

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

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

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209 CMR 48.00: LICENSEE RECORD KEEPING

Section

48.01: Applicability and Purpose,

Deleted: and Scope

48.02: Definitions

48.03: How Long to Keep Books and Records

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48.04: Where to Keep Books and Records

Deleted: Access to

48.05: Format of Books and Records

Deleted: Location of

48.06: Failure to Comply,

Deleted: Review

48.01: Applicability and Purpose,

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The purpose of 209 CMR 48.00 is to establish procedures and requirements for record keeping by licensees. You must comply with 209 CMR 48.00 if you meet the definition of a licensee.

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Deleted: , 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

48.02: Definitions

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The following words shall have the following meanings:--

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Commissioner means the Commissioner of Banks.

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Commonwealth means the Commonwealth of Massachusetts.

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

Deleted: 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.

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

Examination means the examination or inspection of a 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 M.G.L. c. 93, §§ 24 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 M.G.L. c. 255B; an insurance premium finance agency under the provisions of M.G.L. c. 255C; a retail installment sales finance company

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under the provisions of M.G.L. c. 255D; or a mortgage lender or a mortgage broker under the provisions of M.G.L. c. 255E.

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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.

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

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You means a licensee.

48.03: How Long to Keep Books and Records

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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.

48.04: Where to Keep Books and Records

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(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.

Deleted: (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) 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:

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(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 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.¶

(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 or the Commissioner's designee, for the purpose of an examination; and

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(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.

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48.05: Format of Books and Records

(1) You must keep books, 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) You may store books, records, and accounts as electronic records. You must make all electronic records accessible for examination through equipment available to the Commissioner or the Commissioner's designees. If there is no equipment available to conduct the examination, you must procure and make available such equipment, at 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.

48.06: Failure to Comply

(1) If you do not comply with 209 CMR 48.00, 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.

(2) If you do not comply with 209 CMR 48.00, the Commissioner may take enforcement action against you, including but not limited to, the suspension or revocation of your license under applicable authority.

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.

Deleted: 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.¶

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