

# Management Interlocks

## Comptroller's Licensing Manual

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Introduction..... 1  
Prohibitions..... 1  
Exemptions..... 2  
    Statutory Exemptions ..... 2  
    Regulatory Exemptions ..... 3  
Key Policies..... 5  
    Decision Criteria ..... 5  
    Background Investigations ..... 5  
Application Process ..... 5  
    General ..... 5  
    General Exemption Filings..... 6  
    Presumptions of No Adverse Effect on Competition Filings..... 6  
    Change in Circumstances ..... 6  
    Diversified Savings and Loan Holding Companies..... 7  
    Time Frame ..... 7  
    Additional Information Request ..... 7  
Procedures ..... 8  
Glossary ..... 12  
References..... 14

# Management Interlocks

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## Introduction

The Depository Institution Management Interlocks Act (Interlocks Act) generally prohibits a bank or bank holding company management official from simultaneously serving as a management official of an unaffiliated depository institution or depository institution holding company.

These interlock prohibitions have certain exemptions. Some management interlocks are exempted by statute, and some qualify for exemption under the OCC's regulation without filing an application. Other interlocks may be exempted if the OCC approves a specific application. The OCC may exempt a prohibited management interlock if it determines that dual service would not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns.

OCC regulations provide for two broad categories of permissible exemptions: the Small Market Share Exemption and the General Exemption. The Small Market Share Exemption applies to depository organizations with limited control of an area's deposits. This exemption does not require an application or prior OCC approval. Under the General Exemption, the OCC may, through the application process, exempt a management official's service that the Interlocks Act otherwise would prohibit.

This booklet summarizes the conditions under which an interlock occurs under the Interlocks Act, 12 USC 3201-3208, and the criteria the OCC uses to grant an exemption. Banks interested in establishing a management interlock should review the OCC's regulation, 12 CFR 26, Management Official Interlocks, before submitting a request for an interlock exemption. Specifically, this booklet:

- Provides guidance explaining when an Interlocks Act prohibition is created.
- Summarizes permitted Interlocks Act exemptions for persons and organizations.
- Outlines the OCC's application process for persons seeking interlock exemptions.
- Includes a glossary of terms, a reference section of statutes and regulations, and electronic links to sample filings for applicants.

## Prohibitions

The scope of the interlock prohibition depends on the size and location of the organizations involved. Three specific situations always prohibit a management interlock:

- **Community Prohibition** — If both organizations, or any of their depository institution affiliates, have a main or branch office in the same community, they may not have a management interlock regardless of their size.
- **Relevant Metropolitan Statistical Area (RMSA) Prohibition** — If both depository organizations, or any of their depository institution affiliates, have total assets of \$50 million or more, they may not have a management interlock in the same RMSA.
- **Major Assets Prohibition** — If a bank or a bank holding company has assets of at least \$2.5 billion, anyone who is a management official of the bank or the bank holding company, or any of its affiliates, may not serve at the same time as a management official of any unaffiliated bank or bank holding company with total assets exceeding \$1.5 billion or of any affiliate of such bank or bank holding company, regardless of their locations.

The OCC and the other federal financial regulatory authorities<sup>1</sup> may adjust these thresholds periodically. If a threshold is adjusted, the regulatory authorities will provide appropriate notice of those changes to depository organizations by publishing a notice in the *Federal Register*.

## Exemptions

### Statutory Exemptions

The Interlocks Act permits several specific exemptions from the general interlocks prohibitions. Under these statutory exemptions (12 CFR 26.4), the Interlock 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.
- 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.

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<sup>1</sup> The other federal financial regulatory authorities include the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration, and the Office of Thrift Supervision.

- A depository organization that is closed or that the 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, whose director serves simultaneously as a director of an unaffiliated depository organization. For this exemption, both the savings and loan holding company and the depository organization must notify their appropriate regulatory agencies at least 60 days before beginning the dual service. This exemption is allowed if the agencies do not disapprove the dual service before the end of the 60-day period.
- A person whose dual service as a management official of more than one depository organization began before November 10, 1978.

## Regulatory Exemptions

The Interlocks Act provides a general authority for the OCC to establish exemptions through its regulations. By regulation, the OCC may exempt an otherwise prohibited management interlock if it determines that dual service (1) would not result in a monopoly or substantial lessening of competition and (2) would not present safety and soundness concerns to the bank.

The regulations provide for two broad categories of permissible exemptions: the Small Market Share Exemption and the General Exemption.

### **Small Market Share Exemption**

The regulation permits an exemption for interlocks involving two unaffiliated depository organizations that together control no more than 20 percent of deposits in any RMSA or community in which the organizations or their depository institution affiliates have offices. Under 12 CFR 26.5, prior OCC approval is not required to claim the small market share exemption. Financial institutions seeking to form an interlock pursuant to 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 small market share exemption continues to apply for as long as the organizations meet the applicable conditions. Although no filing 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. A bank may meet this record requirement by documenting the determination of eligibility in the board of directors' minutes. The OCC will confirm the bank's determination of eligibility through the supervisory process.

### **General Exemption**

The OCC may permit an exemption, under its general regulatory authority (12 CFR 26.6(a)), if it finds that the interlock will not result in a monopoly or substantial lessening of competition and will not present safety and soundness concerns for the institutions involved.

To request an exemption for an interlock under the general exemption provision, the filer 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. This interlock exemption continues as long as the circumstances do not change; that is, it will not result in a monopoly, substantial lessening of competition, or become unsafe or unsound.

*Presumption of No Adverse Effect on Competition:* The OCC's regulations provide that in certain instances where a general exemption is sought, the agency will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition. Under the OCC's regulation governing the General Exemption, 12 CFR 26.6(b), these instances include a depository institution seeking to add a management official when it:

- Serves primarily low- and moderate-income areas.
- Is controlled or managed by members of a minority group or women.
- Has been chartered for less than two years.
- Is deemed to be in "troubled condition" by the OCC.

An institution that believes it qualifies for one of the presumptions under 12CFR 26.6(b) must submit an application demonstrating that (1) the management interlock will not present a safety and soundness concern to the bank and (2) the depository institution fits into one of the four categories of institutions previously listed. The OCC may request any additional information it needs. Once an applicant demonstrates that one of the presumptions exists, the OCC requires no additional information concerning the interlock's effect on competition. The OCC will not issue an exemption under this provision if it finds that the interlock would result in a monopoly or substantial lessening of competition.

An interlock permitted in accordance with the presumption at 12 CFR 26.6(b) may continue for three years, unless the OCC has provided otherwise in writing. A national bank may file for an extension of such an interlock or, alternatively, use any other exemption for which it qualifies.

## Key Policies

### Decision Criteria

The OCC may reject a request for a management interlock exemption, under its general exemptive authority or the statutory exemption for diversified savings and loan holding companies, if it finds that:

- The interlock would tend to create or result in a monopoly or further any monopoly.
- The interlock may lessen competition substantially or restrain trade.

- The interlock would create a conflict of interest for the proposed management official.
- The proposed management official's competence, experience, or integrity, including history in dealing with regulatory authorities, indicates that the interlock will present safety and soundness concerns.
- The application does not provide the OCC with all requested information.

## Background Investigations

The OCC investigates the 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 institution 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 it obtains sufficient information from a written record of recent management history from another regulated depository institution.

If the person is serving as a management official of a state-chartered bank, thrift institution, or credit union, the OCC will contact other financial regulatory agencies (that is, the FDIC, Federal Reserve, Office of Thrift Supervision, National Credit Union Administration, or state financial regulator) and inquire into that agency's experience with the proposed management official.

## Application Process

### General

Unless the interlock falls under the small market share exemption or any of the statutory exemptions, a bank must submit an application for a management interlock exemption to the relevant director for district licensing at the appropriate OCC district office. A statutory exemption involving a diversified savings and loan holding company requires filing of a notice with the OCC, as discussed below. After determining that sufficient information is provided, the OCC will make a decision on the management interlock application.

### General Exemption Filings

National banks filing an application for an exemption, pursuant to the OCC's general exemptive authority under 12 CFR 26.6(a), must include the following information:

- The biographical portion of the Interagency Biographical and Financial Report on the management official, unless the OCC grants a waiver based on the written record of recent previous management experience in another depository institution (see "Background Investigations" booklet).

- Market share data 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.
- Information demonstrating that the interlock will not adversely affect the bank's safety and soundness.

## Presumptions of No Adverse Effect on Competition Filings

National banks that seek an exemption under the OCC's general exemptive authority and believe they fit within one of the presumptions set out in 12 CFR 26.6(b) must include the following information:

- Information demonstrating that the national bank serves primarily 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)(6).
- 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 a written record of recent previous management experience in another depository institution (see "Background Investigations" booklet).
- Information demonstrating that the interlock will not affect adversely the bank's safety and soundness.

## Change in Circumstances

A management official must terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. 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 affect interlock status:

- An increase in an organization's asset size (see the discussion of asset size in the "Prohibitions" section of this booklet).
- A change in the delineation of the RMSA, or community serving two institutions in the same RMSA or community, thus creating an interlock.
- The establishment of an office, resulting in the same management official serving two institutions in the same RMSA or community, thus creating an interlock.
- An acquisition, merger, consolidation, or any reorganization of the ownership structure of a depository organization (see "Business Combinations") that causes a previously permissible interlock to become prohibited.



- For interlocks created under the small market share exemption, any event (such as an expansion or merger) that causes the level of deposits to exceed 20 percent of the total deposits in an RMSA or community, as appropriate.

## Diversified Savings and Loan Holding Companies

National banks filing a notice for an exemption pursuant to 12 CFR 26.4(h), must include:

- The biographical portion of the Interagency Biographical and Financial Report on the management official, unless the OCC grants a waiver based on the written record of recent previous management experience in another depository institution (see "Background Investigations" booklet).
- Market share data 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.
- Information demonstrating that the interlock will not cause substantial conflicts of interest or unsafe or unsound practices.

## Time Frame

Within 30 days of receipt, the OCC will review the request to determine whether proposed candidate meets the legal requirements for a particular exemption.

## Additional Information Request

The OCC will notify the applicant if additional information is required to make the decision. The letter will note a due date for response. The OCC may disapprove an application if the applicant fails to provide the requested information.

If the applicant cannot submit the additional information on or before the deadline, it should contact the OCC as soon as possible. Generally, the OCC will consider the application abandoned if the information is not received within 60 days. At that time, the OCC will notify the applicant of the withdrawal.

# Procedures

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## Prefiling

### Licensing Staff

1. Refers a bank requesting an exemption for a management interlock to the "Background Investigations" booklet and to this booklet of the *Comptroller's Licensing Manual*.
2. If requested, arranges a prefiling meeting with the applicant to review possible interlocking relationships or to seek an exemption and to discuss the factors that may influence the OCC's review of the filing. Invites the appropriate OCC staff (for example, legal and supervision) to the meeting. Determines if the application should be filed with Headquarters Licensing (HQ LIC), if broad issues are involved.
3. Prepares summary memorandum on all prefiling communications, meetings, and policy or legal issues raised. Retains all pertinent information in the pending file.

## Filing the Application

### Bank

4. Submits a complete application (or notice if involving a diversified savings and loan holding company) to the director for district licensing in the district office, or if so instructed, directly to HQ LIC.

## Receipt of Application

### Licensing Staff

5. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).
6. Establishes the official file to maintain original documents.
7. Notifies the Assistant Deputy Comptroller (ADC) and ADC analyst or the large bank examiner-in-charge (EIC) of receipt of the application.

## Review

8. Reviews the filing and any other relevant information about the bank to determine whether it meets the following criteria:

- For General Exemption Filings and diversified savings and loan holding company filings, contains all necessary information to reach a decision. If not, requests the necessary information from the bank, specifying a response date.
  - For a Presumptive Filing, reviews the filing and any other relevant information about the bank to determine whether the bank qualifies for a presumption and, therefore, that the interlock will not affect competition adversely. To qualify for an exemption, a bank must be:
    - Located in, and serving primarily, low- and moderate-income areas.
    - Controlled or managed by women or members of a minority group.
    - A newly chartered depository institution.
    - In “troubled condition” as defined by 12 CFR 5.51(c)(6).
9. Within five business days of receipt:
- Acknowledges receipt of the filing and advises the applicant of the decision target date and CAIS control number.
  - Solicits comments from the ADC and ADC analyst or large bank EIC and any other OCC divisions, as appropriate, with preliminary responses required within 15 days after the receipt date.
  - If a legal issue is identified, forwards relevant material to the Law Department and requests a response on whether a significant legal issue is present within 15 days after receipt date.
10. Conducts a background investigation to assess the competence and experience of the proposed management official, if appropriate. (Refers to the “Background Investigations” booklet.)
11. If at any time the filing presents significant policy, legal, or supervisory issues, contacts HQ LIC to decide:
- Whether specific issues should be carved out for HQ LIC action, while the filing continues to be processed in the appropriate district office.
  - When the filing should be forwarded to HQ LIC, if appropriate.
12. Reviews the file, prepares the confidential memorandum, makes a recommendation, and forwards the official file to the appropriate official for decision. The confidential memorandum should:
- Summarize the applicant’s competence, experience, and integrity to act as a management official of a national bank.

- Address whether or not the interlock will create a conflict of interest for the proposed management official.
  - Address the regulatory criteria and supervisory concerns including the following.
    - Competitive aspects that may have an adverse effect on competition.
    - Plans for an expansion, merger, or growth.
    - Any safety and soundness concern.
  - Discuss the assessment of any adverse information received from background investigations and the person's response.
  - Discuss whether the interlock will have a negative effect on the bank's safety and soundness.
  - Determine whether the interlock will result in a monopoly or substantial lessening of competition.
  - If reviewing a Presumptive Filing, discuss whether the applicant qualifies for a presumption and if the OCC concurs. If the OCC does not concur, discuss reasons.
13. Decides the filing under delegated authority or forwards the official file to HQ LIC. Goes to step 15, if the filing is referred to HQ LIC.
14. After a decision is made:
- Notifies the ADC and ADC analyst or large bank EIC of the decision by forwarding updated CAIS comments and advises of any concerns.
  - Notifies the bank and sends a decision letter and, if appropriate, a Customer Satisfaction Survey.
  - Notifies interested parties of the decision.

## HQ LIC

15. For filings processed in HQ LIC, makes appropriate CAIS entries.
16. Reviews the file and all relevant information, and solicits comments from other OCC divisions, as appropriate.
17. If disapproval is recommended or if rebutting a presumption, forwards the draft decision letter to the Litigation and the Enforcement and Compliance Divisions for review prior to routing for decision.
18. Prepares and sends the confidential memorandum and decision or rebuttal letter to the appropriate delegated official for decision.

19. After the decision is made:
  - Notifies the bank, the district licensing staff, and the ADC and ADC analyst or large bank EIC of the decision by forwarding updated CAIS comments and advises of any concerns.
  - Sends the bank a decision letter and, if appropriate, a Customer Satisfaction Survey.
  - Notifies all interested parties.

## **Close Out**

20. Reviews the file for completeness and forwards the official file to Central Records.

## Glossary

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An **affiliate** of a depository institution, as defined in 12 USC 3201(3), generally, is any company controlled by the same stockholders that control the depository organization.

An **anticompetitive effect** means a monopoly or substantial lessening of competition, as derived from the Bank Merger Act.

The **area median income** is the median family income for the metropolitan statistical area (MSA) in which an institution is located or the statewide nonmetropolitan median family income if the institution is located outside an MSA.

A **community** is a city, town, or village, and its contiguous or adjacent cities, towns, or villages.

**Contiguous or adjacent cities, towns, or villages** are cities, towns, or villages whose borders touch each other or 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.

A **depository holding company** is 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 institution** is a commercial bank, a savings bank, a trust company that takes deposits from the public, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union. Additionally, a branch or agency office of a foreign commercial bank located in the United States is a depository institution.

A **depository institution affiliate** is a depository institution that is an affiliate of a depository organization.

A **depository organization** is a depository institution or a depository holding company.

A **diversified savings and loan holding company** is any savings and loan holding company whose subsidiary savings association and related activities 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** means spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of the shares are held in trust. Shares held by a person include shares held by members of his or her immediate family.

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

A **low- and moderate-income area** is 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 the area median income.

A **management official**, for Interlock Act purposes, includes a 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.

A **newly chartered institution** is an institution that has been chartered for less than two years from the time it files a request for exemption.

An **office** is 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.

A **relevant metropolitan statistical area (RMSA)** is an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated primary MSAs, as those terms are defined and applied by the Office of Management and Budget.

**Representative or nominee** is a natural person who serves as a management official and has an obligation to act on behalf of another person for management responsibilities.

A **senior executive officer** means the chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, and any other person the OCC identifies to the national 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 national bank to perform such functions in lieu of directly hiring the persons, and a federal branch operated by a foreign bank, the person functioning as the chief managing official of the federal branch.

**Total assets** are assets measured on a consolidated basis and reported in the most recent fiscal year-end Consolidated Report of Condition and Income.

A national bank is 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 by the OCC that, as a result of an examination, it has been designated in troubled condition.

# References

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## **Change in Directors and Senior Executive Officers**

Laws	12 USC 93a, 1831i
Regulations	12 CFR 5.20, 5.51

## **Depository Institution Management Interlocks Act**

Law	12 USC 3201-3208
Regulation	12 CFR 26

## **Directors**

<i>Citizenship Requirement</i>	
Law	12 USC 72
<i>Convicted of a Crime</i>	
Law	12 USC 1829
<i>Election</i>	
Law	12 USC 71
<i>Filling Vacancies</i>	
Regulation	12 CFR 7.2007
<i>Golden Parachute</i>	
Regulation	12 CFR 359
<i>Interest Rates to Directors</i>	
Law	12 USC 376
<i>Liabilities of Directors</i>	
Law	12 USC 503
<i>Loans to Executive Officers</i>	
Law	12 USC 375a
<i>Number of Directors</i>	
Law	12 USC 71a
<i>Oath</i>	
Law	12 USC 73
Issuance	Charter Application, Oath of the Director
<i>President</i>	
Law	12 USC 76
Regulation	12 CFR 7.2012
<i>Purchase from or Sale to Director</i>	
Law	12 USC 375
<i>Quorum of Board</i>	
Regulation	12 CFR 7.2009
<i>Qualifications</i>	
Law	12 USC 72
Regulation	12 CFR 7.2005
<i>Vacancy on Board</i>	
Law	12 USC 74

## **Edge Act and Agreement Corporations**

Laws	12 USC 601-604a
	12 USC 611-631

## **Organization of a National Bank**

Law	12 USC 21
Regulation	12 CFR 5.20