

# Record Retention and Destruction Manual

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Fifth Edition



Michigan Bankers Association

**RECORD RETENTION &  
DESTRUCTION MANUAL**

**MICHIGAN BANKERS ASSOCIATION**

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## PREFACE TO FIFTH EDITION

The fourth edition of this Manual was published in 2007. Since then, there have been a number of changes in the laws regulating record retention, and additional laws have been enacted that impose, or make advisable, new record retention requirements. Because of the extent of the developments since 2007, it was thought advisable to publish a fifth edition of the Manual at this time.

The statutory and regulatory enactments that have been reflected in the Manual include, but are not limited to, the following (with references to sections of this Manual in parentheses):

- The Dodd-Frank Wall Street Reform and Consumer Protection Act (II.E.2.(a)(27); II.E.1.(y); II.E.2.(b)(34))
- The Unlawful Internet Gambling Act (II.E.1.(x); II.E.2(a)(28))
- The S.A.F.E. Mortgage Licensing Act (II.E.2.(a)(29))
- The Check 21 Act (II.A.1.(p))
- The Home Affordable Modification Program (II.E.2.(b)(33))

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## INTRODUCTION

This Manual has been prepared as a tool for the use of banks in the State of Michigan and their counsel in attempting to resolve the never-ending problems concerning the length of time a bank should preserve the many records that its operations generate.

In using this Manual, several cautionary points must be kept in mind:

(1) This Manual was prepared almost exclusively on the basis of legal considerations. Operational considerations often will dictate retention of records for longer periods.

(2) The fact that it is suggested that a particular record be retained for a specified period of time does not necessarily mean that preservation of the record beyond that period might not, in some circumstances, be necessary to prevent the bank from incurring some legal liability. Particularly in view of the fact that statutes of limitations are "tolled" in certain circumstances, there can never be complete assurance that a particular liability will not be incurred. Therefore, each retention period suggested in the Manual represents to some extent the drafters' own judgment regarding the point at which the risk of liability is probably outweighed by the expense and inconvenience of continuing to retain the particular record. Because each bank, together with its legal counsel, must make its own judgment decisions regarding retention periods, the retention periods suggested in the Manual must not be adopted outright as a records retention schedule. The significance and usefulness of the Manual are not in the suggested retention periods, but are in the compilation of laws that may be relevant to the making of decisions regarding retention periods. The Manual is merely an additional tool that may be used by a bank and its counsel in the preparation of its own retention schedules.

(3) Federal and state laws and regulations affecting records retention are constantly being changed, either directly or by judicial interpretation, and new laws and regulations are constantly being added. Changes in or additions to the law from time to time may dictate retention periods that are longer than this Manual suggests.

(4) Generally the Manual does not attempt to suggest retention periods on the basis of the possible use of records in criminal proceedings, because any scrap of paper might be of use in a criminal matter, particularly in view of such an all-encompassing statute as 18 USC 1005, applicable to all insured banks, which makes it a crime for anyone in a bank to make a false entry with intent to injure anyone.

(5) Because the types and descriptions of many documents used in banking operations differ from bank to bank, certain of the records listed in the Manual may not conform to the records used by a particular bank. Similarly, it has not been possible to include in the Manual all of the hundreds of items actually in use. It is hoped that the citations and discussions of the records that have been included will provide adequate guidelines upon which to formulate policies for those items that have not been covered.

(6) As to many items listed in the Manual, the comments specify the time from which the suggested retention period begins to run. Where the time of beginning of the retention period is not specified, the retention period begins at the time the record was made.

In conclusion, it must be emphasized that, while this Manual has been prepared by legal counsel, it is not intended that it be relied upon by any bank as a legal opinion. Rather, it is intended as a text to assist banks and their counsel in the preparation of their own retention schedules or as a comparison check against existing schedules.

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## **A NOTE ON RECORDS RETENTION AND DESTRUCTION IN THE INFORMATION AGE**

In the past, the contents of document retention and destruction schedules have been driven by two competing concerns: the need to have records available for future litigation, and the burden of storing millions of old documents that serve no ongoing business purpose. Although the need for document retention has not changed, the storage burden has. With the advent of computer hard drives, CD-ROMS, DVD's and other electronic storage media, it is now possible to store entire warehouses of documents on a single disk. Moreover, the law is rapidly moving toward giving full recognition to the use and retention of electronic records in place of originals. See, for example, the discussion of the federal Electronic Signatures in Global and National Commerce Act at Section I.E. of this Manual. As banks continue to move towards paperless transactions, the ability to store information electronically becomes even easier.

In light of this technology, the developing law permitting records to be retained electronically and the uncertainty surrounding record retention limits (due to the tolling of statutes of limitation and other business and legal vagaries), the day may soon arrive when business and legal considerations dictate that all documents be stored indefinitely on electronic storage media. This removes all of the risks inherent in document destruction while creating little additional burden in the way of storage space. It also removes the necessity of legal and administrative time spent creating and complying with record retention and destruction policies. Banks and their counsel would be well served by frequent consultation with information technology personnel, in anticipation of the paperless record retention era that is certain to come.