

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

209 CMR 51.00: YEAR 2000 OPERATIONAL SAFETY AND SOUNDNESS STANDARDS

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51.01: Purpose and Scope

The purpose of 209 CMR 51.00 *et seq.* is to establish minimum operational standards for banks and credit unions with respect to Year 2000 Readiness. The safe and sound operation of banks and credit unions requires that management take appropriate and timely steps to ensure that record-keeping and other mission critical systems are Year 2000 compliant.

209 CMR 51.00 also sets out the range of remedial or enforcement actions and sanctions that may be imposed by the Division for banks and credit unions that are not in compliance with federal guidelines and safety and soundness standards relative to Year 2000 readiness. The provisions of 209 CMR 51.00 are minimum record-keeping or operational standards for state-chartered banks and credit unions. These provisions are independent of, and in addition to, the Division's authority to take any other remedial action under applicable state law.

51.02: Definitions

As used in 209 CMR 51.00 *et seq.*, the following words shall, unless the context otherwise requires, have the following meanings:

Bank. A bank shall include a state-chartered savings bank, co-operative bank or trust company or any other association or corporation, as defined by M.G.L. c. 167, § 1, that is subject to supervision and examination by the Division.

Credit Union. A credit union as defined by M.G.L. c. 171, § 1, that is subject to supervision and examination by the Division pursuant to M.G.L. c. 167, § 2.

Division. The Division of Banks, including the Commissioner of Banks.

Federal Bank Regulatory Agency. The Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or the National Credit Union Administration or any other applicable federal bank regulatory agency.

Federal Year 2000 Guidelines. The written guidance papers issued by the FFIEC in the areas of Year 2000 project planning, renovation, testing, contingency planning, and the impact of the century change date. The term includes the eight guidance papers published as of October 15, 1998 and any subsequent guidance papers issued by the FFIEC. The Federal Year 2000 Guidelines provide guidance to federally insured depository institutions and set out the federal bank regulatory agencies' supervisory policies relative to such depository institutions' minimum Year 2000 remediation requirements.

Federal Year 2000 Safety and Soundness Guidelines. Written standards promulgated by the federal bank regulatory agencies under 12 U.S.C. § 1818 p-1. These "Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness" became effective upon their October 15, 1998 publication. (63 *Federal Register* 55,479 (1998)). The guidelines are judicially enforceable under the "prompt correct action" provisions of 12 U.S.C. § 1818o.

FFIEC. The Federal Financial Institutions Examination Council, a federal body established pursuant to 12 U.S.C. § 3301 *et seq.*, which coordinates and promotes uniform supervisory and examination policies among the federal bank regulatory agencies and state bank supervisors.

51.03: Year 2000 Readiness Minimum Standards

- (1) All banks and credit unions shall take all necessary steps and measures to adhere to and implement the Federal Year 2000 Guidelines.
- (2) All banks shall be in compliance with the Federal Year 2000 Guidelines and Federal Year 2000 Safety and Soundness Guidelines at all times. Failure to review, renovate and test internal and external mission critical systems; or to develop and implement business resumption or remediation contingency plans; or to appropriately identify customer risks in accordance with the Federal Year 2000 Safety and Soundness Guidelines shall trigger M.G.L. c. 167, § 22. Such failure shall establish that a bank:
  - (a) is "conducting business in an unsafe and unauthorized manner";
  - (b) is transacting business in an "unsound or unsafe condition", and
  - (c) has violated a "law of the commonwealth" within the meaning of M.G.L. c. 167, § 22.
- (3) All credit unions shall be in compliance with the Federal Year 2000 Guidelines at all times. Failure to review, renovate and test internal and external mission critical systems; or to develop and implement business resumption or remediation contingency plans; or to appropriately identify customer risks in accordance with the Federal Year 2000 Guidelines shall trigger M.G.L. c. 167, § 22. Such failure shall establish that a credit union:
  - (a) is "conducting business in an unsafe and unauthorized manner";
  - (b) is transacting business in an "unsound or unsafe condition"; and
  - (c) has violated a "law of the commonwealth" within the meaning of M.G.L. c. 167, § 22.
- (4)(a) Banks. The Division, in its discretion, may impose any or all of the sanctions under 209 CMR 51.04, under the following circumstances:
  1. If a report of examination conducted by the Division or a federal bank regulatory agency determines that a bank is not in compliance with the Federal Year 2000 Guidelines by virtue of receiving a "Needs to improve" or "Unsatisfactory" rating during or after the mission critical systems testing stage;
  2. The bank fails to take immediate and satisfactory corrective action as directed by the Division or a federal bank regulatory agency; or
  3. The bank is not in compliance with the Federal Year 2000 Safety and Soundness Guidelines and has been issued an order pursuant to 12 U.S.C. § 18180.
- (b) Credit Unions. The Division, in its discretion, may impose any or all of the sanctions under 209 CMR 51.04, under the following circumstances:
  1. If a report of examination conducted by the Division or a federal bank regulatory agency determines that a credit union is not in compliance with the Federal Year 2000 Guidelines by virtue of receiving a "Medium" or "High Risk" rating;
  2. The credit union fails to take immediate and satisfactory corrective action as directed by the Division or a federal bank regulatory agency; or
  3. The credit union is not in compliance with a Year 2000 regulatory directive.
- (c) Corrective action. Failure to take satisfactory corrective action shall include, but is not limited to, failing to submit an acceptable corrective action plan or submitting a corrective plan that is rejected or deemed unacceptable by the Division or by an applicable federal bank regulatory agency or the issuance of a "safety and soundness order" pursuant to 12 U.S.C. § 18180.

51.04: Sanctions

Failure to comply with 209 CMR 51.03 shall constitute grounds for the imposition of the following sanctions:

- (a) the issuance of an order pursuant to M.G.L. c. 167, § 3;
- (b) the suspension or removal of officers, directors or trustees pursuant to M.G.L. c. 167, § 3;
- (c) the notification, certification or consolidation of an excess deposit insured savings bank, co-operative bank or credit union pursuant to St. 1934 c. 43; St. 1934 c.73; or St. 1961 c. 294, respectively;
- (d) the appointment of a conservator pursuant to M.G.L. c. 172, §§ 40 through 46, or other applicable statutes;

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- (e) the taking possession and control of the bank or credit union pursuant to M.G.L. c. 167 § 22;  
or,
- (f) the appointment of a receiver pursuant to M.G.L. c. 167, § 26 or M.G.L. c. 167, § 26A, as  
the case may be.

51.05: Severability

If any provision of 209 CMR 51.00, or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of 209 CMR 51.00 and the application of such provisions to other persons or circumstances shall not be affected thereby.

51.06: Sunset

209 CMR 51.00 shall expire on December 31, 2001.

REGULATORY AUTHORITY

209 CMR 51.00: M.G.L. c. 167, § 6; c. 30A, § 8.