

National Credit Union Administration

§711.2

(c) Promptly after the pro rata distribution to members has been computed, checks shall be drawn for the amounts to be distributed to each member. The checks shall be mailed to the members at their last known address or handed to them in person.

(d) Unclaimed share accounts, unpaid claims, and unpaid claims of members or creditors who failed to cash their final distribution checks shall be trustee or escheated in accordance with the laws of the state in which the member or creditor resides.

(e) The Regional Director will be notified in writing within three days when the final distribution of assets to the members is started.

§710.7 Retention of records.

(a) The board of directors or liquidating agent shall appoint a custodian for the Federal credit union's records which are to be retained after the final distribution of assets.

(b) All records of the liquidated Federal credit union necessary to establish that creditors were paid and that assets were equitably distributed to the members shall be retained by the custodian for a period of five years following the date of charter cancellation.

§710.8 Certificate of dissolution and liquidation.

Within 120 days after the final distribution of assets to members is started, a duly executed Certificate of Dissolution and Liquidation shall be filed with the Regional Director.

§710.9 Federally insured state credit unions.

A federal insured state credit union will notify the Regional Director in writing within three days after the board of directors' decision to liquidate is made. A balance sheet and income statement as of the previous month-end and a copy of any liquidation plan will be included with the notification to the Regional Director.

PART 711—MANAGEMENT OFFICIAL INTERLOCKS

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AUTHORITY: 12 U.S.C. 1757 and 3201-3208.

SOURCE: 61 FR 50702, Sept. 27, 1996, unless otherwise noted.

§711.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the provisions of the Depository Institution Management Interlocks Act (Interlocks Act) (12 U.S.C. 3201 *et seq.*)

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

(c) *Scope.* This part applies to management officials of federally insured credit unions. Section 711.4(c) exempts a management official of a credit union from the prohibitions of the Interlocks Act when the individual serves as a management official of another credit union. Therefore, the Interlocks Act prohibitions contained in this part only apply to a management official of a credit union when that individual also serves as a management official of another type of depository organization (usually a bank or thrift).

§711.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate.* (1) The term *affiliate* has the meaning given in section 202 of the Interlocks Act (12 U.S.C. 3201). For purposes of that section 202, shares held by an individual include shares held by members of his or her immediate family. "Immediate family" means spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.

(2) For purposes of section 202(3)(B) of the Interlocks Act (12 U.S.C. 3201(3)(B)), an affiliate relationship involving a depository institution based on common ownership does not exist if

the appropriate federal supervisory agency determines, after giving the affected persons the opportunity to respond, that the asserted affiliation was established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the appropriate Federal supervisory agency considers, among other things, whether a person, including members of his or her immediate family, whose shares are necessary to constitute the group owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate to that person's ownership of shares in the other organization.

(b) *Area median income* means:

(1) The median family income for the metropolitan statistical area (MSA), if a depository organization is located in an MSA; or

(2) The statewide nonmetropolitan median family income, if a depository organization is located outside an MSA.

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

(d) *Contiguous or adjacent cities, towns, or villages* means cities, towns, or villages whose borders touch each other or whose borders are within 10 road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is the boundary line of that city, town, or village for the purpose of this definition.

(e) *Depository holding company* means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act (12 U.S.C. 3201) having its principal office located in the United States.

(f) *Depository institution* means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a home-stead 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. Addition-

ally, a United States office, including a branch or agency, of a foreign commercial bank is a depository institution.

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

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

(i) *District bank* means any State bank operating under the Code of Law of the District of Columbia.

(j) *Low- and moderate-income areas* means census tracts (or, if an area is not in a census tract, block numbering areas delineated by the United States Bureau of the Census) where the median family income is less than 100 percent of the area median income.

(k) *Management official*. (1) The term *management official* means:

(i) A director;

(ii) An advisory or honorary director of a depository institution with total assets of \$100 million or more;

(iii) A senior executive officer as that term is defined in 12 CFR 701.14(b)(2), or a person holding an equivalent position regardless of title;

(iv) A branch manager;

(v) A trustee of a depository organization under the control of trustees; and

(vi) Any person who has a representative or nominee serving in any of the capacities in this paragraph (m)(1).

(2) The term *management official* does not include:

(i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;

(ii) A person whose management functions relate principally to the business outside the United States of a foreign commercial bank; or

(iii) A person described in the provisions of section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)) (referring to an officer of a State-chartered savings bank, cooperative bank, or trust company that neither makes real estate mortgage loans nor accepts savings).

(l) *Office* means a principal or branch office of a depository institution located in the United States. *Office* does not include a representative office of a

foreign commercial bank, an electronic terminal, or a loan production office.

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

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

(o) *Representative or nominee* means a natural person who serves as a management official and has an obligation to act on behalf of another person with respect to management responsibilities. NCUA will find that a person has an obligation to act on behalf of another person only if the first person has an agreement, express or implied, to act on behalf of the second person with respect to management responsibilities. NCUA will determine, after giving the affected persons an opportunity to respond, whether a person is a *representative or nominee*.

(p) *Total assets*. (1) The term *total assets* means assets measured on a consolidated basis and reported in the most recent fiscal year-end Consolidated Report of Condition and Income.

(2) The term *total assets* does not include:

(i) Assets of a diversified savings and loan holding company as defined by section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) other than the assets of its depository institution affiliate;

(ii) Assets of a bank holding company that is exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. 1843(d)) other than the assets of its depository institution affiliate; or

(iii) Assets of offices of a foreign commercial bank other than the assets of its United States branch or agency.

(q) *United States* includes any State or territory of the United States of America, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

[61 FR 50702, Sept. 27, 1996, as amended at 64 FR 66360, Nov. 26, 1999]

§ 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 \$50 million or more.

(c) *Major assets*. A management official of a depository organization with total assets exceeding \$2.5 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding \$1.5 billion (or any affiliate thereof), regardless of the location of the two depository organizations. The NCUA will adjust these thresholds, as necessary, based on year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest \$100 million. The NCUA will announce the revised thresholds by publishing a notice in the FEDERAL REGISTER.

[61 FR 50702, Sept. 27, 1996, as amended at 64 FR 66360, Nov. 26, 1999; 72 FR 58249, Oct. 15, 2007]

§ 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);