

# South Dakota Banking Record Retention Manual

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## **INTRODUCTION**

A complete record retention policy not only keeps banking institutions in compliance with state and federal retention requirements, but it also conserves resources by not keeping records longer than necessary. To be in compliance, banking institutions must maintain numerous different types of records. This is necessary because the law requires it, and bank records have a high degree of usefulness in criminal, tax or regulatory investigations or proceedings.

Both state and federal statutes and regulations contain record retention requirements. Where requirements overlap, however, the financial institution must use the longer of the two record retention periods. In some instances, there may be federal record retention regulations in an area where a particular state has no corresponding regulation. It is generally recommended that banks keep required records one (1) year past the required state or federal retention period. It is further advised that banking institutions take into consideration various statutes of limitation, which can be found generally in SDCL Chapter 15-2.

The goal of this manual is to be an easy-to-use reference guide for banks and employees. The records referenced in this manual are not meant to represent an exhaustive list of the required state or federal records to be retained. This manual merely attempts to illustrate some of the more commonly used records and the known retention requirements. You should not rely on this manual without first consulting with your own legal counsel about the correctness and sufficiency of the information provided within.

The State Banking Commission has not established any specific schedules or guidelines for record retention. In order to be in compliance with the requirements for record retention, therefore, banking institutions operating within the State must consider the following:

State statutes (SDCL);

Administrative Rules of South Dakota (ARSD);

Federal statutes and regulations; and

General practices of the bank, and its regulations.

SDCL 51A-13-1 generally provides that,

Every bank shall keep such books and accounts as the director may require for the purpose of showing the true condition of the bank, and shall keep accurate, convenient, and complete records of such transactions and accounts in permanent form. Any bank which fails or refuses to open and keep such books or accounts shall be subject to a civil penalty of fifty dollars for each day it violates this section, and the director shall have authority to institute legal proceedings for the recovery of such penalty.

ARSD 20:07:05:30 further provides that,

Banks shall retain records as normal business practices dictate. Numerical documents shall be retained in numerical order. A bank shall not destroy any records necessary for subsequent examinations of the bank.

State record retention methods for bank documents can be located in ARSD Chapter 20:07:05 Retention of Records. Specifically, ARSD 20:07:05:31 provides that,

Records may be microfilmed or maintained in the form of electronically encoded data for retention purposes. Any records required to be maintained may be made available on the basis of computer printed reproduction, video display, or other medium that is readily convertible by the division into legible, tangible documents.

Pursuant to the Bank Secrecy Act (BSA), a bank may maintain records in many forms including: original, microfilm, electronic, copy or reproduction, as long as they are accessible in a reasonable period of time.

Further, pursuant to 31 C.F.R 1010.430(a), the Federal Deposit Insurance Corporation (FDIC) requires that whenever a check, draft, monetary instrument, investment security, or other similar instrument is to be retained, a copy of both the front and back of each document is required to be retained. This rule applies in all cases unless the back of such documents are entirely blank or contain only standardized printed information.

**REQUIRED RECORDS**

<b>TYPE OF RECORD</b>	<b>STATUTE OR REGULATION</b>	<b>RETENTION PERIOD</b>
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*Federal Securities Transaction: A national bank effectuating securities transactions for customers shall maintain the following records:*

<i>Chronological records:</i> An itemized daily record of each purchase and sale of securities maintained in chronological order	12 C.F.R. §12.3(1)	3 years
<i>Account records:</i> Account records for each customer reflecting purchases and sales of securities; receipts and deliveries of securities; receipt and disbursement of cash; and other debts.	12 C.F.R. §12.3(2)	3 years
<i>Memorandum order:</i> A separate memorandum of each order to purchase or sell securities.	12 C.F.R. §12.3(3)	3 years
<i>Record of broker/dealers:</i> A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commission paid or allocated to each broker during the calendar year.	12 C.F.R. §12.3(4)	3 years
<i>Transaction Notifications</i>	12 C.F.R. §12.3(5); see also 12 C.F.R. §§ 12.4 and 12.5	3 years

*Required records pursuant to the Code of Federal Regulations and the Bank Secrecy Act (BSA):*

<i>Extension of credit in excess of \$10,000, containing:</i> Name of borrower, address of borrower, amount of credit extended, nature of loan, and date of loan	BSA	5 years
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<i>International transactions in excess of \$10,000</i>	BSA	5 years
<i>Signature cards</i>	BSA	5 years
<i>Account statements</i>	BSA	5 years
<i>Checks in Excess of \$100</i>	BSA	5 years
<i>Deposits in Excess of \$100: The slip or ticket must record the amount of any currency involved.</i>	BSA	5 years
<i>Certificates of deposit, containing: name of customer, address of customer, taxpayer ID number, description of the certification of deposit, notation of the method of payment, date of transaction.</i>	31 C.F.R. § 1020.410; <i>see also</i> BSA	5 years
<i>Record of each bank check or draft for \$3,000 or more</i>	BSA	5 years
<i>Cashier's check for \$3,000 or more</i>	BSA	5 years
<i>Money order for \$3,000 or more</i>	BSA	5 years
<i>Traveler's check for \$3,000 or more</i>	BSA	5 years
<i>Funds transfers of \$3,000 or more</i>	31 C.F.R. § 1020.410; <i>see also</i> BSA	5 years
<i>Taxpayer Identification Number (TIN)</i>	31 C.F.R. § 1020.410; <i>see also</i> BSA	5 years
<i>Suspicious Activity Report (SAR): A transaction requires reporting if it involves or aggregates at least \$5,000 in funds or other assets.</i>	12 C.F.R. § 21.11; <i>see also</i> 31 C.F.R. § 1020.320 and BSA	5 years
<i>Currency Transaction Report (CTR)</i>	BSA	5 years
<i>Designation of Exempt Person: A record of all designation of persons exempt from CTR reporting as filed with the Treasury.</i>	31 C.F.R. § 1020.220; <i>see also</i> BSA	5 years

<i>Customer Identification Program (CIP):</i> Must include risk-based procedures for verifying the identity of each customer to the extent that is reasonable and practicable.	31 C.F.R. § 1020.220; <i>see also</i> BSA	5 years
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*Housing and Urban Development Requirements:*

<i>Mortgagor's payments</i>	24 C.F.R. § 236.530	As directed by the Commissioner
<i>Interest reduction payments</i>	24 C.F.R. § 236.530	As directed by the Commissioner
<i>Real property records</i>	24 C.F.R. § 85.42	3 years
<i>Equipment records</i>	24 C.F.R. § 85.42	3 years
<i>Records for income transactions after grant or sub grant support</i>	24 C.F.R. § 85.42	3 years
<i>Supporting records, including:</i> <ul style="list-style-type: none"> <li>• Indirect cost rate computations or proposals</li> <li>• Cost allocation plans</li> <li>• Any similar accounting computations of the rate at which a particular group of costs is chargeable</li> </ul>	24 C.F.R. § 85.42	3 years

*Required Records for trust companies pursuant to SDCL and/or ARSD:*

<i>Trust companies:</i>		
<ul style="list-style-type: none"> <li>• Minute books of meetings of its owners and governing board</li> </ul>	51A-6A-30	Permanently
<ul style="list-style-type: none"> <li>• Capital stock and ownership unit ledger and capital stock or ownership unity certificate ledge or stubs</li> </ul>	51A-6A-30	Permanently
<ul style="list-style-type: none"> <li>• General ledger</li> </ul>	51A-6A-30	Permanently
<ul style="list-style-type: none"> <li>• Daily statements of conditions</li> </ul>	51A-6A-30	Permanently
<ul style="list-style-type: none"> <li>• All other records the director requires</li> </ul>	51A-6A-30	Permanently
<ul style="list-style-type: none"> <li>• Internal or external audit reports</li> </ul>	ARSD 20:07:05:32	Permanently

• Annual account reviews	ARSD 20:07:05:32	5 years
• Account transactions	ARSD 20:07:05:32	5 years
• Relevant correspondence to monitor accounts	ARSD 20:07:05:32	5 years

*Required Records for Mortgage Lenders and Mortgage Brokers pursuant to ARSD:*

<i>All cash, checks, or other monetary instruments received in connection with each mortgage loan application, showing:</i> <ul style="list-style-type: none"> <li>• Identity of the payor</li> <li>• Date received</li> <li>• Amount</li> <li>• Purpose</li> </ul>	ARSD 20:07:19:08	5 years
<i>A sequential listing of checks written for each bank account relating to the licensee's business as mortgage broker or lender, showing:</i> <ul style="list-style-type: none"> <li>• Payee</li> <li>• Amount</li> <li>• Date</li> <li>• Purpose of payment</li> </ul>	ARSD 20:07:19:08	5 years
<i>A file for each mortgage loan application, which contains:</i> <ul style="list-style-type: none"> <li>• Applicants name</li> <li>• HUD-1 Settlement Statement</li> <li>• Copies of all agreements/contracts</li> <li>• Copies of appraisals</li> <li>• All disclosures required by state and federal law</li> </ul>	ARSD 20:07:19:08	5 years
<i>Copies of all contracts, agreements, and escrow instructions</i>	ARSD 20:07:19:08	5 years
<i>A record of any contract between the mortgage broker or mortgage loan originator and the borrower, relating to:</i> <ul style="list-style-type: none"> <li>• Rate</li> <li>• Terms</li> <li>• Conditions</li> </ul>	ARSD 20:07:19:08	5 years

<i>A list of all mortgage loan originators, along with all documentation for each loan originator indicating each state in which the originator works and makes loans</i>	ARSD 20:07:19:08	5 years
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*Required Records (Miscellaneous) pursuant to SDCL and/or ARSD:*

<i>Abandoned/unclaimed assets: A record of the name and last known address of the owner of all unclaimed property</i>	SDCL 43-41B-32(a)	10 years
<i>Traveler's checks: A record of the state and date of sale while they remain outstanding</i>	SDCL 43-41B-32(b)	3 years
<i>Money orders: A record of the state and date of sale while they remain outstanding</i>	SDCL 43-41B-32(b)	3 years
<i>A record of each payment instrument and <u>stored value</u> sold</i>  <i><u>Stored value</u>: monetary value that is evidenced by an electronic record; does not include any item that is redeemable by the insurer or its affiliates in goods or services of the issuer or its affiliates)</i>	SDCL 51A-17-29(1)	3 years
<i>A general ledger, posted monthly, containing:</i> <ul style="list-style-type: none"> <li>• Assets</li> <li>• Liabilities</li> <li>• Capital</li> <li>• Income</li> <li>• Expense accounts</li> </ul>	SDCL 51A-17-29(2)	3 years
<i>Bank statements and bank reconciliation records</i>	SDCL 51A-17-29(3)	3 years
<i>Records of outstanding payment instruments and stored value</i>	SDCL 51A-17-29(4)	3 years
<i>Records of each payment instrument and stored value paid within the three-year period</i>	SDCL 51A-17-29(5)	3 years
<i>List of the names and addresses of all the licensee's authorized delegates</i>	SDCL 51A-17-29(6)	3 years



Any other record the director of the Division of Banking reasonably requires pursuant to Chap. 1-26	SDCL 51A-17-29(7)	3 years
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*Federal and State penalties:*

Any insured depository institution and any director, officer, or employee of an insured depository institution who willfully or through gross negligence violates, or any person who willfully causes such a violation pertaining to required records shall be liable to the United States for a <i>civil penalty of not more than \$10,000</i>	12 U.S.C.A § 1829b
Any person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under Chapter 51A-17 or that intentionally makes a false entry or omits a material entry in such a record is <i>guilty of a Class 6 felony</i>	SDCL 51A-17-41



**South Dakota Bankers Association**

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