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**[BILLING CODES: 4810-33-P; 6210-01-P; 6714-01-P; 6720-01-P]**

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 26**

**[Docket ID OCC- 2007-0006]**

**[RIN 1557-AD01]**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 212**

**[Regulation L; Docket No. R-1272]**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 348**

**[RIN 3064-AD13]**

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Part 563f**

**[Docket No. 2006-47]**

**[RIN 1550-AC09]**

**Management Official Interlocks**

**AGENCIES:** Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are amending their rules regarding management interlocks to implement section 610 of the Financial Services Regulatory Relief Act of 2006 (FSRRA) and to correct inaccurate cross-references.

**DATES:** This final rule is effective on [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:**

OCC: Heidi M. Thomas, Special Counsel, Legislative and Regulatory Activities Division, (202) 874-4688; Sue Auerbach, Counsel, Bank Activities and Structure Division, (202) 874-5300; or Jan Kalmus, Senior Licensing Analyst, Licensing Activities Division, (202) 874-4608, Office of the Comptroller of the Currency, 250 E Street S.W., Washington, DC 20219.

Board: Andrew S. Baer, Counsel, (202) 452-2246, or Jennifer L. Sutton, Attorney, (202) 452-3564, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. For users of Telecommunication Device for the Deaf (TDD) only, contact (202) 263-4869.

FDIC: Patricia A. Colohan, Senior Examination Specialist, Division of Supervision and Consumer Protection, (202) 898-7283, or Mark Mellon, Counsel, Legal Division, (202) 898-3884.

OTS: David J. Bristol, Senior Attorney, (202) 906-6461, Business Transactions Division, Office of Thrift Supervision, or Donald W. Dwyer, Director of Applications, Examinations and Supervision – Operations, (202) 906-6414, 1700 G Street NW., Washington, D.C. 20552.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.) (Interlocks Act or Act) prohibits individuals from simultaneously serving as a management official<sup>1</sup> at two unaffiliated depository institutions or their holding companies (collectively, depository organizations) under certain circumstances. For example, section 203(1) of the Act (12 U.S.C. 3202(1)) prohibits interlocks between unaffiliated depository organizations if each depository organization (or a depository institution affiliate thereof) has an office in the same relevant metropolitan statistical area (RMSA) (RMSA prohibition), unless one of the depository organizations involved has total assets below a specified threshold (small institution exception). Prior to enactment of the FSRRA, the total asset threshold for this small institution exception was \$20 million. However, section 610 of the FSRRA amended section 203(1) of the Interlocks Act by raising this asset threshold to \$50 million, effective as of October 13, 2006.<sup>2</sup>

### **II. Summary of Interim Rule**

In January 2007, the Agencies adopted on an interim basis, and requested public comment on, amendments to their rules in order to implement section 610 of the FSRRA.<sup>3</sup>

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<sup>1</sup> Each of the Agencies' regulations generally define "management official" to include a director, an advisory or honorary director of a depository institution with total assets of \$100 million or more, a senior executive officer, 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 such capacity. See 12 CFR 26.2(j) (OCC); 12 CFR 212.2(j) (Board); 12 CFR 348.2(j) (FDIC); and 12 CFR 563f.2(j) (OTS).

<sup>2</sup> Pub. L. 109-351, § 610, 120 Stat. 1966 (Oct. 13, 2006).

<sup>3</sup> See 72 FR 1274, Jan. 11, 2007.

Specifically, the interim rules modified the regulatory RMSA prohibition to conform to revised section 203(1) of the Act by allowing a management official of one depository organization to serve as a management official of an unaffiliated depository organization if the depository organizations (or their depository institution affiliates) have offices in the same RMSA and one of the depository organizations in question has total assets of less than \$50 million.

The interim rule also made technical changes to correct inaccurate cross-references in the definition of management official in each of the Agencies' rules.

### **III. Explanation of Final Rule**

The Agencies received two comments on the interim rule, both of which were filed by trade associations representing banking organizations. Both commenters supported the interim rule, stating that the rule will afford small banking organizations greater access to qualified individuals who may serve as management officials. Both commenters also urged the Agencies to consider further raising the asset threshold for the small institution exception to the RMSA prohibition. As noted in the interim rule, FSRRA raised the asset threshold, and neither FSRRA nor the Act gives the Agencies discretion to modify the asset-size threshold for the small institution exception. After carefully considering the comments received, the Agencies have adopted a final rule that is identical to the interim rule.

### **IV. Regulatory Analysis**

#### Plain Language

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809) requires the Agencies to use "plain language" in all rules published in the Federal Register after January 1, 2000. The Agencies believe the final rule is presented in a simple and straightforward manner.

#### Administrative Procedure Act

The final rule takes effect upon publication in the Federal Register. As noted in the interim rule, the changes adopted in the rule implement a statutory change that took effect upon enactment on October 13, 2006, and the technical corrections of cross-references effected by the rule are not substantive. The new statutory provision itself gives the Agencies no discretion to modify the asset-size threshold for the small institution exception. Accordingly, pursuant to 5 U.S.C. 553(d), the agencies conclude that there is good cause for making this rule effective immediately upon publication the Federal Register.

#### Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the regulatory flexibility analysis otherwise required under section 603 of the RFA (5 U.S.C. 603) is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such certification and a statement explaining the factual basis for such certification in the Federal Register along with its rule.

Pursuant to section 605(b) of the RFA, each of the Agencies certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The Agencies expect that this rule will not create any additional burden on small entities. The final rule relaxes the criteria for obtaining an exemption from the RMSA prohibition, and specifically addresses the needs of small entities by allowing greater numbers of small organizations to qualify for the small institution exception from the RMSA prohibition. Accordingly, a regulatory flexibility analysis is not required.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Agencies have determined that no collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

OCC and OTS Executive Order 12866 Statement

The OCC and OTS each have independently determined that the final rule is not a “significant regulatory action” as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

OCC and OTS Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), requires the OCC and OTS to prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. However, this requirement does not apply to regulations that incorporate requirements specifically set forth in law. Because this final rule implements section 610 of the FSRRA, the OTS and OCC have not conducted an Unfunded Mandates Analysis for this rulemaking.

**List of Subjects**

**12 CFR Part 26**

Antitrust, Holding companies, National banks.

**12 CFR Part 212**

Antitrust, Banks, banking, Holding companies.

**12 CFR Part 348**

Antitrust, Banks, banking, Holding companies.

**12 CFR Part 563f**

Antitrust, Holding companies, Reporting and recordkeeping requirements, Savings associations.

**Office of the Comptroller of the Currency**

**12 CFR Chapter I**

**PART 26--MANAGEMENT OFFICIAL INTERLOCKS**

Accordingly, the interim rule amending 12 CFR Part 26 which was published at 72 FR 1276 on January 11, 2007, is adopted as a final rule without change.

**Federal Reserve System**

**12 CFR Chapter II**

**PART 212--MANAGEMENT OFFICIAL INTERLOCKS**

Accordingly, the interim rule amending 12 CFR Part 212 which was published at 72 FR 1276 on January 11, 2007, is adopted as a final rule without change.

**Federal Deposit Insurance Corporation**

**12 CFR Chapter III**

**PART 348--MANAGEMENT OFFICIAL INTERLOCKS**

Accordingly, the interim rule amending 12 CFR Part 348 which was published at 72 FR 1276 on January 11, 2007, is adopted as a final rule without change.

**Office of Thrift Supervision**

**12 CFR Chapter V**

**PART 563f--MANAGEMENT OFFICIAL INTERLOCKS**

Accordingly, the interim rule amending 12 CFR Part 563f which was published at 72 FR 1276 on January 11, 2007, is adopted as a final rule without change.

**[THIS SIGNATURE PAGE RELATES TO THE JOINT FINAL RULE ON  
MANAGEMENT OFFICIAL INTERLOCKS]**

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Date

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**John C. Dugan**  
Comptroller of the Currency.

**[THIS SIGNATURE PAGE RELATES TO THE JOINT FINAL RULE ON  
MANAGEMENT OFFICIAL INTERLOCKS]**

By order of the Board of Governors of the Federal Reserve System, \_\_\_\_\_, 2007.

Jennifer J. Johnson  
Secretary of the Board

**[THIS SIGNATURE PAGE RELATES TO THE JOINT FINAL RULE ON  
MANAGEMENT OFFICIAL INTERLOCKS]**

By order of the Board of Directors.

Dated at Washington, DC, this \_\_\_\_\_ day of \_\_\_\_\_ 2007.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

Executive Secretary.

(SEAL)

**[THIS SIGNATURE PAGE RELATES TO THE JOINT FINAL RULE ON  
MANAGEMENT OFFICIAL INTERLOCKS]**

By the Office of Thrift Supervision, \_\_\_\_\_, 2007.

**John M. Reich,**

Director.