

# **Director Waivers**

**Other Changes and Activities**

## **Comptroller's Licensing Manual**

**Washington, DC  
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# Director Waivers

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# Director Waivers

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## Introduction

This booklet summarizes citizenship and residency requirements and the criteria for granting waivers to members of a bank's board of directors.

Specifically, this booklet:

- Provides guidance on requesting citizen and/or residency waivers for a person or group of people.
- Includes a reference section of statutes and regulations.

Interested parties also should review 12 USC 72, "Qualifications," before submitting a request for a citizenship and/or residency waiver. This booklet should be used together with other related booklets of the *Comptroller's Licensing Manual*. Users should refer to the "General Policies and Procedures" and "Background Investigations" booklets for additional instructions and procedures. Interested parties also should visit the "Application Documents" link on the Comptroller of the Currency's (OCC) Internet site for additional information on application processing.

## Applicability

Every national bank director must be a citizen of the United States throughout his/her term of service (12 USC 72). The OCC, however, may waive those requirements for a minority of the total number of directors of any national bank.

A majority of a national bank's directors must reside in the state in which 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 their election (12 USC 72). The OCC has discretion to waive those residency requirements.

## Citizenship Waivers

The procedures in this booklet apply if a proposed or operating national bank wishes to appoint or elect one or more non-U.S. citizens to its board of directors. Sometimes an additional approval may be required by 12 CFR 5.51 (see the "Changes in Directors and Senior Executive Officers" booklet). Honorary and advisory directors are not required to be U.S. citizens and need not apply under these procedures.

## Residency Waivers

The procedures in this booklet apply if a proposed or operating national bank wishes to appoint or elect a board of directors the majority of whom reside in states other than those in which the bank has its main office or branches or beyond 100 miles of the bank's main office.

The procedures also apply when the composition of a board of directors changes and a majority no longer live in the state in which a bank has its main or branch offices or within 100 miles of its main office. When the composition of a board changes because of resignations or an increase in the number of directors, a bank needs only to request waivers for its new directors not living in the specified areas.

Finally, the procedures provide for a multiple waiver in which the OCC waives the residency requirement for a majority or all of the board of directors. Certain banks may find that those multiple waivers promote 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 waivers each time a director is changed or added to their boards.

If a multiple residency waiver is approved 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 waivers, as long as the ratio of directors remains the same as in the original approval received by the bank. Under this waiver, the bank must review the qualifications of the directors nominated to ensure compliance with the requirements of 12 USC 72 for citizenship and stock ownership.

## Summary of Process

### Citizenship Waivers

Bank requests for a waiver of the citizenship requirement must be submitted in writing to the director for district licensing at the appropriate district office (see Document - Request for Citizenship Waiver). The waiver request must:

- Certify that, after the waiver is granted, a majority of the bank's directors will be U.S. citizens.
- Provide a discussion of the qualifications and experience of the proposed foreign citizen director and how he/she supports the bank's services, business plan goals, or market areas.
- Provide biographical information on the proposed foreign citizen director (see "Background Investigations" booklet).

The OCC will review the request to determine that:

- All required information is provided.
- A waiver would not violate applicable laws, rulings, and regulations.

- The experience and ability of the proposed foreign 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.

Background checks are performed on each proposed director to supply information on the competence, experience, and integrity of each person named in the request. They also provide an independent verification of 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.

The OCC usually decides requests for citizenship waivers within 30 days from the receipt date. The request will be denied if the OCC discovers material misrepresentations, fraudulent activities, or questionable business or bank activities by the non-U.S. citizen(s).

## Residency Waivers

A bank's request for a waiver of the residency requirement must be submitted in writing to the director for district licensing at the appropriate district office. The waiver request must discuss how:

- The qualifications and experience of the proposed directors are relevant in helping the bank meet the goals of its business plan.
- The reputation and integrity of the proposed directors would support the safety and soundness of the bank.

The OCC will review requests to determine that:

- All required information is provided.
- A waiver would not violate applicable laws, rulings, and regulations.
- The experience and ability of the proposed directors 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.

For individual waivers, the OCC generally will review the information only for the person subject to the request.

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

# Procedures

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## Filing the Request

### Licensing Staff

1. Refers a bank that requests instructions to the "General Policies and Procedures" (GPP) and "Background Investigations" booklets and to this booklet of the *Comptroller's Licensing Manual*.

### Bank

2. Submits a complete request to the director for district licensing at the appropriate district office.

### Licensing Staff

3. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).
4. Establishes the official file to maintain all original documents.
5. Notifies appropriate Assistant Deputy Comptroller/Examiner-in-Charge (ADC/EIC) and/or portfolio manager of receipt of application.
6. Reviews the request and other relevant information about the bank to determine whether the request contains all information necessary to reach a decision. If the filing lacks any information needed to reach a decision, requests the necessary information from the bank, specifying a response date.
7. Performs background checks on the proposed director(s) consistent with the guidance provided in the "Background Investigations" booklet.
8. If at any time the filing presents policy, legal, or supervisory issues, contacts Headquarters Licensing (HQ LIC) to decide:
  - Whether the application should be filed with the Washington office, if broad issues are involved.
  - Whether specific issues should be carved out for Washington action, while the application continues to be processed in the appropriate district office.
  - When the filing should be forwarded to Washington.

## Review

9. Within five business days of receipt of application:
  - Acknowledges receipt of application and notifies the bank of the target date for a decision.
  - Solicits comments from the ADC/EIC and/or portfolio manager and from other OCC divisions, as appropriate, with a preliminary response required within 15 days after receipt.
  - If a legal issue is identified or a legal opinion has been submitted with the application, forwards relevant material to the Law Department and requests a response on whether a significant legal issue is present within 15 days after the receipt date.

## Decision

10. Decides the application under delegated authority or forwards the official file to HQ LIC for decision. If referred to HQ LIC, go to step 15.
11. Notifies the bank and, if appropriate, any interested parties.
12. Sends the bank the decision letter and a Customer Satisfaction Survey.
13. Notifies the appropriate ADC/EIC and/or portfolio manager of the decision by forwarding updated CAIS comments and, if warranted, any concerns.
14. If the decision is a conditional approval, forwards a copy of the confidential memorandum and decision letter to the secretary to the director, Licensing Activities.

## HQ LIC

15. Makes appropriate CAIS entries.
16. Reviews the file and all relevant information; solicits comments from other OCC divisions, as appropriate; makes a recommendation; and forwards the official file to the appropriate official for decision.
17. Once decided, notifies the bank and the district of the decision.
18. Notifies the appropriate ADC/EIC and/or portfolio manager of the decision by forwarding updated CAIS comments and, if warranted, advises of any concerns.
19. Sends the bank the decision letter and a Customer Satisfaction Survey and notifies any interested parties.

20. If the decision is either a conditional approval or denial, forwards a copy of the confidential memorandum and decision letter to the secretary to the director, Licensing Activities.
21. If either approved or conditionally approved, returns the official file to the appropriate district office.

## **Close Out**

### Licensing Staff

22. Reviews the file for completeness and forwards it to Central Records.
23. Makes appropriate CAIS entries.



## References

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**Changes in Directors and Senior Executive Officers**

Law 12 USC 1831i  
Regulation 12 CFR 5.51

**International Banking Act of 1978**

Law 12 USC 3101

**Qualifications of Directors**

Law 12 USC 72