Office of the
Comptroller of the Currency

COMPTROLLER'S LICENSING MANUAL

Changes in Directors and Senior Executive Officers

June 2019

Contents

Introduction **1**
Prior Notice Required 1
Waiver of Prior Notice 2
Filing the Notice 3
Streamlined Notices 4
Disclosure Requirements 4
Other Requirements 5
Review and Decision 5
Initial Review 5
90-Day Review 6
Decision 7
Penalties 8
Appeals 8

Appendix A: Standard and Streamlined Notice Requirements **10**

Glossary **11**

References **12**

Table of Updates Since Publication **14**

Introduction

This booklet of the *Comptroller's Licensing Manual* discusses the Office of the Comptroller of the Currency's (OCC) policies and processes regarding notices of changes in directors and senior executive officers pursuant to 12 CFR 5.51. Users of this booklet should refer to the "Background Investigations" booklet of the *Comptroller's Licensing Manual* for more information and procedures relating to background investigations undertaken in the review and evaluation of notices of changes in directors and senior executive officers.

Pursuant to 12 USC 1831i,[1] as implemented by 12 CFR 5.51,[2] certain depository institutions must give prior notice of proposed changes in directors and senior executive officers. Regulatory agencies must complete their review of that notice within a certain time frame. 12 CFR 5.51 applies to both Federal Deposit Insurance Corporation-insured and uninsured national banks, all federal savings associations (FSA), and all federal branches.[3] This booklet refers to insured and uninsured national banks, FSAs, and federal branches collectively as banks. When it is necessary to distinguish among the types of institutions, they are referred to separately.

Separate from its authority under 12 CFR 5.51, the OCC generally requires notice under additional circumstances, such as de novo banks, change in control, or conversions to a federal charter. For more information regarding prior notice requirements under these circumstances, please consult the "Charters," "Change in Bank Control," and "Conversions to Federal Charter" booklets of the *Comptroller's Licensing Manual*.

Prior Notice Required

A bank is required to file an "Interagency Notice of Change in Director or Senior Executive Officer" at least 90 days before the proposed director or senior executive officer's directorship, employment, or change in responsibilities, when one of the following circumstances exists:

- The bank is in troubled condition.
- The bank is not in compliance with minimum capital requirements as prescribed in 12 CFR 3.
- The OCC determines, in writing, in connection with the review by the agency of a plan required under section 38 of the Federal Deposit Insurance Act,[4] or otherwise, that such prior notice is appropriate.

---

[1] Refer to 12 USC 1831i, "Agency Disapproval of Directors and Senior Executive Officers of Insured Depository Institutions or Depository Institution Holding Companies; Prior Notice Required."

[2] Refer to 12 CFR 5.51, "Changes in Directors and Senior Executive Officers of a National Bank or Federal Savings Association."

[3] Refer to 12 CFR 5.51(c)(3), which provides that the term "national bank" includes a federal branch for purposes of 12 CFR 5.51.

[4] Refer to 12 USC 1831o, "Prompt Corrective Action."

A bank is in troubled condition when it

- has a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System (CAMELS);[5]
- is subject to a cease-and-desist order, consent order, or formal written agreement, unless otherwise informed in writing by the OCC; or
- is informed in writing by the OCC that, based on information pertaining to the bank, the bank has been designated in troubled condition for purposes of 12 CFR 5.51.

Waiver of Prior Notice

The OCC may waive prior notice at its discretion, provided certain criteria are met,[6] but may not waive the required filing of the notice. The bank must submit its request for a waiver of prior notice in writing, and the request must explain the bank's need for the waiver.

The OCC may waive the prior notice requirement under any of the following circumstances:

- Delay could adversely affect the safety and soundness of the bank.
- Delay would not be in the public interest.
- Other extraordinary circumstances exist.

If a technically complete notice is not filed within the time frame specified in the waiver, the proposed individual must immediately resign his or her position.[7]

When a new director not proposed by management is elected at a shareholders' meeting, 12 CFR 5.51(e)(6)(ii), "Automatic Waiver," provides an automatic waiver of the prior notice requirement. The bank must, however, file a completed notice with the appropriate OCC supervisory office no later than seven days after the election.

A proposed director or senior executive officer who receives a waiver and for whom the bank files a technically complete notice in a timely manner may serve in the interim until

- the OCC notifies the bank of its intent not to disapprove the notice;
- the review period for a technically complete notice lapses without any notification from the OCC; or
- the OCC provides a notice of disapproval.

---

[5] A bank's composite rating under the Uniform Financial Institutions Rating System, or CAMELS, integrates ratings from six component areas: capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk. Evaluations of the component areas take into consideration the bank's size and sophistication, the nature and complexity of its activities, and its risk profile. Refer to the "Bank Supervision Process" booklet of the *Comptroller's Handbook.*

[6] Refer to 12 CFR 5.51(e)(6)(i), "Waiver Request."

[7] Ibid.

If the OCC notifies the bank of its intent not to disapprove, or if the review period lapses, the director or senior executive officer may then serve on a permanent basis. If the OCC provides a notice of disapproval, the individual must immediately resign from the position upon receipt of the notice of disapproval.

Filing the Notice

The bank and each proposed director or senior executive officer are responsible for understanding the requirements and for the accuracy of the statements in the notice. Unless the bank qualifies for a streamlined notice,[8] the notice must include the following, at a minimum, to be deemed technically complete:

- "Interagency Notice of Change in Director or Senior Executive Officer"
  - An authorized bank representative must sign the certification.
  - If the notice is for an individual to assume the position of president of a national bank, the notice must also indicate that the individual will assume the position of director, unless the individual is already a director of the national bank.[9]
  - If the notice is for an individual to assume the position of president of an FSA and the association's bylaws require the president to serve as director, the notice must also indicate that the individual will assume the position of director, unless the individual is already a director of the FSA.
- "Interagency Biographical and Financial Report"
- Employment contracts or compensation arrangements[10]
- Fingerprint checks
  - The proposed director or senior executive officer must be fingerprinted at an authorized site. The OCC uses an electronic fingerprinting service, Fieldprint, to fingerprint filers residing in the United States, including Puerto Rico and the U.S. Virgin Islands. Filers not residing in the United States should contact the OCC's Licensing Division for information on the fingerprinting process. Fingerprints are not required if the proposed director or senior executive officer submitted fingerprints as part of a previous notice filed with the OCC within the three years immediately preceding the initial submission of the notice under review.

[8] Refer to the "Streamlined Notices" section of this booklet for more information. Also refer to appendix A of this booklet for documents that must be included in standard (i.e., non-streamlined) and streamlined notices.

[9] Refer to 12 USC 76, "President of Bank as Member of Board; Chairman of Board," which requires the president of a national bank to also be a director. There is no similar requirement for FSAs, but an FSA's bylaws may require the president to serve as director.

[10] Banks proposing to enter into an employment contract or other written agreement regarding compensation with a prospective director or senior executive officer may be subject to additional requirements under 12 CFR 359, "Golden Parachute and Indemnification Payments." Submitting an employment agreement or contract with the notice required under 12 CFR 5.51 does not fulfill a bank's obligations under 12 CFR 359. FSAs must comply with 12 CFR 163.39, "Employment Contracts," when entering into an employment contract.

- "IRS Tax Check Waiver"
  - The OCC official delegated to receive the information from the Internal Revenue Service must be entered on the first page. The OCC supervisory office provides the name of the delegated OCC official.
  - The proposed director or senior executive officer and his or her spouse, if applicable, must sign and hand-date the second page. The Internal Revenue Service does not accept typed dates.
- "Authorization for Release of Information" (consent for background investigation)

Streamlined Notices

An extensive investigation may be unnecessary if information about the proposed director or senior executive officer is already known to the OCC. Under the following circumstances the OCC may permit the use of streamlined notices:

- The proposed director or senior executive officer is employed in, or is an executive officer (as defined in 12 CFR 215)[11] of, the bank filing the notice.
- The proposed director or senior executive officer is employed in, or is a director of, an affiliated, federally regulated bank or parent holding company.
- A 12 CFR 5.51 notice was filed on the proposed director or senior executive officer within the past three years and was not previously disapproved.

Before filing a streamlined notice, the bank should contact its OCC supervisory office to determine whether the proposed director or senior executive officer qualifies for the streamlined procedure. After consideration of all relevant facts and circumstances, the OCC will determine whether it will permit use of a streamlined notice. If the bank submits a streamlined notice but the proposed director or senior executive officer does not meet the guidelines for a streamlined notice or the OCC otherwise determines it will not permit streamlined processing, the OCC will notify the bank in writing.

Disclosure Requirements

Directors are elected by an institution's shareholders or members, who often cast votes by proxies. Banks provide shareholders and members with proxy materials that discuss the matters for voting. For banks subject to OCC proxy rules,[12] the OCC's disapproval authority is a material fact that should be disclosed in proxy materials provided for the bank's annual meeting. Banks subject to 12 CFR 5.51 should include the following disclosure in their proxy materials:

> Federal law requires that the bank furnish the Office of the Comptroller of the Currency (OCC) up to 90 days' prior notice of the proposed addition or replacement of individuals

[11] Refer to 12 CFR 215, "Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks (Regulation O)."

[12] Refer to 12 CFR 11, "Securities Exchange Act Disclosure Rules" (for national banks and FSAs), and 12 CFR 169, "Proxies" (for FSAs).

as members of the bank's board of directors. During the 90 days following receipt by the OCC of a technically complete notice, the OCC may disapprove the director(s). Accordingly, the director's ability to serve is contingent on whether the OCC decides to disapprove the addition or replacement of said director(s). If the OCC disapproves the proposed addition or replacement, the bank may allow shareholders the opportunity to vote on the election of an alternate director(s).

Other factors may require disclosure depending on the specifics of each case.

Other Requirements

Filing a notice pursuant to 12 CFR 5.51 or other requirements listed in the "Prior Notice Required" section of this booklet does not absolve banks of their responsibility to file other notices and applications required because of changes in directors or senior executive officers. Banks may need to consider topics outside the scope of this booklet, including

- whether a golden parachute application is required for a proposed employment contract.[13]
- compliance with 12 CFR 163.39 for FSA employment contracts.
- citizenship and residency requirements for national bank directors.[14]
- board composition restrictions for FSAs.[15]
- management interlocks.[16]
- number of directors versus maximum allowed per statute or regulation.[17]

Review and Decision

Initial Review

The OCC must determine whether the bank's notice is technically complete. The OCC generally makes its determination within five calendar days of receiving the notice, but failure to make this determination within five calendar days does not automatically result in the notice being deemed technically complete.

[13] Refer to 12 CFR 359.

[14] Refer to 12 USC 72, "Qualifications" (national banks), and the "National Bank Director Waivers" booklet of the *Comptroller's Licensing Manual* (national banks).

[15] Refer to 12 CFR 163.33, "Directors, Officers, and Employees" (FSAs).

[16] Refer to 12 USC 3201–3208, "Depository Institution Management Interlocks"; 12 CFR 26, "Management Interlocks"; and the "Management Interlocks" booklet of the *Comptroller's Licensing Manual.*

[17] Refer to 12 USC 71a, "Number of Directors" (national banks); 12 CFR 5.21, "Federal Mutual Savings Association Charter and Bylaws" (mutual FSAs); and 12 CFR 5.22, "Federal Stock Savings Association Charter and Bylaws" (stock FSAs).

The OCC notifies the bank in writing whether the notice is deemed technically complete. If the notice is deemed not technically complete, the OCC notifies the bank in writing with a request for additional information. The notice is considered technically complete when it includes all information required by the regulation and any additional information that the OCC requests.

90-Day Review

The OCC has up to 90 calendar days from receipt of a technically complete notice to perform its full review. In computing the 90-day review period, "day 1" is the day after the OCC receives a technically complete notice, even if that day is a Saturday, Sunday, or federal holiday. If the 90-day review period ends (i.e., "day 90") on a Saturday, Sunday, or federal holiday, the review period ends the next day that is not a Saturday, Sunday, or federal holiday.

Example 1: Notice Technically Complete as Originally Submitted

The OCC receives the notice from the bank on February 1, 20XX. The OCC performs its initial review on February 4, 20XX, and determines that the notice is technically complete. The OCC notifies the bank that the notice is technically complete on February 4, 20XX. In calculating the 90-day review period, February 2, 20XX, would be considered "day 1."

Example 2: Additional Information Needed

The OCC receives the notice from the bank on February 1, 20XX. The OCC performs its initial review on February 4, 20XX, and determines that the notice is not technically complete. The OCC notifies the bank that the notice is not technically complete on February 4, 20XX. The bank submits the additional information required on February 10, 20XX. The OCC reviews this information on February 14, 20XX, and determines that the notice is technically complete. The OCC also notifies the bank on February 14, 20XX, that the notice is technically complete. In calculating the 90-day review period, February 11, 20XX, would be considered "day 1."

The proposed director or senior executive officer may begin serving upon notification of the OCC's intent not to disapprove or after expiration of the OCC's review period, unless the OCC has notified the bank of disapproval.

In certain instances, the OCC and the bank may agree to enter into a tolling agreement, which suspends the 90-day review period.

Background Investigations

The OCC performs background checks on proposed directors and senior executive officers subject to 12 CFR 5.51. Banks remain responsible for conducting their own due diligence and background investigations on proposed directors or senior executive officers.

The OCC may waive standard background checks if the investigation would be redundant or otherwise unnecessary. The OCC may require additional background checks under some

circumstances. Standard and discretionary background checks and procedures are detailed in the "Background Investigations" booklet of the *Comptroller's Licensing Manual*.

Standards of Review

The OCC may disapprove an individual proposed as a director or senior executive officer if the OCC determines on the basis of the individual's competence, experience, character, or integrity that it would not be in the best interests of the bank's depositors or the public to permit the individual to be employed by or associated with the bank. When a bank proposes to employ a director or senior executive officer with previous experience in a failed or troubled institution, the OCC will consider the nature and demands of the position for which the director or senior executive officer is proposed, and the proposed director's or senior executive officer's level of competence and experience in dealing with a failed or troubled institution.

The OCC considers all information deemed necessary to evaluate a proposed director or senior executive officer under the review standards, and may request additional information even after receiving a technically complete notice. Requests for additional information should be in writing and specify when the additional information must be provided. If the bank cannot provide the requested information by the date the OCC specifies, the bank may request in writing that the OCC suspend processing of the notice.[18] The OCC will advise the bank in writing whether the suspension is granted and, if granted, the length of the suspension. If the bank fails to provide the information within the time specified by the OCC, the OCC may deem the notice abandoned under 12 CFR 5.13(c) or may review the notice based on the information provided.[19]

OCC staff may opt to interview the proposed director or senior executive officer. Such interviews may be in person or by telephone or other reasonable method.

Decision

The OCC may either disapprove or indicate its intent not to disapprove a notice. The OCC may impose enforceable conditions in connection with its intention not to disapprove. Any such conditions would be "conditions imposed in writing" within the meaning of 12 USC 1818(b).[20]

The OCC informs the bank and the proposed director or senior executive officer by letter of disapproval or intent not to disapprove. The OCC may disapprove a notice at any time within the 90-day review period and renders a decision as soon as practicable. If the decision is to disapprove the notice, the OCC's correspondence to the bank should contain the statutory basis for denial (competence, experience, character, or integrity) and explain the OCC's decision. If the disapproval is based on background information received from an outside source, the letter may describe the nature of the information, but it should not identify the information source.

---

[18] Refer to 12 CFR 5.51(e)(3)(ii), "Requests for Additional Information."

[19] Ibid.

[20] Refer to 12 USC 1818(b), "Cease-and-Desist Proceedings."

Examples of grounds for disapproval of a notice include the following:

- Mismanagement of a financial institution when the proposed director or senior executive officer had control, was a director or senior executive officer, or was in another decision-making capacity.
- Significant and improper benefit from insider transactions at financial institutions with which the official was associated previously.
- Conviction of a crime.[21]
- Discipline, censure, or denial of the right to do business or practice a profession by a state or federal regulatory agency or license-granting body.
- Submission of an inaccurate or misleading notice.
- Insufficient experience in a comparable or related position to perform adequately the duties and responsibilities of the proposed position.

Penalties

A bank failing to provide the required prior notice before the director or senior executive officer assumes the position, or failing to obtain a waiver of the prior notice requirement, may be subject to civil money penalties. Civil money penalties can be imposed on the bank for up to $1 million for each day the notice is not provided.

The OCC can take supervisory action against a bank or proposed director or senior executive officer who provides false or incomplete information to the OCC. Deliberate misrepresentation or omission of a material fact constitutes fraud, is grounds for disapproval, and may subject the bank and the proposed director or senior executive officer to criminal sanctions provided by 18 USC 1001.[22] In addition, the OCC may assess substantial civil money penalties for willful violations. Generally, previously issued decisions of intent not to disapprove are revoked if the OCC becomes aware that the proposed director or senior executive officer engaged in material violations of law, misrepresentations, or any fraudulent activity that was not disclosed in the notice; if the proposed director or senior executive officer has already assumed the position, the OCC may initiate removal proceedings.[23]

Appeals

Within 15 days of receipt of a notice of disapproval, the bank or the disapproved proposed director or senior executive officer (or both) may appeal on the grounds that the reasons for

[21] An individual who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering, or who has entered into a pretrial diversion or similar program in connection with prosecution of such offense(s), must obtain approval from the Federal Deposit Insurance Corporation before he or she may own, control, participate in the affairs of, or become an institution-affiliated party of a depository institution. Refer to 12 USC 1829, "Penalty for Unauthorized Participation by Convicted Individual."

[22] Refer to 18 USC 1001, "Statements or Entries Generally."

[23] Refer to OCC Bulletin 2018-41, "OCC Enforcement Action Policies and Procedures Manuals." and its attachment, PPM 5000-7, "Civil Money Penalties."

disapproval are contrary to fact or insufficient to justify disapproval. The appellant should submit supporting documentation and written arguments that the appellant wishes to be considered in support of the appeal.

The Comptroller, or an authorized designee not previously involved in the disapproval, evaluates and decides the appeal, considering all information submitted with the original notice, the information provided to the OCC official who made the initial decision, and information submitted by the appellant. The bank or proposed director or senior executive officer shall file the appeal with the bank's supervisory office, which forwards the appeal to the Comptroller or an authorized designee. The appeal is granted and the disapproval overturned if the reasons given for the disapproval are contrary to fact or insufficient to justify the disapproval. The OCC normally decides appeals within 45 days.

Upon completing the review, the Comptroller, authorized designee, or appellate official notifies the appellant in writing of the decision. If the original decision is overturned, the proposed director or senior executive officer may assume the position in the bank.

Appendix A: Standard and Streamlined Notice Requirements

The following table outlines the documents that must be included in standard (i.e., non-streamlined) and streamlined notices.

	Non-streamlined notice	**Streamlined notice**
“Interagency Notice of Change in Director or Senior Executive Officer”	Yes	Yes
“Interagency Biographical and Financial Report”	Yes	Questions 1 and 2 of the biographical portion only and certification
Employment contracts or compensation arrangements	Yes	Yes
Fingerprint check	Yes	No
“IRS Tax Check Waiver”	Yes	No
“Authorization for Release of Information”	Yes	No
Cover letter containing information that supports a streamlined notice	Not applicable	Yes

Glossary

Calendar days: All seven days of the week, including legal holidays.

Director: A person who serves on the board of directors of a national bank or FSA, unless he or she is an advisory director who does not have the authority to vote on matters before the board of directors and solely provides general policy advice to the board or any committee. **Note:** A director of a foreign bank that operates a federal branch is not included in this definition.

Senior executive officer: A president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, or any other individual the OCC identifies in writing who exercises significant influence over or participates in major policymaking decisions of the bank without regard to title, salary, or compensation. The term includes employees of entities (such as consulting firms) the bank retains to perform such policymaking functions in lieu of hiring the persons directly and, for a federal branch operated by a foreign bank, the person functioning as the chief managing official.

Technically complete notice: A notice that includes all of the information the OCC requires.

Technically complete notice date: The date when the OCC is in receipt of a technically complete notice.

Troubled condition: A bank when it (1) has a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System (CAMELS);[24] (2) is subject to a cease-and-desist order, a consent order, or a formal written agreement, unless otherwise informed in writing by the OCC; or (3) is informed in writing by the OCC that, based on information pertaining to the bank, the bank has been designated in troubled condition for purposes of 12 CFR 5.51.

[24] Refer to footnote 5.

References

In this section, references apply to both national banks and FSAs unless otherwise noted.

Laws

12 USC 71a, “Number of Directors” (national banks)
12 USC 72, “Qualifications” (national banks)
12 USC 76, “President of Bank as Member of Board; Chairman of Board” (national banks)
12 USC 1818(b), “Cease-and-Desist Proceedings”
12 USC 1829, “Penalty for Unauthorized Participation by Convicted Individual”
12 USC 1831i, “Agency Disapproval of Directors and Senior Executive Officers of Insured Depository Institutions or Depository Institution Holding Companies; Prior Notice Required”
12 USC 1831o, “Prompt Corrective Action”
12 USC 3201–3208, “Depository Institution Management Interlocks”
18 USC 1001, “Statements or Entries Generally”

Regulations

12 CFR 3, “Capital Adequacy Standards”
12 CFR 5.13(c), “Required Information and Abandonment of Filing”
12 CFR 5.21, “Federal Mutual Savings Association Charter and Bylaws” (FSAs)
12 CFR 5.22, “Federal Stock Savings Association Charter and Bylaws” (FSAs)
12 CFR 5.51, “Changes in Directors and Senior Executive Officers of a National Bank or Federal Savings Association”
12 CFR 11, “Securities Exchange Act Disclosure Rules”
12 CFR 26, “Management Interlocks”
12 CFR 163.33, “Directors, Officers, and Employees” (FSAs)
12 CFR 163.39, “Employment Contracts” (FSAs)
12 CFR 169, “Proxies” (FSAs)
12 CFR 215, “Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks (Regulation O)”
12 CFR 359, “Golden Parachute and Indemnification Payments”

Comptroller’s Licensing Manual

“Background Investigations”
“Change in Bank Control”
“Charters”
“Conversions to Federal Charter”
“Management Interlocks”
“National Bank Director Waivers” (national banks)

Comptroller's Handbook

"Bank Supervision Process"

OCC Issuances

OCC Bulletin 2018-41, "OCC Enforcement Action Policies and Procedures Manuals," and its attachment, PPM 5000-7, "Civil Money Penalties"

Table of Updates Since Publication

This table summarizes updates to the booklet since its publication on February 16, 2017.

Date of Last Publication: February 2017	
Reason	**Affected pages**
Updated for the OCC's transition to electronic fingerprinting rather than paper fingerprint cards	3, 10
Updated to reflect the applicability of 12 CFR 11 to both national banks and FSAs as of April 1, 2017	4
Updated reference to "Director Waivers" booklet of the *Comptroller's Licensing Manual* to the "National Bank Director Waivers" booklet. Refer to OCC Bulletin 2017-14, "National Bank Director Waivers: Revised Comptroller's Licensing Manual Booklet" for more information.	5
Added reference	8
Updated "References" section for consistency with the body of the booklet	12–13