

COMPTROLLER'S LICENSING MANUAL

# National Bank Director Waivers



April 2017

# Introduction

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This booklet of the *Comptroller's Licensing Manual* summarizes the Office of the Comptroller of the Currency's (OCC) citizenship and residency requirements for members of a national bank's board of directors, and the criteria and process for requesting waivers of these requirements for an individual or group of individuals. This booklet is not applicable to federal savings associations (FSA), as directors of FSAs are not subject to citizenship or residency requirements.

Interested parties also should review 12 USC 72, "Qualifications," before submitting a request for a citizenship and/or residency waiver. Honorary and advisory directors are not required to be U.S. citizens or to meet residency requirements.<sup>1</sup>

This booklet should be used together with other related booklets of the *Comptroller's Licensing Manual*. Users should refer to the "[Background Investigations](#)" booklet for additional instructions and procedures.

For information about filing Licensing applications or notices, refer to the "[General Policies and Procedures](#)" booklet of the *Comptroller's Licensing Manual*.

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<sup>1</sup> A national bank may appoint honorary or advisory members of a board of directors to act in advisory capacities without voting power or power of final decision in matters concerning the business of the bank. Any listing of honorary or advisory directors must indicate their advisory status or otherwise distinguish between them and the bank's board of directors. Refer to 12 CFR 7.2004.

# Key Policies

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## Citizenship Waivers

Each national bank director must be a citizen of the United States throughout his or her term of service. The OCC, however, may waive this requirement for a minority of the total number of directors of any national bank. The bank should submit a citizenship waiver request to the OCC before appointing a non-citizen as a director. If the OCC has granted a citizenship waiver and the composition of the bank's board subsequently changes so that more than a minority of the directors are non-citizens, the bank must restructure its board to bring it back into compliance.

The OCC normally conducts background checks using biographical information provided for each proposed director who is not a U.S. citizen to obtain information on the competence, experience, and integrity of each person named in the waiver request. The background checks also independently verify the accuracy and completeness of the information submitted. The specific policies and procedures required in performing background checks are given in the "[Background Investigations](#)" booklet of the *Comptroller's Licensing Manual*.

## Residency Waivers

A majority of a national bank's directors must reside in the state where the bank is located (that is, the state(s) in which the bank has its main office or branches) or within 100 miles of its main office for at least one year immediately preceding the directors' election and during their continuance in office. The OCC has discretion to waive these residency requirements.

When the composition of the bank's board changes because of resignations, an increase in the number of directors, or the relocation or replacement of one or more directors, and if a majority of the resulting board of directors does not meet the residency requirements, then the bank needs to request a residency waiver from the OCC. The bank should request a residency waiver before the proposed change. If the change results from an unexpected resignation, however, the bank should request the residency waiver from the OCC as soon as possible after the event.

The bank may request a multiple residency waiver in which the OCC waives the residency requirement for a majority or all of the board of directors. Certain banks may find that a multiple residency waiver promotes the safety and soundness of their operations without introducing the inefficient maintenance of an expanded board to meet statutory requirements or imposing the regulatory burden of applying for residency waivers each time a director is changed or added to the board.

If the OCC approves a multiple residency waiver for a majority or all of the directors, the bank may continue to appoint directors who do not meet the residency requirement without applying for individual residency waivers, as long as the ratio of directors remains the same

as in the original approval received by the bank. Under this residency waiver, the bank must review the qualifications of the nominated directors to ensure compliance with the requirements of 12 USC 72 regarding citizenship and stock ownership.

If the bank is not well managed, or not well capitalized, OCC Licensing staff will perform background checks for residency waivers.<sup>2</sup> In addition, the OCC may in certain other instances determine that background checks are required for residency waivers.

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<sup>2</sup> If a bank is subject to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) Section 914 process, Licensing staff typically is able to rely on the background check conducted as part of that process.

# Application Process

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## Citizenship Waivers

A bank's request for a waiver of the U.S. citizenship requirement must be filed with the appropriate OCC Licensing office (see [Citizenship Waiver Request](#)).

The waiver request must

- include a discussion of the proposed director's specific qualifications and experience, how the proposed director will carry out his or her duties effectively to ensure that the bank is meeting its operating goals, and how the waiver will support the safe and sound operation of the bank.
- provide biographical information for the proposed director using the [Interagency Biographical and Financial Report](#) form. The financial information section of this form is typically not required.
- certify that, after the waiver is granted, a majority of the bank's directors will be U.S. citizens, and provide the number of both U.S. and non-U.S. citizen directors including the proposed director.

The OCC reviews the request to determine that

- all required information is provided.
- a waiver would not violate applicable laws, regulations, and rulings.
- the experience and ability of the proposed non-U.S. citizen director
  - are relevant to the bank and the type of services it provides.
  - would support, through reputation and integrity, the safety and soundness of the bank.

The OCC usually decides requests for citizenship waivers within 30 days from the receipt date. The request generally will be denied if the OCC discovers material misrepresentations or fraudulent activities by the proposed director.

## Residency Waivers

A bank's request for a waiver of the residency requirement must be filed with the appropriate OCC Licensing office (see [Residency Waiver Request](#)). The waiver request must

- include a discussion of the proposed director's specific qualifications and experience, how the proposed director will carry out his or her duties effectively to ensure that the bank is meeting its operating goals, and how the waiver will support the safe and sound operation of the bank.
- indicate the number of directors who, if the request is approved, have resided in the state(s), territory, or district where the bank has its main office or branches, or within 100 miles of the bank's main office, for at least one year immediately preceding their election

and will continue to so reside, and the number of directors who will not meet these requirements.

- provide biographical information on the proposed director using the [Interagency Biographical and Financial Report](#) form. The financial information section of this form is typically not required.

The OCC reviews the request to determine that

- all required information is provided.
- a waiver would not violate applicable laws, regulations, or rulings.
- the experience and ability of the proposed director are relevant to the bank and the type of services it intends to provide.
- approval of the residency waiver will support the safety and soundness of the bank.

The OCC usually decides requests for residency waivers within 30 days from the receipt date. The request generally will be denied if the OCC discovers material misrepresentations or fraudulent activities by the proposed director.