



Document Retention Policy for Banks

JULY 15, 2016 | PUBLICATIONS

Document retention sounds like a boring topic until you realize that your bank can be subject to huge monetary damages and possible regulatory action if it doesn't handle document retention correctly. In the old days, banks could simply keep every document forever to be on the safe side. That isn't a practical alternative in today's environment. Nowadays, retaining documents after their useful date can actually harm the bank.

It is important for your bank to adopt a document retention policy that provides for the systematic retention and destruction of documents received or created by the bank. This policy must address all documents regardless of physical or electronic form, and this policy must instruct your bank personnel on how long each type of document should be kept.

Various federal and state laws require a bank to retain specified documents for a designated period of time. Unfortunately, there is no one place that sets forth all of the bank's document retention requirements. These document retention requirements are scattered throughout many statutes and regulations, which is one reason why document retention is confusing. The bank regulators in some states have created schedules listing document types and the required retention period for those document types but, unless these schedules are updated periodically, they obviously won't keep up with the new changes in the law. As to national banks, the OCC has not created any such schedule. Consequently, both national and state banks are forced to research each separate law to determine if that law has a document retention requirement.

The following is a listing of the most common banking laws that have specific document retention requirements:

- Equal Credit Opportunity Act – Retain documents for 25 months after date bank notifies applicant of the action taken on the loan application (12 months for a business applicant with gross revenues of \$1 million or less and 60 days for a business applicant with gross revenues in excess of \$1 million)
- Truth in Lending Act – Retain evidence of compliance for 2 years after date disclosures are required to be given or action is required to be taken
- Truth in Savings Act – Retain evidence of compliance for 2 years after date disclosures are required to be given or action is required to be taken
- Electronic Funds Transfer Act – Retain evidence of compliance for 2 years after date disclosures are required to be given or action is required to be taken
- Bank Secrecy Act – Documents generally must be retained for 5 years under the BSA/AML requirements but it is the type of documents that is so exhaustive:
 - All CTRs and SARs for 5 years after filing
 - Records of every cashier and other official check of \$3,000 or more for 5 years after issuance
 - CIP information for 5 years after any account closed or loan paid
 - Specific information as to any extension of credit in excess of \$10,000 (not secured by real estate) for 5 years after loan paid
 - Records of every request to transfer currency or monetary instruments in excess of \$10,000 to or from any person, account or place outside of U.S. for 5 years
 - Specific information as to wire transfers in excess of \$3,000 for 5 years after origination
 - Signature cards and verifying information for 5 years after account closed
 - Record of each account statement for every deposit account for 5 years
 - Copy of each check drawn on or issued by the bank in excess of \$100 for 5 years
 - Copy of each deposit slip or equivalent record showing deposit in excess of \$100 for 5 years
 - Records needed to reconstruct transaction to trace any check in excess of \$100 deposited at bank for 5 years

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In addition to the banking law requirements, your bank must retain documents that will be needed for your business operations, such as vendor contracts, employment files, accounts payable records, etc. Not all laws expressly state a specific document retention period. If no retention period is specifically designated by federal or state law for a particular type of document, we recommend the bank use its state's general statute of limitations period.

It is important to realize that the bank is legally required to stop the destruction of documents once there is a reasonable indication of possible litigation against the bank or if the bank knows that it is under investigation for an alleged regulatory violation. At that point, the bank is under a duty to preserve all relevant documents so destruction of all relevant documents must be suspended immediately when a lawsuit is filed against the bank, if a lawsuit appears imminent, or if the bank is notified that it is being investigated for a possible regulatory violation. This means that the bank can't destroy a document even if the bank's policy would otherwise indicate that it was time to destroy the document. Destruction can be reinstated only upon conclusion of the lawsuit or investigation. This is commonly referred to as the "Litigation or Official Investigation Hold."

With respect to document retention, one frequently asked question is whether the paper document can be destroyed after the document has been imaged. The answer is yes. The Federal E-Sign Act permits electronic records (i.e., imaged documents) to satisfy the bank's document retention requirements if: (1) the electronic record accurately reflects the original document, and (2) the electronic record is in a form that can be accurately reprinted later. Thus, imaged documents serve as a substitute for the original paper document and the original document can be destroyed after it is imaged. There are a few exceptions, however, where you will want to retain the original document, such as negotiable instruments and in other situations where the original document will be required to prove ownership or transfer title.

One last item with respect to document retention is the proper destruction of documents. When it is time to destroy a document, the bank can't simply throw the document in the trash can. To maintain the privacy and confidentiality of its customers, the bank must implement procedures that require the burning, pulverizing or shredding of papers, and the destruction or erasure of electronic documents.

If you have any questions about document retention, you are welcome to contact [Elizabeth Fast](mailto:efast@spencerfane.com) at efast@spencerfane.com or (816) 292-8861.