This proposal addresses the issue by stating that the NCUA will consider a person to be critical to a depository organization if the person will play an important role in helping the institution either address current problems or maintain safe and sound operations going forward. The NCUA believes that this approach is consistent with the legislative intent by insuring that only persons of demonstrated expertise and importance to the institution will be allowed to serve pursuant to a regulatory standards exemption.

Low- and Moderate-Income Areas

The current regulation permits interlocks under certain circumstances involving a depository organization located ''in a low income or other economically depressed area.'' However, the current rule does not define ''low income'' or ''economically depressed.''

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

Management Official

The current regulation defines ''management official'' to include an employee or officer ''with management functions'' (including a branch manager), a director, a trustee of an organization under the control of trustees, or any person who has a representative or nominee serving in such capacity. The definition excludes (1) A person whose management functions relate either exclusively to the business of retail merchandising or manufacturing or principally to business outside the United States of a foreign commercial bank and (2) a person excluded by section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)).

The proposed regulation adopts the definition of ''management official'' set forth in the current rule, except that the phrase ''an employee or officer with management functions'' is removed. It is replaced by the term ''senior executive officer'' as defined by the NCUA's regulation pertaining to the prior notice of changes in senior executive officers, which implements section 212 of the Federal Credit Union Act (FCU Act) (12 U.S.C. 1790a) as added by section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

The NCUA is proposing this change to eliminate the uncertainty and attendant compliance burden created by the ambiguous term ''management functions.'' The proposal incorporates specific illustrative examples of positions at credit unions that will be treated as senior executive officers. *See* 12 CFR 701.14. The NCUA believes that these definitions will allow credit unions to identify impermissible interlocks with greater certainty and thus will enhance compliance. The NCUA requests comment on the advisability of defining ''management official'' by using ''senior executive officer'' rather than ''employee or officer with management functions.''

The current definition of ''management official'' exempts those individuals whose management

functions relate to retail merchandising or manufacturing. Stated another way, the current exemption applies to a category of persons whose responsibilities are unrelated to the business of a deposit-taking institution.

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

Relevant Metropolitan Statistical Area (RMSA)

The current regulation defines ''relevant metropolitan statistical area'' as an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated primary MSAs as defined by the Office of Management and Budget (OMB). This definition is derived from section 203(1) of the Interlocks Act (12 U.S.C. 3202(1)).

The proposed regulation defines ''relevant metropolitan statistical area (RMSA)'' as an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated primary MSAs, to the extent that the OMB defines and applies these terms. This change reflects the fact that the OMB defines ''consolidated MSA'' to include two or more primary MSAs. Given that consolidated MSAs, by the OMB's definition, are comprised of primary MSAs, the reference to consolidated MSAs in the Interlocks Act and the NCUA's regulation is inappropriate. The proposed change enables the NCUA to implement the statute in a way that complies with both the spirit and the letter of the Interlocks Act.

Representative or Nominee

The current regulation defines ''representative or nominee'' as a person who serves as a management official and has an express or implied obligation to act on behalf of another person with respect to management responsibilities. The current definition goes on to state that the determination of whether someone is a representative or nominee depends on the facts of a particular case and that certain relationships (such as family, employment, and so on) may evidence an express or implied obligation to act.

The proposed regulation also defines ''representative or nominee'' as someone who serves as a management official and has an obligation to act on behalf of someone else. The proposed definition deletes the rest of the current definition, however, and inserts in lieu thereof a statement that the NCUA will find that someone has an obligation to act on behalf of someone else *only* if there is an agreement (express or implied) to act on behalf of another. The NCUA proposes this change to clarify that the determination that a representative or nominee situation exists will depend on whether there is a basis to conclude that an agreement exists to act on someone's behalf. The NCUA notes that the current definition provides specific guidance for determining when a representative or nominee relationship might be found to exist, and requests comment on whether the current definition, the proposed definition, or another definition is preferable.

Prohibitions

The current regulation prohibits interlocks in the following three instances. First, no two unaffiliated depository organizations may have an interlock if they (or their depository institution affiliates) have offices in the same community. Second, a depository organization may not have an interlock with any unaffiliated depository organization if either depository organization has assets exceeding $20 million and the depository organizations (or depository institution affiliates of either) have offices in the same RMSA.[3] Third, if a depository organization has total assets exceeding $1 billion, it (and its affiliates) may not have an interlock with any depository organization with total assets exceeding $500 million (or affiliate thereof), regardless of location.

The proposed regulation amends the rule as it applies to institutions with assets of less than $20 million to better conform to the purposes of the Interlocks Act. Whereas the current rule prohibits interlocks in an RMSA if *one* of the organizations has total assets of $20 million or more, the proposed rule would apply the RMSA-wide prohibition only if *both* organizations have total assets of $20 million or more. Interlocks within a community involving unaffiliated depository organizations would continue to be prohibited.

The NCUA believes that this proposed change is consistent with both the language and the intent of the Interlocks Act. While the statute uses the plural ''depository institutions'' when referring to the community-wide prohibition, in context, neither the statute nor its legislative history compels the conclusion that the interlock must involve two institutions with less than $20 million in assets before the less restrictive prohibition applies.

The Interlocks Act seeks to prohibit interlocks that could enable two institutions to engage in anticompetitive behavior. However, an institution with less than $20 million is likely to derive most of its business from the community in which it is located and unlikely to compete with institutions that do not have offices in that community. Therefore, interlocks involving one institution with assets under $20 million and another institution with assets of at least $20 million not in the same community are not likely to lead to the anticompetitive conduct that the Interlocks Act is designed to prohibit.

The NCUA believes, moreover, that the proposed change will promote rather than inhibit competition. Expanding the pool of managerial talent for institutions with assets under $20 million could enhance the ability of smaller institutions to compete by improving the management of these institutions.

The proposed regulation reflects the change affecting depository organizations with less than $20 million in total assets. It also sets forth the prohibition against interlocks involving large depository organizations but does not change the substance of that prohibition. The proposed regulation changes the wording of all three prohibitions in order to make them easier to understand.

The NCUA invites comment on any aspect of this proposed section. The NCUA specifically seeks comment on whether the proposed reinterpretation of 12 U.S.C. 3202(1) might result in anticompetitive effects and thus run counter to the legislative intent of the Interlocks Act. For example, could the proposed change enable a large depository organization to engage in anticompetitive conduct by creating interlocks with one or more smaller depository institutions located in the same RMSA but not in the same community (a ''hub and spokes'' interlock)? The NCUA also seeks comment on whether the final rule should specifically address such situations.

Interlocking Relationships Expressly Permitted by Statute

The current regulation restates most of the exemptions that are expressly permitted by the Interlocks Act as well as listing those exemptions that the NCUA has permitted by regulation pursuant to the broad exemptive

[3] A community as that term is defined in the proposal is smaller than RMSA. There may be several communities in one RMSA.

authority that applied before the enactment of the CDRI Act. The proposal deletes the exemptions authorized by NCUA's regulations and states the exemptions found in 12 U.S.C. 3204(1)–(8). The proposed regulation reorders the exemptions set forth in the current regulations in order to conform the list of exemptions to the list set forth in the Interlocks Act.

Regulatory Standards Exemption

The current rule contains no regulatory standards exemption. The proposed rule sets forth the standards that a credit union must satisfy in order to obtain a regulatory standards exemption. The proposal implements the requirement regarding certification by allowing a credit union's board of directors (or the organizers of a credit union that is being formed) to certify to the NCUA that it located no other qualified candidates after undertaking reasonable efforts to locate other qualified candidates who are not prohibited from service under the Interlocks Act. If read narrowly, the Interlocks Act could require a credit union to evaluate every person in a given locale that might be qualified and interested. This would create a requirement that, in practice, would be impossible to satisfy. Given that Congress would not have included an exemption that would have no practical application, the NCUA believes that the proposed ''reasonableness'' standard is consistent with the legislative intent.

The proposed regulation also sets forth a presumption that the NCUA will apply when reviewing an application for a regulatory standards exemption. NCUA will presume that a person is critical to a credit union's safe and sound operations if the NCUA also approves that individual under section 914 of FIRREA and the credit union in question either was a newly chartered institution, or was in a ''troubled condition'' as defined in § 701.14(b)(3) of NCUA's regulations at the time the section 914 filing was approved.

The NCUA invites comment on the utility of the proposed presumption and on whether other presumptions also should apply.[4]

The proposed regulation also addresses the duration of an interlock permitted under the regulatory standards exemption. The statute does not require that these interlocks terminate. In light of this open-ended grant of authority, the NCUA is not proposing a specific term for a permitted exemption. Instead, the NCUA may require a credit union to terminate the interlock if the NCUA determines that the management official in question either no longer is critical to the safe and sound operations of the affected organization or that continued service will produce an anticompetitive effect. The NCUA will provide affected organizations an opportunity to submit information before they make a final determination to require termination of an interlock.

Grandfathered Interlocking Relationships—Removed

The current regulation restates the grandfather provisions set forth in section 206 of the Interlocks Act (12 U.S.C. 3205). Section 338(a) of the CDRI Act authorizes the NCUA to extend a grandfathered interlock for an additional five years if the management official in question satisfied the statutory criteria for obtaining an extension. Individuals who wished to extend their dual service had until March 23, 1995, to apply to the NCUA. The proposed regulation removes the section addressing the grandfather exemption because it is unnecessary and redundant in light of the statute.

Management Consignment Exemption

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

The proposed regulation implements the Management Consignment exemption, and restates the statutory criteria, with three clarifications. First, the proposed rule states that the NCUA considers a ''newly chartered institution'' to be an institution that has been chartered for less than two years at the time it files an application for exemption. This standard is consistent with NCUA's threshold for determining when a credit union is considered newly chartered (*See* 12 CFR 701.14(c)(1)).

Second, the proposal clarifies that the exemption available for ''minority- and women-owned institutions'' is available for an institution that is owned either by minorities or women. In noting the types of exemptions that the Federal banking agencies have approved, the House Conference Report to the CDRI Act (H.R. Conf. Rep. No. 652, 103d Cong., 2d Sess. 181 (1994)) (Conference Report) states that the types of institutions that have received exemptions include those that are ''owned by women or minorities.'' These exemptions ultimately were codified in the Interlocks Act. Accordingly, the NCUA, along with the other banking agencies have concluded that Congress intended the Management Consignment exemption to assist institutions owned by women and/or by minorities, but did not intend to require the institution to be owned by both.

Third, the proposal permits an interlock if the interlock would strengthen the management of *either* a newly chartered institution or an institution that is in an unsafe or unsound condition. Section 209(c)(1)(C) of the Interlocks Act (12 U.S.C. 3207(c)(1)(C)) permits an exemption if the interlock would ''strengthen the management of newly chartered institutions that are in an unsafe or unsound condition.'' However, this provision contains what appears on its face to be an error, given that an exemption limited to situations involving newly chartered institutions that also are in an unsafe and unsound condition would have no practical utility. The NCUA does not approve an application for a credit union charter unless the applicant seeking a charter can demonstrate that the proposed new credit union will operate in a safe and sound manner for the foreseeable future. While there may be an extraordinary instance where a newly chartered credit union immediately experiences unforeseen problems so severe that they threaten the safety and soundness of that institution, there is nothing in the legislative history to suggest that Congress intended to limit the Management Consignment exemption to such rare instances.

Moreover, the legislative history of the CDRI Act suggests that the NCUA is to apply the Management Consignment exemption in cases involving either

[4] The other banking agencies have proposed a presumption that an interlock will not have an anticompetitive effect if it involves institutions that, if merged, would not trigger a challenge from the agencies on competitive grounds. The agencies will use the Herfindahl-Hirschman Index (''HHI'') (*See* Department of Justice Merger Guidelines (49 FR 26823, June 29, 2984)) to determine whether the potential interlock has an anticompetitive effect since banks and savings associations frequently use the HHI as an initial indicator of the effects a transaction is likely to have on competition in a given market. NCUA does not propose implementing this presumption because there is no statutory authority for credit unions to merge with other types of depository institutions, and the typical HHI analysis does not reflect the shares/deposits held by credit unions, therefore, any HHI analysis involving credit unions would be meaningless.

newly chartered institutions or institutions that are in an unsafe or unsound condition. The Conference Report notes that the Federal banking agencies have used their exemptive authority to grant exemptions in limited cases where institutions ''are particularly in need of management guidance and expertise to operate in a safe and sound manner.'' *Id*. The Conference Report goes on to state that ''Examples of exceptions permissible under an agency management official consignment program include improving the provision of credit to low- and moderate-income areas, increasing the competitive position of minority- and women-owned institutions, and strengthening he [sic] management of newly chartered institutions or institutions that are in an unsafe or unsound condition.'' *Id*. at 182 (emphasis added).

Finally, Congress used the exemptions in the agencies' current rules as the model for the Management Consignment exemption. See id. at 181–182. These exemptions distinguish newly chartered institutions from institutions that are in an unsafe or unsound condition. The reference in the CDRI Act's legislative history to the current regulatory exemptions suggests that Congress intended to codify these exemptions.

For these reasons, the NCUA proposes to permit exemptions pursuant to the Management Consignment exemption if the management official will strengthen either a newly chartered institution or an institution that is in an unsafe or unsound condition. Commenters are requested to address this approach.

The proposal sets forth two presumptions that the NCUA will apply in connection with an application for an exemption under the Management Consignment exemption. First, the NCUA will presume that an individual is capable of strengthening the management of a credit union that has been chartered for less than two years if the NCUA approved the individual to serve as a management official of that credit union pursuant to section 914 of FIRREA. Second, the NCUA will presume that an individual is capable of strengthening the management of a credit union that is in an unsafe or unsound condition if the NCUA approved the individual to serve under section 914 as a management official of an institution at a time when that institution was in a ''troubled condition.''

The NCUA believes that presumptions of suitability are less valid when applied to the other Management Consignment exemptions because there is no reason to conclude that a management official approved under section 914 necessarily will improve the flow of credit to low- and moderate-income areas or increase the competitive position of minority- or woman-owned institutions. No presumption regarding effects on competition is proposed, given that this is not a factor to be considered by the NCUA when reviewing an application for a Management Consignment exemption.

The NCUA seeks comment on the utility of the proposed presumptions and on whether additional presumptions should apply as well.

The proposed regulation sets forth the limits on the duration of a Management Consignment exemption. The Interlocks Act limits a Management Consignment exemption to two years, with a possible extension for up to an additional two years if the applicant satisfies at least one of the criteria for obtaining a Management Consignment exemption. The proposed regulation implements this limitation by requiring interested parties to submit an application for an extension at least 30 days before the expiration of the initial term of the exemption and by clarifying that the presumptions and procedures that apply to initial applications also apply to extension applications.

Change in Circumstances

The current regulation provides a 15-month grace period for nongrandfathered interlocks that become impermissible due to a change in circumstances. This period may be shortened by the NCUA under appropriate circumstances. The proposed regulation revises the wording of this section in the current regulations but not its substance. The NCUA specifically seeks comment on the proposed continued availability of a grace period.

Enforcement

The current regulations set forth the jurisdiction of the NCUA to enforce the Interlocks Act. The proposed regulations simplify the wording of this section in the current regulations but not its substance.

Regulatory Procedures

Regulatory Flexibility Act

It is hereby certified that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Board has determined that the requirements of the Paperwork Reduction Act do not apply.

Executive Order 12612

This proposed rule, like the current 12 CFR part 711 it would replace, will apply to all Federally insured credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined, however, that this proposed rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Further, this proposed rule will not preempt provisions of State law or regulations.

List of Subjects in 12 CFR Part 711

Antitrust, Credit unions, Holding companies.

By the National Credit Union Administration Board on March 13, 1996.

Becky Baker,

Secretary of the Board.

For the reasons set out in the preamble, the NCUA proposes to revise part 711 of chapter VII of title 12 of the Code of Federal Regulations to read as follows:

PART 711—MANAGEMENT OFFICIAL INTERLOCKS

Sec.
711.1 Authority, purpose, and scope.
711.2 Definitions.
711.3 Prohibitions.
711.4 Interlocking relationships permitted by statute.
711.5 Regulatory Standards exemption.
711.6 Management Consignment exemption.
711.7 Change in circumstances.
711.8 Enforcement.

Authority: 12 U.S.C. 1766 and 3201–3208.

§ 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*.), as amended, and the NCUA's general rulemaking authority in 12 U.S.C. 1766.

(b) *Purpose*. The purpose of the Interlocks Act and this part is to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations in situations where the management interlock could have an anticompetitive effect.

(c) *Scope*. This part applies to management officials of federally insured credit unions and their affiliates.

§ 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 section 202, shares held by an individual include shares held by members of his or her immediate family. ''Immediate family'' includes 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 common ownership does not exist if the NCUA 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 NCUA considers, among other things, whether a person owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate with that person's ownership of shares in the other organization.

(b) *Anticompetitive effect* means a monopoly or substantial lessening of competition.

(c) *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 nonmetropolitan median family income, if a depository organization is located outside an MSA.

(d) *Community* means city, town, or village, and contiguous or adjacent cities, towns, or villages.

(e) *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.

(f) *Credit union* means a federal or state-chartered credit union that is insured by the National Credit Union Share Insurance Fund.

(g) *Critical* means important in helping a depository organization either address current problems or maintain safe and sound operations going forward.

(h) *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.

(i) *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.

(j) *Depository institution affiliate* means a depository institution that is an affiliate of a depository organization.

(k) *Depository organization* means a depository institution or a depository holding company.

(l) *Low- and moderate-income areas* means areas where the median family income is less than 100 percent of the area median income.

(m) *Management official.* (1) The term *management official* includes:

(i) A director;

(ii) An advisory or honorary director of an 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 above capacities.

(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 provisos 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).

(n) *Office* means a principal or branch of a depository institution located in the United States. *Office* does not include a representative office of a foreign commercial bank, electronic terminal, or a loan production office.

(o) *Person* means a natural person, corporation, or other business entity.

(p) *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.

(q) *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. The NCUA will find that a person has an obligation to act on behalf of another person only if the first person has agreed to act on behalf of the second person with respect to management responsibilities. The NCUA will determine, after giving the affected person an opportunity to respond, whether a person is a ''representative or nominee.''

(r) *Total assets.* (1) The term *total assets* means assets measured on a consolidated basis as of the close of the organization's last fiscal year.

(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.

(s) *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 $1 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 $500 million (or any affiliate thereof), regardless of the location of the two depository organizations.

§ 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 may disapprove a notice of proposed service if it finds that:

(i) The service cannot be structured or limited so as to preclude an anticompetitive 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 the NCUA.

(3) The NCUA 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 Regulatory Standards exemption.

(a) *Criteria.* The NCUA may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 711.3 if:

(1) The board of directors of the depository organization (or the organizers of a depository organization being formed) that seeks the exemption provides a resolution to the NCUA certifying that the organization, after the exercise of reasonable efforts, is unable to locate any other candidate from the community or RMSA, as appropriate, who:

(i) Possesses the level of expertise required by the depository organization and who is not prohibited from service by the Interlocks Act; and

(ii) Is willing to serve as a management official; and

(2) The NCUA, after reviewing an application submitted by the depository organization seeking the exemption, determines that:

(i) The management official is critical to the safe and sound operations of the affected depository organization; and

(ii) Service by the management official will not produce an anticompetitive effect with respect to the depository organization.

(b) *Presumptions.* The NCUA applies the following presumption when reviewing any application for a Regulatory Standards exemption: A proposed management official is critical to the safe and sound operations of a credit union if that official is approved by the NCUA to serve as a director or senior executive officer of that credit union pursuant to 12 CFR 701.14 or pursuant to conditions imposed on a newly chartered credit union and the institution has operated for less than two years, or otherwise was in a ''troubled condition'' as defined in 12 CFR 701.14 at the time the service under 12 CFR 701.14 is approved.

(c) *Duration of interlock.* An interlock permitted under this section may continue until the NCUA notifies the affected organizations otherwise. The NCUA may require a credit union to terminate any interlock permitted under this section if the NCUA concludes, after giving the affected persons the opportunity to respond, that the determinations under paragraph (a)(2) of this section no longer may be made.

§ 711.6 Management Consignment exemption.

(a) *Criteria.* The NCUA may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 711.3 if the NCUA determines that the interlock would:

(1) Improve the provision of credit to low- and moderate-income areas;

(2) Increase the competitive position of a minority- or woman-owned depository organization;

(3) Strengthen the management of an institution that has been chartered for less than two years at the time an application is filed under this part; or

(4) Strengthen the management of an institution that is in an unsafe or unsound condition as determined by the NCUA on a case-by-case basis.

(b) *Presumptions.* The NCUA applies the following presumptions when reviewing any application for a Management Consignment exemption:

(1) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(3) of this section if that official is approved by the NCUA to serve as a director or senior executive officer of that institution pursuant to 12 CFR 701.14 or pursuant to conditions imposed on a newly chartered credit union and the institution has operated for less than two years at the time the service under 12 CFR 701.14 is approved.

(2) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(4) of this section if that official is approved by the NCUA to serve as a director or senior executive officer of that institution pursuant to 12 CFR 701.14 and the institution was in a ''troubled condition'' as defined under 12 CFR 701.14 at the time service under 12 CFR 701.14 is approved.

(c) *Duration of interlock.* An interlock granted under this section may continue

for a period of two years from the date of approval. The NCUA may extend this period for one additional two-year period if the depository organization applies for an extension at least 30 days before the current exemption expires and satisfies one of the criteria specified in paragraph (a) of this section. The provisions set forth in paragraph (b) of this section also apply to applications for extensions.

§ 711.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption to the Interlocks Act if a change in circumstances causes the service to become prohibited under that Act. 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 acquisition, a merger, a consolidation, or any 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 credit union involved in the interlock for 15 months following the date of the change in circumstances. The NCUA may shorten this period under appropriate circumstances.

§ 711.8 Enforcement.

The NCUA administers and enforces the Interlocks Act with respect to credit unions, and their affiliates, and may refer any case of a prohibited interlocking relationship involving these institutions to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–19]

Airworthiness Directives; General Electric Company CF34 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF34 series turbofan engines. This proposal would reduce the allowable operating cyclic life limit for affected fan disks. This proposal is prompted by an updated stress and life analysis. The actions specified by the proposed AD are intended to prevent fan disk rupture, engine failure, and damage to the aircraft.

DATES: Comments must be received by May 24, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–19, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7148, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–ANE–19.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–19, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has reviewed and approved an updated stress and life analysis for fan disks installed in General Electric Company (GE) CF34 series turbofan engines. Although the FAA has not received any reports of cracked or failed fan disks, the stress and life analysis was performed using new, improved methodology. This analysis revealed that the published cyclic life limits were higher than updated calculated lives, which could result in the operation of a fan disk beyond its cyclic life. This condition, if not corrected, could result in fan disk rupture, engine failure, and damage to the aircraft.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would reduce the allowable operating cyclic life limit for affected fan disks.

There are approximately 440 engines of the affected design in the worldwide fleet. The FAA estimates that 150 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately zero additional work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $106,320 per engine, based on the estimated current part cost, prorated downward by a factor equal to the quotient of the difference between the original cyclic life limit (38,280 cycles) and the revised cyclic life limit (9,000 cycles) divided by the original cyclic life limit. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $15,950,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient