

Proposed Amendments – 10/18/19

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, c. 169, and 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, c. 169, and c. 169A.

45.02: Definitions

For the purposes of 209 CMR 45.00, the following definitions apply unless the context requires otherwise.

Applicant means 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. Applicant shall include partners or members, if the applicant is a partnership, limited liability company, or association, and officers, directors, and principal employees, if the applicant is a corporation.

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

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

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

Clear and Conspicuous means disclosure of material information in a size, color, contrast and presentation that is sufficient to be readily noticed and understood by a reasonable person to whom it is being disclosed.

Commissioner means the Commissioner of Banks.

Division means the Division of Banks.

Foreign Transmittal Agency means 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; provided, however, that the following activities shall not constitute activities requiring licensure by the Division as a Foreign Transmittal Agency:

- (1) the transmission of money or its equivalents that is not primarily for personal, family, or household purposes; or
- (2) A transaction in which the recipient of the money or other monetary value is an agent of the payee pursuant to a written contract and delivery of the money or other monetary value to the agent satisfies the payor's obligation to the payee.
 - a. For purposes of this regulation, "payee" means the provider of goods or services who is owed payment of money or other monetary value from the payor for the goods or services.
 - b. For purposes of this regulation, "payor" means the recipient of goods or services, who owes payment of money or monetary value to the payee for the goods or services.

Licensee means 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 casher under M.G.L. c. 169A.

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

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

- (a) that portion of an applicant's or licensee's assets pledged to secure obligations of any person or entity other than that of the applicant or licensee;
- (b) any assets due from officers or stockholders of the applicant or licensee, or from persons in which the applicant's or licensee'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; and
- (g) any other intangible asset, as may be determined by the Commissioner.

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

Person means a natural person or an organization, including, but not limited to, a corporation, partnership, association, limited liability company, cooperative, or trust.

45.03: Procedures to Apply for or Renew 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 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 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 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 authorized 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 cashing 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 or 45.04, M.G.L. c. 167F, § 4, c. 169, or 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 209 CMR 45.03 or 45.04, M.G.L. c. 167F, § 4, c. 169, or c. 169A, as applicable.

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

1. violated any provisions of M.G.L. c. 167F, § 4, c. 169, c. 169A, or 209 CMR 45.00;
2. 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. conducted or will conduct its business in an unsafe or unsound manner;
4. 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. made a false statement of a material fact in the application for a license;
 6. an adverse credit history as determined by the Commissioner in a current credit report; or
 7. ever:
 - a. been convicted of or pleaded nolo contendere to a felony; or
 - b. 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) or (3) 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) A licensed check casher shall complete and maintain a Check Cashing Fee Schedule in a format substantially similar to the model form set forth in 209 CMR 45.99: *Appendix A*.
- (a) A licensed check casher may, at its 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 209 CMR 45.99: *Appendix A*; and
 - (b) The Check Cashing Fee Schedule must clearly convey the required fee information.
- (2) A licensed check casher shall post the current Check Cashing Fee Schedule in each of its 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) A licensed check casher shall provide in writing, without charge, a copy or copies of the Check Cashing Fee Schedule upon the request of any person, and such person shall be able to retain such copy or copies.
- (4) A licensed check casher is encouraged to make best efforts to communicate the fees and charges which may be assessed for cashing a check, draft, or money order in languages which meet the needs of non-English speaking customers in the service area of the licensee. Efforts that comply with 209 CMR 45.00 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, 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, or visit the Division of Banks website at www.mass.gov/dob.

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, 209 CMR 45.10(1) 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 prior written approval of any change in or closing of a Massachusetts location; however, 209 CMR 45.10(3) shall not apply to check sellers. Written applications to the Commissioner shall be submitted 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: *Licensee Record Keeping* 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; c. 169; c. 169A; 209 CMR 45.00; and state and federal laws and regulations, as applicable.
- (2) Each licensee shall maintain quarterly financial statements that include a Balance Sheet and a year-to-date Income Statement that are prepared in accordance with U.S. generally accepted accounting principles and may be prepared internally or by an independent certified public accountant.
- (3) A licensed check casher shall also maintain, at a minimum, the following records:
 - (a) A daily record of all check cashing transactions occurring each day, which shall be limited to the following, provided a sufficient audit trail is available through records obtainable from the licensee's bank account(s):
 1. The amount of the check cashed; and
 2. The amount of the fee charged for cashing the check.
 - (b) A daily cash reconciliation summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business, and which shall separately reflect cash received from the redemption of returned items, bank cash withdrawals, cash disbursed in cashing of checks, and bank cash deposits; and
 - (c) Copies of any agreements between the licensed check casher and third parties relative to check cashing activities.
- (4) A licensed foreign transmittal agency shall also maintain, at a minimum, the following records:
 - (a) Bank account statements, including, but not limited to, 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; and
 - (d) Copies of any agreements between the licensed foreign transmittal agency and third parties relative to foreign transmittal activities.
- (5) Each licensee shall preserve its books and records for inspection for a minimum of three years.
- (6) Each licensee shall make such other statements and reports to the Commissioner as he or she may require in addition to the statements and reports required by law. 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~~ February 15th of each year, 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 ~~May~~~~April~~, and the 14th of August and November~~July, and October~~ of each year, each check seller shall notify the Commissioner of any change in the list of authorized agents contained in the Annual Statement referenced in 209 CMR 45.12(1), and shall file the names of any additional authorized agents appointed or of any authorized agents whose authority was revoked by the Check Seller.

(3) Check Cashier Annual Report. On or before March 31st of each year, each licensed check cashier shall file a copy of the completed Check Cashing 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 Check Cashing Fee Schedule shall be filed with the Division in writing forthwith. Such filing shall state the date on which the amended Check Cashing Fee Schedule became or will become effective.

(4) Foreign Transmittal Agency Annual Report. On or before March 31st of each year, 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) A 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 from clients for transmission abroad 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) A licensee files for bankruptcy or reorganization;

(b) A licensee receives:

1. Notification to cease and desist in any state;

2. Notification of the initiation of license denial, suspension, or revocation procedures in any state;
or

3. Notification of other formal regulatory action against the licensee in any state;

(c) An officer, director, member, or principal employee of a 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; or

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

(2) (a) A licensee shall file a notice with the Commissioner at least 30 days prior to the occurrence of any proposed change in control. Upon such notice, the Commissioner may investigate the licensee as if the licensee applied for a new license or as the Commissioner otherwise deems necessary. In the case of a corporation, change in control is defined as:

1. A change of ownership by a person or group acting in concert to acquire 10% of the stock; or
2. 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 shareholder; 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 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. 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, 209 CMR 45.15(1) 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 an authorized copy thereof 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 not be limited to, the prohibited acts and practices provided in 209 CMR 45.16(1) and (2).

(1) Prohibited Practices of Licensees Generally. It shall be a prohibited act or practice for a licensee to:

(a) Imply 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, including, but not limited to, 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) Imply that the licensee is a bank, 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) Fail to provide a receipt to customers for check selling, check cashing, or foreign transmittal services rendered pursuant to 209 CMR 45.00;
 - (d) Fail to comply with the notice requirements of 209 CMR 45.14;
 - (e) Fail to maintain books and records as required by 209 CMR 45.11 and 209 CMR 48.00: Licensee Record Keeping;
 - (f) Fail to register as a money services business with the Financial Crimes Enforcement Network if the licensee is required to be registered under applicable Financial Crimes Enforcement Network rules and regulations;
 - (g) Fail to maintain adequate liquidity for the nature and volume of its business;
 - (h) Fail to establish and implement policies and procedures for the monitoring and oversight of authorized agents to ensure that such authorized agents are complying with pertinent state and federal laws and regulations, including, but not limited to, the provisions of 209 CMR 45.00;
 - (i) Fail to disclose the type and number of its license(s) in all advertisements pursuant to 209 CMR 45.15;
 - (j) Accept 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; or
 - (k) Knowingly participate in fraud or in an attempt to defraud.
- (2) Additional Prohibited Practices. It shall also be a prohibited act or practice for:
- (a) A check seller to fail to have sufficient funds available to satisfy issued and outstanding obligations from the sale of checks or money orders; and
 - (b) A licensed foreign transmittal agency to fail 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 31st.

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, c. 169, 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, c. 169, c. 169A, and 209 CMR 45.00.

REGULATORY AUTHORITY

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

45.99: Appendix A

CHECK CASHING FEE SCHEDULE

FEES 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 Checks of \$ to \$</u>	<u>Percent Charged For Checks of \$ to \$</u>	<u>Percent Charged For 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.