

**Proposed Amendments to
209 CMR 48.00: Licensee Record Keeping**

209 CMR 48.00: LICENSEE RECORD KEEPING

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48.01: Applicability and Purpose and Scope

The purpose of 209 CMR 48.00 ~~et seq.~~ is to establish procedures and requirements for record keeping, pursuant to M.G.L. c. 93, §24D; M.G.L. c. 140, § 97; M.G.L. c. 255B, § 3; M.G.L. c. 255C, § 6; M.G.L. c. 255D, § 3; and M.G.L. c. 255E, § 8, applicable to record keeping by Licensees, by persons who are licensed under these chapters. You must comply with 209 CMR 48.00 if you meet the definition of a licensee. ~~St. 1996, c. 118 amended the aforementioned chapters of the General Laws by deleting any provision that books, records and accounts, necessary to determine compliance with laws and regulations, be kept and used within the Commonwealth. Moreover, St. 1996, c. 118 authorized travel outside of the Commonwealth for the purpose of conducting examinations of persons licensed under the aforementioned chapters as well as modern forms of record keeping as described in 209 CMR 48.05.~~

48.02: Definitions

The following words ~~as used in 209 CMR 48.00, unless the context requires otherwise,~~ shall have the following meanings:--

Commissioner means, the Commissioner of Banks.

Commonwealth means the Commonwealth of Massachusetts.

Electronic means relating to technology as having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

Electronic Record means a record created, generated, sent, communicated, received or stored by electronic means.

Examination, means the examination or inspection of a Licensee licensee's books and records as required by applicable statute.

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Licensee, means any person who is registered as a third party loan servicer under the provisions of M.G.L. c. 93, §§ 24 through 28 or any person who is licensed; as: a debt collector under the provisions of~~as defined in~~ M.G.L. c. 93, §§ 24~~D~~ through 28; a small loan company under the provisions of M.G.L. c. 140, §§ 96 through 114A; a check seller under the provisions of M.G.L. c. 167F, § 4; a foreign transmittal agency under the provisions of M.G.L. c. 169; a check casher under the provisions of M.G.L. c. 169A; a motor vehicle sales finance company under the provisions of~~as defined in~~ M.G.L. c. 255B; an insurance premium finance agency under the provisions of~~as defined in~~ M.G.L. c. 255C; a retail installment sales finance company under the provisions of~~as defined in~~ M.G.L. c. 255D; or~~and~~ a mortgage lender or a mortgage broker under the provisions of~~as defined in~~ M.G.L. c. 255E.

NMLS means the Nationwide Multi-State Licensing System & Registry, a multistate licensing system owned and operated by the State Regulatory Registry LLC (SRR), a wholly owned subsidiary of the Conference of State Bank Supervisors (CSBS), an association of state financial services regulators.

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Person, Person means a natural person or an organization including a corporation, a limited liability company or partnership, partnership, association, cooperative or trust.

You means a licensee.

48.03: How Long to ~~Books~~Keep Books and Records

You must keep all books, records, and accounts as required by State and federal law and regulation. If you are licensed as a debt collector or registered as a third party loan servicer, you must maintain all books, records, and accounts for a minimum of two years. If you are licensed as a small loan company, check seller, foreign transmittal agency, check casher, motor vehicle sales finance company, insurance premium finance agency, retail installment sales finance company, mortgage lender, mortgage broker, mortgage company, you must maintain all books, records, and accounts for a minimum of three years. This includes, but is not limited to, a complete customer account history for each transaction including but not limited to terms and conditions of the agreement, payment dates, maturity or final payment due date, refunds, refinancing date, collection or legal action taken.

~~(1) Each Licensee shall keep and use its books, records, and accounts in a manner which will allow the Commissioner to determine whether the Licensee is complying with the provisions of M.G.L. c. 93, §§ 24 through 28; M.G.L. c. 140, §§ 96 through 114A, M.G.L. c. 255B, M.G.L. c. 255C, M.G.L. c. 255D, or M.G.L. c. 255E and all other provisions applicable to the conduct of the licensed business.~~

~~(2) A Licensee shall maintain all books, records and accounts required by its governing statute. These shall include a complete customer account history for each transaction~~

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~~including but not limited to terms and conditions of the agreement, payment dates, maturity or final payment due date, refunds, refinancing date, collection or legal action taken.~~

~~48.04: Location of Books and Records~~

~~(1) You may keep books, records, and accounts at a location in the Commonwealth. You must designate the location in NMLS, as well as the name of the individual responsible for providing access, and provide immediate access to the Commissioner or the Commissioner's designees in order to conduct an examination.~~

~~(2) You may also keep books, records, and accounts at a location outside of the Commonwealth. You must designate the location in NMLS, as well as the name of the individual responsible for providing access. If you keep books, records, and accounts out of state, you must:~~

~~(a) provide access, within 72 hours of an official request, to any books, records, and accounts at a suitable location in the Commonwealth, as determined by the Commissioner of the Commissioner's designee, for the purpose of an examination; and~~

~~(b) for on-site examinations, provide immediate access to books, records, and accounts to the Commissioner or the Commissioner's designees in order to conduct the examination. You must also separately reimburse the Commissioner for appropriate and necessary expenses for an examiner, or examiners, to conduct an examination at a location outside of the Commonwealth.~~

~~Each Licensee shall keep and use its books, records, and accounts within the Commonwealth, except, however, that with the prior approval by the Commissioner of a written plan, a Licensee may keep such books, records, and accounts at a location, or locations, outside of the Commonwealth. Such written plan shall contain:~~

~~(1) an agreement to provide access, within 72 hours of an official request, to any requested books, records, and accounts to a suitable and mutually agreed upon location within the Commonwealth for the purpose of examination, or~~

~~(2) an agreement to separately reimburse the Commissioner for appropriate and necessary expenses for an examiner, or examiners, to conduct an examination at a licensee's location outside of the Commonwealth. Such reimbursement will be only for travel expenses above those normally necessary to conduct an examination within the Commonwealth.~~

48.05: Format of Books and Records

~~(1) You must keep books, and records, and accounts in a manner that will allow the Commissioner to determine if you are in compliance with applicable state and federal laws and regulations.~~

~~(2) Each Licensee may You may store its books, and records, and accounts as electronic records. You must make all electronic records record, copy or reproduce its books, records, and accounts by photographic, photostatic, microfilm, microcard, miniature photographic, electronic, including, but not limited to, optical imaging, or other process which accurately reproduces or forms a durable medium for reproducing the original record or document or in any other form or manner, provided, however, that such method used to record, copy or reproduce original records or documents shall be approved by the Commissioner in a written plan for examination. A licensee's records shall be accessible for examination through equipment available to the Commissioner or the Commissioner's his examiners designees. If equipment required to If there is no equipment available to conduct the examination is lacking, you must the Licensee shall at its own expense procure and make available such equipment, at own your own expense. Prior to maintaining your books, records, and accounts electronically, you must indicate in NMLS how your books, records, and accounts will be stored, including the name of the system utilized, and how such electronic records will be made accessible to the Commissioner or the Commissioner's designees for the purpose of an examination.~~

~~(3) You must secure all books, records, and accounts against unauthorized access and damage.~~

~~The written plan pursuant to 209 CMR 48.05 may be separate or included as a part of the plan under 209 CMR 48.04.~~

48.06: Failure to Comply Review

~~(1) If you do not comply with 209 CMR 48.00 Any written plan for examination approved by the Commissioner under 209 CMR 48.00 et seq. shall remain in effect indefinitely, but shall be subject to periodic review by the Commissioner. A Licensee may amend its written plan from time to time and such amendment shall not be effective until approved by the Commissioner. The Commissioner may modify, curtail, rescind, or otherwise limit a Licensee's authority to keep its books, records, and accounts at a location outside of the Commonwealth or to store books, records, and accounts in electronic form pursuant to 209 CMR 48.04, and also to record, copy or reproduce its books, records and accounts under any method authorized under 209 CMR 48.05.~~

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(2) ~~If you do not comply with Failure of a Licensee to keep its books and records in accordance with 209 CMR 48.00, et seq. the Commissioner may take enforcement action against you, including but not limited to, the suspension or revocation of your license under applicable authority may result in suspension or revocation of the license under the authority contained in the specific statute applicable to the Licensee.~~

REGULATORY AUTHORITY:

209 CMR 48.00: M.G.L. c. 93, § 24D; M.G.L. c. 140, § 97; [c. 167F, § 4](#); [c. 169, § 10](#); [c. 169A, § 11](#); c. 255B, § 3; c. 255C, § 6; c. 255D, § 3; c. 255E, § 8; and c. 30A, § 8.