



Office of the  
Comptroller of the Currency

COMPTROLLER'S LICENSING MANUAL

# NATIONAL BANK DIRECTOR WAIVERS

DECEMBER 2021

# Introduction

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This booklet of the *Comptroller's Licensing Manual* provides guidance concerning the licensing procedures of the Office of the Comptroller of the Currency (OCC) relating to citizenship and residency requirements for a national bank. The requirements referred to in this guidance document reflect provisions in existing statutes and regulations. The relevant statutes and regulations are listed at the end of this booklet or referenced as applicable throughout the document.<sup>1</sup>

This booklet summarizes the OCC's 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),<sup>2</sup> including covered savings associations (CSA), because 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>3</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> This booklet also may include procedures that banks must follow in connection with the filing of applications and notices with the OCC. Such procedures are not substantive rules that establish decision criteria. Rather, they are steps a bank must take to allow the OCC to assess whether a bank has met the substantive requirements for the application or notice in existing statutes and regulations. Consistent with the Administrative Procedure Act, the OCC may issue guidance concerning licensing that contains binding procedural steps a bank must take to allow the OCC to assess a bank's application or notice. See 5 USC 553(b)(A).

<sup>2</sup> A CSA retains its FSA charter and continues to be treated as an FSA for purposes of governance, including incorporation, bylaws, board of directors, shareholders, mutual members, and distribution of dividends. See 12 USC 1464a(d)(1); 12 CFR 101.4(a)(2)(i); OCC Bulletin 2019-31, "Covered Savings Associations Implementation: Covered Savings Associations," and attached "Frequently Asked Questions," question 5; 84 Fed. Reg. 23991 (May 24, 2019).

<sup>3</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 distinguish between them and the bank's board of directors or indicate their advisory status. 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 their term of service.<sup>4</sup> The OCC, however, may waive this requirement for a minority of the total number of directors of any national bank. The OCC grants citizenship waivers on an individual basis, and a waiver is valid until the individual no longer serves on the board or the OCC revokes the waiver.<sup>5</sup> The bank should submit a citizenship waiver request to the OCC before appointing a noncitizen 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 noncitizens, 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 each director's election and during their continuance in office.<sup>6</sup> The OCC has discretion to waive these residency requirements. The OCC may grant a waiver on an individual basis or for any number of director positions. The waiver is valid until the OCC revokes the waiver, or, if granted on an individual basis, the individual no longer serves on the board.<sup>7</sup>

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 or further restructure its board. 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.

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<sup>4</sup> Referto 12 USC 72.

<sup>5</sup> Referto 12 CFR 5.43(c)(2) and 12 CFR 5.43(d).

<sup>6</sup> Referto 12 USC 72.

<sup>7</sup> Referto 12 CFR 5.43(c)(1) and 12 CFR 5.43(d).

The bank may request a multiple residency waiver in which the OCC waives the residency requirement for a majority or all 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 appointments do not result in a greater proportion or number, as applicable, of nonresident directors than noted in the original approval received by the bank.<sup>8</sup> 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 perform background checks for residency waivers.<sup>9</sup> In addition, the OCC may in certain other instances determine that background checks are required for residency waivers.

## Other Considerations

Applicants may contact the OCC to clarify any questions or concerns before filing a waiver request. Requests to waive a portion or all the background investigations in connection with a citizenship or residency waiver request are reviewed on a case-by-case basis.

Citizenship and residency waivers are not mutually exclusive. There are situations when both waivers are required for the same individual to address the applicable legal requirements.

The president of a national bank, or the person performing the functions of the president, regardless of title, is required to be on the bank's board consistent with 12 USC 76.<sup>10</sup> Citizenship and residency waiver requests for the president of a national bank are reviewed on a case-by-case basis, and the OCC considers the impact of granting such a waiver on the safe and sound operation of the bank.

The OCC may revoke a residency or citizenship waiver that it had previously approved. Before revocation, the OCC will provide written notice to the national bank and affected director(s) of its intention to revoke a residency or citizenship waiver and the basis for its intention. The bank and affected director(s) may respond in writing to the OCC within 10 calendar days, unless the OCC determines that a shorter period is appropriate in light of

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<sup>8</sup> If a bank has received a multiple residency waiver for the bank's entire board, individual residency waivers are not required for new nonresident director appointments.

<sup>9</sup> If a bank is required to submit prior notice of changes in directors or senior executive officers pursuant to 12 CFR 5.51, licensing staff typically is able to rely on the background check conducted as part of that process.

<sup>10</sup> Refer to 12 CFR 7.2012.

relevant circumstances. The OCC will consider the written responses of the bank and affected director(s), if any, prior to deciding whether to revoke a residency or citizenship waiver.

A director or national bank, or both, may seek review by appealing the OCC's decision to revoke a residency or citizenship waiver to the Comptroller, or an authorized delegate, within 15 days of the receipt of the OCC's written decision to revoke. The director or national bank, or both, may appeal on the grounds that the reasons for revocation are contrary to fact or arbitrary and capricious. The appellant must submit all documents and written arguments that the appellant wishes to be considered in support of the appeal.

The OCC's decision to revoke a residency or citizenship waiver is effective: (i) If the director or national bank, or both, appeals, upon the director's receipt of the decision of the Comptroller, an authorized delegate, or the appellate official, to uphold the initial decision to revoke the residency or citizenship waiver; or (ii) If neither the director nor national bank appeals, upon the expiration of the period to appeal.

## **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, and how the proposed director will carry out their duties effectively to ensure that the bank is meeting its services, business plan goals, or market services.
- 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.
- provide the number of both U.S. and non-U.S. citizen directors, including the proposed director.
- certify that the filing is authorized and the information in the application has been examined carefully and is true, correct, and complete as of the date of submission.

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 is denied if the OCC discovers material misrepresentations or omissions 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 their 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.
- certify that the filing is authorized and the information in the application has been examined carefully and is true, correct, and complete as of the date of submission.

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 is denied if the OCC discovers material misrepresentations or omissions by the proposed director.

# References

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Law  
Regulation

12 USC 72, 76, and 93a  
12 CFR 5.43 and 7.2012

# Table of Updates Since Publication

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Date of Last Publication: April 2017	
Reason	Affected pages
Revisions made to reflect updates to 12 CFR 5.	Various