

209 CMR 45.00 is hereby amended by striking 209 CMR 45.00 and inserting in place thereof the following:

209 CMR 45.00: THE LICENSING AND REGULATION OF MONEY SERVICES BUSINESSES

Section

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45.01: Purpose and Scope

The purpose of 209 CMR 45.00 is to establish procedures and requirements for the licensing, regulation and supervision of licensees under the provisions of M.G.L. c. 167F, § 4, M.G.L. c. 169, and M.G.L. c. 169A.

Nothing contained in 209 CMR 45.00 shall limit the ability of the Commissioner to consider other information in determining whether or not to approve an application, or to require additional information from applicants and licensees for the enforcement of M.G.L. c. 167F, § 4, M.G.L. c. 169, and M.G.L. c. 169A.

45.02: Definitions

As used in 209 CMR 45.00 the following words shall, unless the context otherwise requires, have the following meanings:-

Applicant, any person submitting an application for a license under the provisions of M.G.L. c. 167F, § 4, M.G.L. c. 169, or M.G.L. c. 169A. The term shall include partners or members, if the applicant is a partnership or association, and officers, directors and principal employees, if the applicant is a corporation.

Authorized Agent, a person designated by a check seller or licensed foreign transmittal agency to engage in the licensed business on the licensee's behalf at a licensed location in the Commonwealth.

Check Cashier, a person engaged in cashing checks, drafts or money orders for a consideration in excess of \$ 1.00 per item.

Check Seller, a person engaged in the business of selling, issuing or registering checks or money orders.

Clear and Conspicuous, shall mean that the material representation being disclosed is of such size, color or contrast and is presented as to be readily noticed and understood by a reasonable person to whom it is being disclosed.

Commissioner, the Commissioner of Banks.

Division, the Division of Banks.

Foreign Transmittal Agency, a person who engages or is financially interested in the business of receiving deposits of money for the purpose of transmitting the same or equivalents thereof to foreign countries.

Licensee, any person who is licensed as a: check seller under M.G.L. c. 167F, § 4; foreign transmittal agency under M.G.L. c. 169; or a check cashier under M.G.L. c. 169A.

Mobile unit, a motor vehicle or other movable means from which the business of a licensed check cashier is to be conducted.

Net Worth, the applicant's or licensee's total assets less total liabilities, omitting the following assets:

- (a) that portion of an applicant's assets pledged to secure obligations of any person or entity other than that of the applicant;
- (b) any assets due from officers or stockholders of the applicant or persons in which the applicant's officers or stockholders have an interest;
- (c) an amount in excess of the lower of the cost or fair market value of real property;
- (d) an investment shown on the balance sheet in joint ventures, subsidiaries, or affiliates, which is greater than the fair market value of the assets;
- (e) goodwill or value placed on insurance renewals or other similar intangible value;
- (f) organization costs;
- (g) any other intangible asset, as may be determined by the Commissioner.

NMLS, 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.

Person, a natural person or an organization including a corporation, partnership, association, cooperative or trust.

45.03: Procedures to Apply for or Review a License

(1) Applications. Each applicant for a license shall submit an application for licensure through the NMLS, containing such information as the Commissioner may from time to time require.

(2) Requirements. An applicant shall be required to submit detailed information supporting the following general requirements:

- (a) Financial responsibility.

1. An applicant for a check seller or foreign transmittal agency license shall demonstrate and provide the Commissioner with evidence of its financial responsibility and submit a sworn statement which states that the applicant meets the foregoing requirement.

2. An applicant for a check casher license shall demonstrate and provide the Commissioner with evidence of its financial responsibility and submit a sworn statement which states that the applicant meets the following requirements. An applicant for a check casher license shall demonstrate and maintain a net worth of not less than \$25,000 and maintain adequate liquidity for the nature and volume of the applicant's business.

(b) Financial statements. An applicant shall submit financial statements prepared in accordance with U.S. generally accepted accounting principles, in U.S. dollars, meeting the following minimum requirements:

1. Contents. The financial statements required by 209 CMR 45.00 shall include, but are not limited to, a Balance Sheet, Statement of Income, and Statement of Cash Flows, and all relevant notes thereto. An applicant shall also submit financial statements for the preceding fiscal year and such other financial information as the Commissioner may require. If an applicant's audited or reviewed financial statements are consolidated, the applicant shall include a separate breakdown of all consolidated entities. Consolidated financial statements shall include a separate, stand-alone breakdown of the applicant with a separate balance sheet, income statement, and statement of cash flows.

2. Initial Application. An applicant shall submit audited or reviewed financial statements for its preceding fiscal year or such other financial information as the Commissioner may require.

3. Renewal Applications. An applicant for a license renewal shall submit financial statements audited by an independent certified public accountant within 90 days of the close of its most recent fiscal year. If audited financial statements were not prepared, an applicant shall submit financial statements reviewed by an independent certified public accountant within 90 days of the close of its most recent fiscal year.

4. Scope. Audited financial statements shall be prepared in accordance with generally accepted auditing standards and reviewed financial statements shall be prepared in accordance with Statements of Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

(c) Character and Fitness. An applicant shall submit information demonstrating that the applicant possesses the character, reputation, integrity, and fitness to engage in the licensed business in an honest, fair, sound and efficient manner.

(d) Public Need. An applicant for a check casher license shall demonstrate to the Commissioner's satisfaction that the public need for the establishment of a check cashing business in the area specified in the application is consistent with the provisions of M.G.L. c. 169A, § 3.

(e) Business Experience. An applicant shall demonstrate to the Commissioner's satisfaction that the applicant, and its applicable officers and employees, possess the necessary educational and business experience to engage in the licensed business.

(f) Other Information. An applicant shall submit such other information the Commissioner may deem necessary to properly evaluate an application.

(3) Bond.

(a) Each applicant for a foreign transmittal agency license shall execute and deliver a bond in such amounts as determined by the Commissioner under M.G.L. c. 169, § 2. Such bond shall be examined and approved by the Commissioner in accordance with M.G.L. c. 169, § 3 prior to the issuance of any license to engage in the business of a foreign transmittal agency.

(b) Each applicant for a check seller license shall deposit and maintain a surety bond, cash or securities, in the sum of \$100,000. Such bond or deposit shall be held as security for the payment of checks or money orders sold by such person or such person's agents, in accordance with M.G.L. c. 167F, § 4.

45.04: Additional Application Procedures for Check Casher Mobile Units

(1) If the licensed check casher business is to be conducted from a mobile unit, the applicant must provide the following information, in addition to the information required under 209 CMR 45.03:

(a) the Massachusetts motor vehicle registration number or other satisfactory identification of the mobile unit;

(b) a description of the area in which the applicant seeks to utilize the mobile unit;

(c) information demonstrating the adequacy of the vehicle for the transaction of cashing a check, draft or money order including, but not limited to, provisions relative to security; and

(d) other information which the Commissioner may require.

(2) A licensed check casher shall immediately notify the Commissioner of any change in the mobile unit used for the cashing of a check, draft or money order and include the information required in 209 CMR 45.04(1) with said notice.

45.05: Licensing Standards

(1) A license to engage in the business of check selling, check cashing or foreign transmittal will be issued to an applicant if the Commissioner, upon review of the application and all other relevant information, determines that the applicant has met all of the requirements of 209 CMR 45.03, M.G.L. c. 167F, § 4, M.G.L. c. 169, or M.G.L. c. 169A, as applicable.

(2) (a) The Commissioner may deny an application if the Commissioner upon review of the application and other relevant information, determines that the applicant has not satisfied the requirements of M.G.L. c. 167F, § 4, M.G.L. c. 169, or M.G.L. c. 169A, or 209 CMR 45.03.

(b) The Commissioner may also deny such an application or the renewal thereof if the applicant:

1. has violated any provisions of M.G.L. c. 167F, § 4, M.G.L. c. 169, or M.G.L. c. 169A or 209 CMR 45.00;

2. has violated or engaged in a pattern of violations of any state or federal law applicable to the conduct of the licensed business, or any rule, regulation or administrative order or directive promulgated thereunder;

3. has conducted or will conduct its business in an unsafe or unsound manner;

4. has engaged in conduct which has resulted in the suspension or revocation of its license to engage in the business of a check seller, foreign transmittal agency, check casher or any other business by any licensing authority of any state;

5. has made a false statement of a material fact in the application for a license;

6. has an adverse credit history as determined by the Commissioner in a current credit report; or

7. has ever been (i) convicted of or pleaded nolo contendere to a felony, or (ii) committed an act involving fraud or deceit, which act is substantially related to the qualifications, functions or duties of a person engaged in the licensed business.

(3) The Commissioner may deny an application for a check casher license under M.G.L. c. 169A if a check cashing store located at the address at which the applicant intends to operate its business has had its check casher license revoked within six months of the date of the new application.

(4) An applicant for a check seller license or for a foreign transmittal agency license whose application has been denied may appeal the Commissioner's action under M.G.L. c. 30A.

(5) An applicant for a check casher license whose application has been denied under 209 CMR 45.05(2) may appeal the Commissioner's action to the superior court sitting in the county in which the business of the applicant is located pursuant to M.G.L. c. 169A, § 4.

45.06: Schedule of Fees for Check Cashers

(1) Licensed check cashers shall complete and maintain a Check Cashing Fee Schedule in a format substantially similar to the model form set out in Appendix A:

(a) Licensed check cashers may, at their discretion, employ any reasonable format and graphic design or add or delete columns as necessary in the model form Check Cashing Fee Schedule set forth in Appendix A;

(b) The Check Cashing Fee Schedule must clearly convey the required fee information.

(2) Licensed check cashers shall post the current schedule of fees and charges in each of their places of business.

(a) All such postings shall be clear and conspicuous; and

(b) All such postings shall be within the immediate area in which the check, draft or money order will be cashed.

(3) Licensed check cashers shall provide in writing, without charge, a copy or copies of the schedule of fees and charges upon the request of any person and such person shall be able to retain such copy or copies.

(4) Licensed check cashers are encouraged to make their best efforts to communicate the fees and charges which may be assessed for the cashing of a check, draft or money order in languages other than English which meet the needs of non-English speaking customers in the service area of the licensee. Such efforts which comply with 209 CMR 45.00 may include but shall not be limited to:

(a) using multi-lingual staff; and

(b) providing copies of its fee schedule in languages other than English.

45.07: Fee Disclosure Requirements for Foreign Transmittal Agencies

Compliance with the pre-payment disclosure requirements set forth in 12 CFR 1005.31 shall constitute compliance with 209 CMR 45.07 regarding pre-payment disclosure requirements applicable to licensed foreign transmittal agencies.

45.08: Transaction Receipts for Check Cashers

A licensed check casher shall provide each person cashing a check, draft or money order with a receipt of each transaction stating thereon:

- (1) the name and license type and number of the licensee;
- (2) the amount of each check, draft or money order to be cashed, which may be aggregated if the fee for each transaction is the same;
- (3) the fee charged for each check, draft or money order;
- (4) the total amount received by the customer for each check, draft or money order cashed;
- (5) the date of the transaction; and
- (6) the following statement:

If you have experienced any problems or difficulties with your transaction(s) please contact [Licensee's complaint contact info]. If they are unable to assist you or you would like to file a consumer complaint against the licensee please contact the Massachusetts Division of Banks Consumer Assistance Unit at 617-956 1500 ext 501, visit the Division of Banks website at www.mass.gov/dob or contact the Division by mail at:

Consumer Assistance Unit
Massachusetts Division of Banks
1000 Washington Street, 10th floor
Boston, MA 02118-2218

45.09: Transaction Receipts for Foreign Transmittal Agencies

Compliance with the receipt disclosure requirements set forth in 12 CFR 1005.31 shall constitute compliance with 209 CMR 45.09 regarding transaction receipts applicable to licensed foreign transmittal agencies.

45.10: Office Locations

- (1) Office Locations. A licensee shall obtain a separate license in order to conduct business at another location; however, this provision shall not apply to check sellers.
- (2) Security. A licensee shall maintain adequate security for the protection of its customers' funds and for the safety of its customers and employees.
- (3) Relocations and Closings. A licensee shall obtain the Commissioner's written prior approval of any change in or closing of a Massachusetts location; however, this provision shall not apply to check sellers. Written applications to the Commissioner shall be made prior to any such change or closing and shall contain such other information as the Commissioner may require.

45.11: Books and Records

(1) Each licensee shall comply with 209 CMR 48.00 and 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. 167F § 4; M.G.L. c. 169; or M.G.L. c. 169A, as applicable, 209 CMR 45.00, and applicable state and federal laws and regulations.

(2) Each licensee shall maintain quarterly financial statements that include a Statement of Condition (Balance Sheet) and a year-to-date Income Statement that are prepared in accordance with Generally Accepted Accounting Principles (GAAP); and may be prepared internally or by an independent certified public accountant (CPA).

(3) At a minimum, a licensed check casher shall maintain the following records:

(a) A daily record of all check cashing transactions occurring each day. Such daily record shall be limited to the following, provided a sufficient audit trail is available through records obtainable from the licensee's bank account(s).

1. Amount of the check cashed; and

2. Amount of fee charged for cashing the check.

(b) A daily cash reconciliation shall be maintained summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business. Such reconciliation shall separately reflect cash received from the redemption of returned items, bank cash withdrawals, cash disbursed in cashing of checks, and bank cash deposits;

(c) Copies of any agreements between the licensed check casher and third parties relative to check cashing activities.

(4) At a minimum, a licensed foreign transmittal agency shall maintain the following records:

(a) Bank account statements, including paid checks, charges or other debits, deposit slips and other credits representing the entries reflected on such statements;

(b) A system of books and records that will enable the foreign transmittal agency to prepare an accurate balance sheet and income statement;

(c) Daily work records, including purchase and sales slips or other documentation needed to identify and reconstruct foreign transmittal transactions with customers and foreign banks, including but not limited to documentation evidencing that a transfer was made to the designated recipient in the original transfer amount;

(d) Copies of any agreements between the licensed foreign transmittal agency and third parties relative to foreign transmittal activities.

(5) Every licensee shall preserve its books and records for inspection for a minimum of three years.

(6) In addition to the reports required by law, a licensee shall make such other statements and reports to the Commissioner as he or she may require. The Commissioner may furnish blank forms for all such statements or reports.

45.12: Reports to the Commissioner

(1) Check Seller Annual Statement. On or before January 15, each check seller shall file a sworn statement in such form as the Commissioner shall prescribe, setting forth the names and business addresses of its authorized agents and any other information required by the Commissioner.

(2) Check Seller Notifications. On or before the 15th of April, July and October of each year, each check seller shall notify the Commissioner of any change in the list of agents contained in the Annual Statement referenced in 209 CMR 45.12(1), and shall file the names of any additional agents appointed or of any agents whose authority was revoked by the Check Seller.

(3) Check Cashier Annual Report. On or before March 31, each licensed check cashier shall file a copy of the completed fee schedule required pursuant to 209 CMR 45.06 and an annual report with the Commissioner for the preceding calendar year in such form as the Commissioner shall prescribe. Any amendment made to the fee schedule shall be filed with the Division forthwith and in writing. Such filing shall state the date on which the amended schedule of fees and charges became or will become effective.

(4) Foreign Transmittal Agency Annual Report. On or before March 31, each licensed foreign transmittal agency shall file an annual report with the Commissioner for the preceding calendar year in such form as the Commissioner shall prescribe.

45.13: Client Funds Accounts for Foreign Transmittal Agencies

(1) All funds of clients deposited with a licensed foreign transmittal agency for transmittal to a foreign country shall be deposited in one or more client funds accounts maintained at a federally insured bank or credit union. Said account(s) shall contain only those funds collected for transmittal.

(2) A licensed foreign transmittal agency may offset funds in the client funds account(s), in order to effect the transmittal of funds to foreign countries in accordance with the directions of clients.

(3) The licensed foreign transmittal agency shall maintain complete and accurate client funds account records. The licensed foreign transmittal agency shall produce, upon request, all documents pertaining to client funds account activity, including, but not limited to, bank statements, check stubs, canceled, voided or unused checks, deposit tickets, and reconciliations or other comparable account records.

(4) No person licensed as a foreign transmittal agency shall commingle money collected for transmission abroad from clients with its own funds or use any part of a client's money in the conduct of the licensed foreign transmittal agency's business.

45.14: Notice of Significant Events and Proposed Change in Ownership or Personnel

(1) A licensee shall be required to notify the Division in writing within one business day of the occurrence of any of the following significant developments:

(a) Licensee filing for bankruptcy or reorganization.

(b) Receiving notification of the initiation of license denial, cease and desist, suspension or revocation procedures, or other formal regulatory action, in any state against the licensee, and the reasons thereof.

(c) An officer, director, member, or principal employee of the licensee being charged with a criminal offense that is in any way related to check cashing, check selling, or money transmittal activities of a licensee, including, but not limited to, the handling or reporting of moneys received or instruments sold.

(d) An officer, director, member, principal employee, or manager of an authorized agent being convicted of any felony.

(2) (a) 30 days prior to the occurrence of any proposed change in control of a licensee, or any change among the officers, partners or directors of a licensee, a notice shall forthwith be filed with the Commissioner who may thereupon cause such investigation to be made as the Commissioner deems necessary, as if it were a new license. In the case of a corporation, control is defined as a change of ownership by a person or group acting in concert to acquire 10% of the stock, or the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy of the corporation.

(b) A notice of change in personnel or ownership shall contain the following information:

1. the name, address and occupation of each proposed officer, partner, director or shareholders; and
2. such other information as the Commissioner may require.

(3) (a) No later than 5 days subsequent to a change in management of any authorized agent that is engaged in the business of transmitting money on behalf of a foreign transmittal agency at a licensed location in the Commonwealth, a notice shall forthwith be filed with the Commissioner who may thereupon cause such investigation to be made as the Commissioner deems necessary.

(b) A notice of change in management shall contain the following information:

1. the name, address and occupation of each proposed manager of that location; and
2. provide such other information as the Commissioner may require.

45.15: License Disclosure

(1) A licensee shall disclose the type and number of its license(s) in all advertisements used in the Commonwealth which advertise or refer to the licensed business; however this paragraph shall not apply to an Internet banner advertisement or pop-up advertisement

(2) A licensee shall prominently post the official letter of license issuance or authorized copy issued by the Commissioner in its place of business. No licensee shall operate under a name other than the name on the license issued by the Commissioner.

45.16: Prohibited Practices

Grounds for license revocation, the issuance of cease and desist orders, or other disciplinary action shall include, but are not limited to, the following prohibited acts and practices:

(1) Prohibited Practices of Licensees Generally.

(a) Implying that the licensee is a branch of or associated with any agency or department of the federal government or of any state or municipal government, or use of any seal, insignia, envelope or other format which simulates that of any government department or agency unless licensed by, under contract with or authorized in writing by said department or agency.

(b) Implying that the licensee is a bank or to act in any manner so as to lead the public to believe that the licensee's business is that of a bank or otherwise violate the unauthorized banking provisions of M.G.L. c. 167, § 37.

(c) Failing to provide a receipt to customers for check selling, check cashing, or foreign transmittal services rendered pursuant to 209 CMR 45.00.

(d) Failing to comply with the notice requirements of 209 CMR 45.14.

- (e) Failing to maintain books and records as required by 209 CMR 45.11 and 209 CMR 48.00.
- (f) Failing to register as a money services business (MSB) with the Financial Crimes Enforcement Network (FinCEN), if the licensee is required to be registered under applicable FinCEN rules and regulations.
- (g) Failing to maintain adequate liquidity for the nature and volume of its business.
- (h) Failing to establish and implement policies and procedures for the monitoring and oversight of authorized agents to ensure that such authorized agents are complying with the pertinent state and federal laws and regulations, including but not limited to the provisions of 209 CMR 45.00.
- (i) Failing to disclose the type and number of its license(s), as applicable, in all advertisements; however this paragraph shall not apply to an Internet banner advertisement or pop-up advertisement.
- (j) Accepting any fees or charges which were not disclosed as required by state or federal law, including but not limited to the provisions of 209 CMR 45.00.
- (k) Knowingly assisting in fraud.

(2) Additional Prohibited Practices.

- (a) A check seller failing to have sufficient funds available to satisfy issued and outstanding obligations from the sale of checks or money orders.
- (b) A licensed foreign transmittal agency failing to forward all money received for transmission to a foreign country to the person to whom the same is directed within seven days following receipt thereof.

45.17: Annual License Expiration

All licenses will expire annually on December 31.

45.18: Compliance

Compliance with any applicable provisions of the Bank Secrecy Act, 31 CFR Chapter X, the Electronic Fund Transfer Act, 12 CFR Part 1005 (Regulation E) and the corresponding Appendices and Official Interpretations, which do not conflict with M.G.L. c. 167F, § 4, M.G.L. c. 169, M.G.L. c. 169A, 209 CMR 45.00 or an advisory ruling of the Commissioner, shall be deemed to be compliance with M.G.L. c. 167F, § 4, M.G.L. c. 169, and M.G.L. c. 169A and 209 CMR 45.00.

REGULATORY AUTHORITY

209 CMR 45.00: M.G.L. c. 167F, § 4; M.G.L. c. 169, § 7; M.G.L. c. 169A, § 2.

CHECK CASHING FEE SCHEDULE

FEEES CHARGED TO CASH A CHECK MAY VARY AMONG BUSINESSES.
 YOU MAY WISH TO COMPARE THESE CHARGES TO THOSE OF
 OTHER CHECK CASHERS AND FINANCIAL INSTITUTIONS IN
 CONSIDERING THE TOTAL COST OF YOUR TRANSACTION.

COMPLETE FEE SCHEDULE OF

 Name of Licensee & License #

| <u>Type of Check</u> | <u>Percent Charged For</u> <u>Checks of \$ to \$</u> | <u>Percent Charged For</u> <u>Checks of \$ to \$</u> | <u>Percent Charged For</u> <u>Checks of \$ to \$</u> |
|----------------------|---------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|
| Payroll | ____% | ____% | ____% |
| Insurance | ____% | ____% | ____% |
| Government | ____% | ____% | ____% |
| Lottery | ____% | ____% | ____% |
| Personal | ____% | ____% | ____% |
| Money Orders | ____% | ____% | ____% |
| Other(Specify) | | | |
| _____ | ____% | ____% | ____% |
| _____ | ____% | ____% | ____% |

EXAMPLE: FOR A CHECK OF \$100.00 ON WHICH THE FEE CHARGED IS 1% YOUR TOTAL CHARGE IS \$1.00 AND THE AMOUNT YOU RECEIVE BACK IS \$99.00.