

December 21, 2018

# Depository Institution Management Interlocks Act

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## Threshold Increase for the Major Assets Prohibition in the Depository Institution Management Interlocks Act Rules

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### SUMMARY

On December 20, the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation issued a [notice of proposed rulemaking](#)<sup>1</sup> requesting comment on a proposal to increase to \$10 billion the thresholds at which the “major assets” prohibition on management interlocks between unaffiliated depository organizations<sup>2</sup> is imposed under the agencies’ regulations implementing the Depository Institution Management Interlocks Act (“DIMIA”).<sup>3</sup> According to the agencies, the proposal is designed to reduce burden by decreasing the number of depository organizations subject to the prohibition and help smaller depository organizations find qualified directors.<sup>4</sup> It also fulfills the commitment the agencies made in March 2017 to Congress to raise the thresholds.<sup>5</sup> The proposal solicits comment on three alternative options for adjusting the thresholds, which are discussed below.

### DISCUSSION

DIMIA generally prohibits a management official from serving as a management official of another unaffiliated depository organization where that service could have an anti-competitive effect. DIMIA includes three prohibitions on management interlocks between unaffiliated depository organizations. The first two—the community and metropolitan statistical area prohibitions—prohibit interlocks within a geographic area and would not be affected by the proposal. The third—the major assets prohibition—applies nationwide and prohibits a management official of a depository organization with total assets of more than \$2.5 billion (or any of its affiliates) from serving as a management official of an unaffiliated depository organization that has total assets of more than \$1.5 billion (or any of its affiliates). These

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thresholds were established through amendments to DIMIA in 1996 that also give the Federal depository institution regulatory agencies the authority “to adjust the total assets threshold to allow for inflation or market changes.”<sup>6</sup> Currently, a management official must obtain an exemption from the appropriate agency if the official seeks to serve as a management official of another depository organization that would fall within one of the three prohibitions, which can be a time-consuming process even for interlocks that clearly pose no meaningful anti-competitive risk.

The agencies’ proposal would raise both of the thresholds in the major assets prohibition to \$10 billion because such a threshold “would still prohibit interlocks between larger organizations, which could present a risk of anticompetitive conduct at the national banking market level, while exempting smaller or community banking organizations.”<sup>7</sup> A \$10 billion threshold is used in other statutory and regulatory contexts to differentiate between larger and smaller banking organizations. The agencies also solicit comment on three alternative options for adjusting the asset thresholds that are based on market changes or inflation:

- **Percentage of the Number of Banking Organizations Covered by the Prohibition.** Under this approach, the agencies would adjust the thresholds to a level that would maintain the total number of banking organizations subject to the prohibition as of the fourth quarter of 1996. This approach would increase the thresholds from \$1.5 billion to \$7.9 billion and \$2.5 billion to \$11.8 billion.
- **Asset Growth.** This approach would use total asset growth at depository organizations between the fourth quarters of 1996 and 2017. By the agencies’ calculation, assets grew of approximately 3.5 times. This approach would increase the thresholds from \$1.5 billion to \$5.3 billion and \$2.5 billion to \$8.8 billion.
- **Inflation.** This final approach would be based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) from the fourth quarter of 1996 to the fourth quarter of 2017. Such an inflation-based adjustment would increase the thresholds from \$1.5 billion to \$2.3 billion and \$2.5 billion to \$3.9 billion.

The comment period will run 60 days from the date the proposal is published in the Federal Register.

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ENDNOTES

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<sup>1</sup> The draft notice of proposed rulemaking is available at: <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20181220b1.pdf>

<sup>2</sup> “Depository organization” for this purpose includes a U.S. commercial bank (including private bank), savings bank, trust company, savings and loan association, building and loan association, homestead association, cooperative bank, industrial bank, credit union, bank holding company, or savings and loan holding company, in each case that has a principal office located in the United States. A U.S. office of a foreign commercial bank, including a branch or agency, is also covered by the definition.

<sup>3</sup> See 12 CFR Part 26; 12 CFR Parts 212 and 238; and 12 CFR Part 348.

<sup>4</sup> Proposal at p. 8.

<sup>5</sup> [Federal Financial Institutions Examination Council, Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act](#), 82 FR 15900, 15903 (Mar. 30, 2017).

<sup>6</sup> [Economic Growth and Regulatory Paperwork Reduction Act of 1996](#), Pub. L. No. 104-208, Title II, 110 Stat. 3009-9, Sec. 2210(a); 12 USC 3203.

<sup>7</sup> Proposal at p. 11.

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