

**STATE OF GEORGIA
DEPARTMENT OF
BANKING AND FINANCE**



BULLETIN... BULLETIN... BULLETIN... BULLETIN... BULLETIN...

*SONNY PERDUE
GOVERNOR*

*ROB BRASWELL
COMMISSIONER*

*SPECIAL EDITION
IMPORTANT NOTICE
FINAL RULEMAKING*

November 2, 2010

DEPARTMENT OF BANKING AND FINANCE

FINAL REGULATIONS

Adopted November 2, 2010

To all interested persons:

Notice is hereby given that pursuant to the authority granted to it in the Georgia Administrative Procedures Act, Official Code of Georgia Annotated (O.C.G.A.) Chapter 50-13 and by authority of O.C.G.A. § 7-1-61, O.C.G.A. § 7-1-663; O.C.G.A. § 7-1-1012, and other cited statutes, the following attached Rules of the Department of Banking and Finance have been finally adopted on November 2, 2010. They were filed with the Secretary of State on November 2, 2010, and will be effective 20 days following or November 22, 2010.

Summary:

The attached rules were proposed and distributed on September 23, 2010. We received ten (10) written comment letters, seven (7) regarding Loans Generally, Interpretations and Rulings; two (2) regarding Disclosure Requirements and Mortgage Loan Files; and one (1) regarding late fees for a mortgage loan originator's failure to timely obtain continuing education. After review of the comment letters received, revisions have been made for clarification purposes to the Proposed Rules and are set forth below. The Department believes these Final Rules encourage safety and soundness, safe and fair mortgage lending, and conform to the law. This set of rules is your copy of the Final Rules.

REVISIONS:

80-1-5-.01 Loans Generally, Interpretations and Rulings.

In the Final Rules, the Department has deleted proposed language at Rule 80-1-5-.01(13) in its entirety for further review and consideration. No change to Rule 80-1-5-.01 has been made in the Adopted Final Rules.

(1) "Indirect" loans as used in Code Section 7-1-285 shall mean loans made for the substantial benefit of a third party where repayment of the loan is dependent on activities of the third party rather than solely dependent on the resources of the borrower and subject to the provisions of Rule 80-1-5-.11.

(2) Loans extended to any Industrial Development Authority domiciled in Georgia which are dependent upon revenues obtained under an assigned lease contract naming the Authority as lessor shall be considered as loans to the lessee in calculating legal loan limitations.

(3) Loans by a bank to any wholly-owned subsidiary of the bank, which subsidiary is located within an approved office of the bank and which has agreed to abide by all laws, rules and regulations applicable to the bank shall be exempt from the twenty-five (25) percent maximum lending limit of the bank. In addition, to the extent allowed by other applicable law and with the prior written approval of the Department, this exemption from the twenty-five (25) percent maximum lending limit may be extended to loans from a bank to a wholly owned subsidiary of an affiliated bank.

(4) In determining amounts loaned, all amounts guaranteed or insured by any instrumentality of the United States government shall be deducted to the extent of the guaranty or insurance coverage. Immediate and deferred participations on loans by an instrumentality of the United States government shall also be excluded. Where the source of repayment of a loan, i.e. lease payments, is guaranteed by an instrumentality of the United States government and such guarantee is assignable and has been assigned to the bank, such loan may be excluded to the extent of the guarantee.

(5) In determining whether or not a loan in excess of the fifteen (15) percent limitation is secured by "good collateral and other ample security," the lack of a perfected lien, inadequate insurance, required margins between collateral value and the amount of the loan shall be prima facie evidence of inadequate security to the debt. Loans secured by endorsement must be supported by a financial statement on the endorser, properly signed, which is not more than eighteen months old, if the loan is to be considered secured, and such statement must reflect adequate income to service the loan and unencumbered equity sufficient to protect the loan.

(6) A borrower's deposit accounts in the lending bank will be regarded as collateral to a loan when they are not subject to check or withdrawal, mature on or after the loan which is secured, are under the sole control of the bank, and are properly assigned. Where, according to the terms of the deposit contract, the deposit is eligible for withdrawal before the secured loan matures, the bank must establish internal procedures to prevent release of the security without the lending bank's prior consent. If proper procedures are in place, such deposits will be considered as collateral. Where deposit balances are properly taken as collateral to a loan, the loan may be reduced to the extent of the deposit in determining the amounts loaned for either secured or unsecured legal lending limitations, as applicable.

(7) Except as provided in this paragraph, extensions of credit in the form of insufficient funds checks held beyond the permissible return date and overdrafts shall be considered "extensions of credit" included in determining compliance with the legal limitation as it applies to the maker of the check or owner of the overdraft. Such extensions of credit shall also be subject to the requirements for prior written approval and ample collateral where the total indebtedness of the borrower exceeds fifteen (15) percent of the statutory capital base. Such extensions of credit will not be considered extensions of credit for purposes of compliance with the above legal loan limitations and requirements, provided that the extension is inadvertent, which requires that:

(a) The extension(s) do not exceed the aggregate amount of \$1,000 at any one time; and

(b) The account is not overdrawn or the insufficient funds check held for more than five (5) business days.

(8) Wherever approval of the Board of Directors or Loan Committee is required, such approval must be specific, prior, written approval of each extension of credit, except that advances made under a master note covering a specific purpose or project need not receive specific approval where such approval was accorded the master note. Annual approval of a line of credit may be used where interest rate, repayment terms, and anticipated collateral are clearly identified and current credit information is on file. Commodity, floor-plan and discount lines of credit which are anticipated to exceed fifteen (15) percent of the statutory capital base may be approved annually to be deemed appropriate by the Board of Directors without each transaction receiving specific prior approval. When in excess of twenty-five (25) percent of the statutory capital base, the line must be reviewed quarterly by the Board of Directors or Loan Committee.

(9) In determining the primary collateral basis upon which a loan is granted, that portion of the collateral having the greatest market value shall be assumed to be the primary collateral and the credit worthiness of the individual and of endorsers shall not be considered in determining conformity with the law unless proper, current, financial information is in file on the borrower or endorser.

(10) In determining amounts loaned to "any person, firm or corporation," amounts acquired as a result of purchasing accounts receivable from a third party (factoring) shall not be considered; provided, the aggregate debt of the obligor including factored accounts shall not exceed thirty-five (35) percent of the bank's statutory capital base.

(11) Extensions of credit to political subdivisions of the State of Georgia authorized to levy taxes or backed by the taxing authority of another political subdivision shall qualify for exemption from the twenty-five (25) percent loan limitation under the provisions of Code Section 7-1-285, subparagraph (c)(4)(B), only where such extension of credit otherwise conforms with the provisions of Georgia Constitution, Article 9, Section 5.

(12) Where the "statutory capital base" as defined in Section 7-1-4(35) is reduced by operating losses, loan losses, or for other reasons, existing debt which was in conformity with the legal limitations at the time it originated shall not be construed to be non-conforming with new legal limitations resulting from the reduced statutory capital base; provided, however, in the absence of agreements to the contrary and originating at the time such debt originated regarding repayment programs for the debt in question, any extension, renewal, rollover or the like of the existing debt shall be considered to be a new loan and must conform to the new, lower lending limitations. Demand notes in excess of resultant lower lending limitations or included in aggregate debts in excess of such limitations must be called for maturity within six (6) months after it has been determined that the new lending limits are applicable; provided, such notes may be wholly or partially renewed on a demand basis or otherwise where the aggregate debt of the borrower conforms to the new lending limits.

~~(13) Consistent with legislative intent, a renewal or restructuring of a loan, as provided for at O.C.G.A. § 7-1-285(c)(9), that technically may exceed the reduced legal lending limits of an institution shall be permissible only for performing loans. Such renewal or restructuring shall be consistent with safe and sound banking practices, and appropriate underwriting standards. For the purposes of this Rule, a "performing loan" shall be defined as an accruing loan that is ninety (90) days or less past due.~~

Authority Ga. L. 1974, pp. 733, 790-797; Ga. L. 1983, Act No. 255, Effective March 16, 1983.
~~§ 7-1-285.~~

80-11-1-.01 Disclosure Requirements.

In the Final Rules, the words “a good faith estimate of” have been deleted from 80-11-1-.01(1)(a) to avoid confusion. These words do not identify the Good Faith Estimate federal form widely known by that name, but were simply used as descriptive language of a fee. Clarification has also been made to subsections 80-11-1-.01(6) and (7) to state that brokers and lenders are to comply with good faith estimate disclosures as required by federal law. Based upon the clarifications made to language in subsections (6) and (7) the proposed language at 80-11-1-.01(8)(c) is no longer needed and thus has been deleted.

(1) Written disclosure required before acceptance of fees. Any person required to be licensed or registered under Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated ("Article 13") must make the following disclosures in writing to the applicant prior to accepting an application fee, property appraisal fee, credit report fee, or any other third-party fee from an applicant for a residential mortgage loan.

(a) The amounts of the application fee, ~~a good faith estimate~~ of the credit report fee, the property appraisal fee and/or any other third-party fees;

(b) Whether all or any part of such fees or charges is refundable prior to settlement of the mortgage loan, and the terms and conditions for obtaining a refund if all or any part of the fees or charges is refundable;

(c) The specific services which will be provided or performed for the application fee;

(d) In cases where the fees are being accepted by a mortgage lender or mortgage broker that such lender or broker cannot guarantee approval of the loan application or acceptance into a particular loan program. Further, lender or broker may not use the terms “closing” or “settlement” to refer to a transaction unless the transaction meets the definition of settlement in paragraph (2) of this rule.

(2) For purposes of this Rule, the term "settlement" or “closing” means the process of executing legally binding documents regarding a lien on residential property and the disbursement of funds necessary to effect the transaction. Where a federally required right of rescission applies to a transaction, the settlement or closing date will be the date the binding documents are signed, not the disbursement date.

(3) Some or all of the disclosures required by paragraph (1) of this Rule may appear on forms used to comply with otherwise applicable state or federal laws.

(4) The disclosures required in paragraph (1) of this Rule shall be acknowledged in writing by the applicant and a copy of the acknowledgment maintained by the lender or broker required to make the disclosure, and a copy of the acknowledgment shall be given to the applicant. In instances of mail applications, the disclosures required by paragraph (1) must be included in the

mail application package with a request that a signed acknowledgment form be returned to the mortgage broker or lender required to make the disclosure. A copy of this request shall be kept by the mortgage broker or lender. In instances of applications taken by telephone, the disclosures required by paragraph (1) must be mailed or delivered to the applicant with a request that a signed acknowledgment form be returned to the mortgage broker or lender required to make the disclosure. A copy of this request shall be kept by the mortgage broker or lender.

(5) For purposes of paragraph (1) of this Rule, "application fee" means any fee advanced prior to settlement by the applicant to the mortgage broker or lender in connection with an application for a mortgage loan, including any charge for soliciting, processing, placing or negotiating a mortgage loan. The term does not include payments to be remitted to third party service providers, such as appraisal fees or fees for credit reports.

(6) Good Faith Estimate to be provided by broker. Every broker, including every home improvement dealer and manufactured home dealer required to be licensed or registered under Article 13 shall provide applicants for mortgage loans the good faith estimate disclosure as required ~~below~~ by federal law.

~~(a) Every broker shall disclose in writing to the applicant for a mortgage loan a good faith estimate, also required by federal law, of the costs the applicant can reasonably expect to pay in obtaining a mortgage loan, whether all or any part of these costs is refundable prior to settlement of the mortgage loan, and the terms and conditions under which all or any part of these costs is refundable. The good faith estimate of costs shall be mailed or delivered to the applicant within three business days after the application is received. If a mortgage broker acting as an exclusive agent of the lender receives the application, either the lender or the mortgage broker shall provide the good faith estimate. In the event that an application is received by a mortgage broker who is not an exclusive agent of the lender, the mortgage broker must provide a good faith estimate within three days of receiving a loan application based on his or her knowledge of the range of costs. An "exclusive agent" for the purposes of Article 13 shall mean a broker who represents only one lender and no others.~~

~~(b) The disclosures required in paragraph (6) of this Rule shall be acknowledged in writing by the applicant and a copy of the acknowledgment maintained by the broker, or lender if the broker is acting as an exclusive agent of the lender. A copy of such acknowledgment shall be given to the applicant. In instances of mail applications and applications taken by telephone or electronically, the broker, or lender if the broker is acting as an exclusive agent of the lender, shall deliver or mail to the applicant together with the required disclosures a request that a signed acknowledgment form be returned to the mortgage broker, or lender as appropriate. A copy of this request shall be kept by the mortgage broker or lender who delivers it.~~

~~(c) Some or all of the disclosures required in paragraph (6) of this Rule may appear on forms used to comply with otherwise applicable state or federal laws.~~

(7) Good Faith Estimate to be provided by Lender. ~~Except as provided in subsection (d) of this Rule, e~~Every lender required to be licensed or registered under Article 13 shall provide applicants for mortgage loans the good faith estimate disclosure as required ~~below~~ by federal law.

~~(a) Every lender shall disclose in writing to the applicant for a mortgage loan a good faith estimate, also required by federal law, of the costs the applicant can reasonably expect to pay in obtaining a mortgage loan, whether all or any part of these costs is refundable prior to settlement of the mortgage loan, and the terms and conditions under which all or any part of these costs is refundable. The good faith estimate of costs shall be mailed or delivered to the applicant within three business days after the application is received.~~

~~(b) The disclosures required in paragraph 7 of this Rule shall be acknowledged in writing by the applicant, maintained by the lender required to make the disclosures, and a copy of such acknowledgment shall be given to the applicant. In instances of mail applications and applications taken by telephone or electronically, the lender shall deliver or mail to the applicant together with the required disclosures a request that a signed acknowledgment form be returned to the mortgage lender. A copy of this request shall be kept by the mortgage lender.~~

~~(c) Some or all of the disclosures required in paragraph (7) of this Rule may appear on forms used to comply with otherwise applicable state or federal laws.~~

~~(d) In cases where the broker provides a good faith estimate that includes the costs of the broker and the lender, the lender would not be required to issue a good faith estimate as dictated by paragraph (7) of this Rule, provided the broker's good faith estimate is an accurate estimate of the lender's costs.~~

(8) Foreclosure Disclosure.

(a) Every lender, and every broker who closes mortgage loans in the broker's own name with funds provided by others and which loans are assigned within 24 hours of the funding of the loan to the mortgage lender providing the funding of such loans (i.e. table funding), required to be licensed or registered under Article 13 shall disclose in writing to each applicant for a mortgage loan that failure to meet every condition of the mortgage loan may result in the loss of the applicant's property through foreclosure. The disclosure shall be made at or before the time of settlement. The disclosure shall include the following language in at least ten-point bold-faced type:

"O.C.G.A. § 7-1-1014(3) requires that we inform you that if you fail to meet any condition or term of the documents that you sign in connection with obtaining a mortgage loan you may lose the property that serves as collateral for the mortgage loan through foreclosure."

(b) The applicant shall be required to sign the disclosure and the lender or broker, as applicable, shall keep a copy of the signed disclosure.

(c) This disclosure requirement may be satisfied by a substantially similar disclosure as required by federal law. To the extent any disclosure requirements contained in this Rule conflict with federal law, a licensee shall demonstrate compliance with applicable federal law.

Authority Ga. L. 1974, p. 733; Ga. L. 1993, p. 543; O.C.G.A. § 7-1-61; § 7-1-261.

80-11-2-.04 Mortgage Loan Files.

In the Final Rules, the Department has clarified language at 80-11-2-.04(3) to provide that if a loan application is taken for a cancelled loan that loan application, whether signed or unsigned, should be retained.

(1) Any person who is acting as a mortgage broker and who is required to be licensed under O.C.G.A. Title 7, Article 13, whether as a broker or a lender ("licensee"), shall maintain a loan file for each mortgage loan transaction. The files shall be maintained in an alphabetical or numerical sequence in the principal place of business or in each branch office where mortgage loans are originated, provided that the branch office is indicated on the licensee's initial written application for licensure or written amendment thereto.

(2) Each loan file shall contain the following:

(a) Copy of the signed mortgage loan application with the Nationwide Mortgage Licensing System and Registry (NMLSR) unique identifier of the mortgage loan originator if the application form is received by the licensee;

(b) Copy of credit report if the credit report is pulled or ordered by the licensee;

(c) Copy of the appraisal and the order for such appraisal if the appraisal is ordered by the licensee;

(d) Copy of signed closing statement (HUD-1) or documentation of denial or cancellation of loan application;

(e) Copies of the disclosure documents required by Rule 80-11-1-.01;

(f) Copies of all contracts, letters, notes and memos regarding the customer, including but not limited to lock-in agreements and commitment agreements; and

(3) For canceled loans, A licensee shall maintain a copy of any unsigned mortgage loan application if taken in an instance in which there is a cancelled loan.

(4) Failure to maintain files and required documentation (incidental and isolated clerical errors or omissions shall not be considered a violation) may be grounds for suspension of the license or other appropriate administrative action and will subject the licensee to fines in accordance with regulations prescribed by the Department.

Authority Ga. L. 1993, p. 543.

ADOPTED RULES

80-1-5-.11 Combination of Debt for Legal Lending Limit Purposes

(a) General Rule. Pursuant to Code Section 7-1-285, loans or extensions of credit to one borrower will be attributed to another person and each person will be deemed a borrower:

(1) When proceeds of a loan or extension of credit are to be used for the direct benefit of the other person, to the extent of the proceeds so used; or

(2) When a common enterprise is deemed to exist between the persons.

(b) Direct Benefit. The proceeds of a loan or extension of credit to a borrower will be deemed to be used for the direct benefit of another person and will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services.

(c) Common enterprise. A common enterprise will be deemed to exist and loans to separate borrowers will be aggregated:

(1) When the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer will not be treated as a source of repayment under this paragraph because of wages and salaries paid to an employee, unless the standards of paragraph (c)(2) of this section are met;

(2) When loans or extension of credit are made:

(i) To borrowers who are related directly or indirectly through common control, including where one borrower is directly or indirectly controlled by another borrower; and

(ii) When substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when fifty (50) percent or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments;

(3) When separate persons borrow from a bank to acquire a business enterprise of which those borrowers will own more than fifty (50) percent of the voting securities or voting interests, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loans; or

(4) When the Department determines, based upon an evaluation of the facts and circumstances of particular transactions that a common enterprise exists.

(d) Special Rule for Loans to a Corporate Group.

(1) Loans or extensions of credit by a bank or a corporate group may not exceed fifty (50) percent of the bank's capital and surplus. This limitation applies only to loans subject to the combined general limit. A corporate group includes a person and all of its subsidiaries. For purposes of this paragraph, a corporation or a limited liability company is a subsidiary of a person if the person owns or beneficially owns directly or indirectly more than fifty (50) percent of the voting securities or voting interests of the corporation or company.

(2) Except as provided in paragraph (d)(1) of this section, loans or extension of credit to a person and its subsidiary, or to different subsidiaries of a person, are not combined unless either the direct benefit or the common enterprise test is met.

(e) Special Rules for Loans to Partnerships, Joint Ventures, and Associations.

(1) Loans or extensions of credit to a partnership, joint venture, or association are deemed to be loans or extensions of credit to each member of the partnership, joint venture, or association. This rule does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members, by the terms of the partnership or membership agreement, are not held generally liable for the debts or actions of the partnership, joint venture, or association, and those provisions are valid under applicable law.

(2) Loans to Partners.

(i) Loans or extensions of credit to members of a partnership, joint venture, or association are not attributed to the partnership, joint venture, or association unless either the direct benefit or the common enterprise tests are met. Both the direct benefit and common enterprise tests are met between a member of a partnership, joint venture or association and such partnership, joint venture or association when loans or extensions of credit are made to the member to purchase an interest in the partnership, joint venture or association.

(ii) Loans or extensions of credit to members of a partnership, joint venture, or association are not attributed to other members of the partnership, joint venture, or association unless either the direct benefit or common enterprise test is met.

(3) Documentation. In order to demonstrate that the direct benefit and common enterprise provisions of this Rule have been satisfied, a bank must maintain adequate financial, operational, cash flow and ownership structure information relative to the borrower to support that these requirements have been fully met.

(4) For the purposes of this Rule, "*capital*" is defined as the amount of common stock outstanding and unimpaired plus the amount of perpetual preferred stock outstanding and unimpaired.

(5) For the purposes of this Rule, "*surplus*" means the sum of:

(i) Capital surplus; undivided profits; reserves for contingencies and other capital reserves (excluding accrued dividends on perpetual and limited life preferred stock); net worth certificates

issued pursuant to 12 U.S.C. 1823(i); minority interests in consolidated subsidiaries; and allowances for loan and lease losses; minus intangible assets;

(ii) Mortgage servicing assets;

(iii) Mandatory convertible debt to the extent of twenty (20) percent of the sum of capital and (i) and (ii) above; and

(iv) Other mandatory convertible debt, limited life preferred stock and subordinated notes and debentures to the extent that it is stated on the instrument that it is not a deposit and is not insured by the FDIC.

(6) For the purposes of this Rule, “*control of a company or bank*” means that a person directly or indirectly, or acting through or in concert with one or more persons:

(i) Owns, controls, or has the power to vote twenty-five (25) percent or more of any class of voting securities of the company or bank;

(ii) Controls in any manner the election of a majority of the directors of the company or bank; or

(iii) Has the power to exercise a controlling influence over the management or policies of the company or bank.

(7) For the purposes of this Rule, a person is presumed to have “*control*”, including the power to exercise a controlling influence over the management or policies of a company or bank if:

(i) The person is:

(A) An executive officer or director of the company or bank; and

(B) Directly or indirectly owns, controls, or has the power to vote more than ten (10) percent of any class of voting securities of the company or bank; or

(ii)(A) The person directly or indirectly owns, controls, or has the power to vote more than ten (10) percent of any class of voting securities of the company or bank; and

(B) No other person owns controls, or has the power to vote a greater percentage of that class of voting securities.

(8) For the purposes of this Rule, a person is not considered to have control, including the power to excise a controlling influence over the management or policies, of a company or bank solely by virtue of the individual’s position as an officer or director of the company or bank.

Authority O.C.G.A. §7-1-285.

80-3-1-.02 Check Cashers.

(1) Every applicant for a license or registration shall demonstrate to the Department that such applicant has sufficient financial resources in the form of working capital and tangible net worth to successfully engage in the business of cashing checks. Sufficiency of financial resources shall be determined through financial analysis by the Department of proforma and historical financial information on the applicant. Each licensee or registrant shall be required to complete and attest to official questionnaires and statements of assets and liabilities when requested for examination purposes. Licensees and registrants shall be prohibited from withholding, deleting, destroying, or altering information requested by an examiner of the Department or making false statements or material misrepresentations to the Department during the course of an examination or on any application or renewal form sent to the Department.

(2) As used in O.C.G.A. Article 4A of Title 7:

(a) "Employee" shall mean such persons (includes a natural person, as well as a partnership, association, corporation or other similar entity) as are regularly compensated by the licensee or registrant, its officers, directors, agents or assigns, to perform services for the licensee or registrant where such persons have access to the monetary resources of the licensee or registrant under the system of internal routine and controls employed in the offices of the licensee or registrant.

(3) Every licensee or registrant shall post in prominent view of each teller window or other customer service station a copy of its license or registration. The words "LICENSED BY THE GEORGIA DEPARTMENT OF BANKING AND FINANCE" or "REGISTERED BY THE GEORGIA DEPARTMENT OF BANKING AND FINANCE", as applicable, in letters at least one-quarter inch high shall be displaced by window decal or other signage at each public entrance to a licensed or registered check cashing business and all other advertising material relative to the cashing of checks distributed within this state.

(4) Exemptions.

(a) Exemtees: Persons who do not charge a fee to cash a check, draft, or money order. Fees may include cash, may be in the form of exchange of value in excess of regular retail value, in the form of mandatory purchase of goods or services by patrons or in the form of the purchase of catalog items or coupons indicating the ability to receive goods, services, or catalog items.

(b) Registrants: Persons charging a fee of no more than two percent (2%) of the face amount of the check, draft, or money order or two dollars (\$2.00) per check, draft, or money order, whichever is greater, as consideration for the cashing of a check may be exempted from the requirement to obtain a license provided such check cashing service is not advertised, announced or otherwise promoted as a service. Such persons are designated as "Registrants." Notwithstanding such exemption from the requirement to obtain a license, such persons shall be subject to the requirements and restrictions on the cashing of checks set forth in O.C.G.A. § 7-1-704 and § 7-1-705, record keeping requirements in subsection 5(b) of this Rule, and other requirements as noted herein. Persons qualifying for registration under the provisions of this subsection shall apply for such registration on forms prescribed by the Department and will be required to pay a registration fee prescribed in Rule 80-5-1-.02.

(5) Minimum Books and Records.

(a) Books and records required herein shall be maintained by every holder of a license or registration as indicated in this Rule. Information required in items 1 through 8 of subsection (5)(b) of this Rule, shall be maintained by all licensees and registrants, cashing checks for an amount of more than one thousand dollars (\$1,000).

(b) A Daily Record of Checks Cashed shall be maintained as a record of all check cashing transactions occurring each day. For all checks in excess of one thousand dollar (\$1,000), such Daily Record shall include:

1. The date of the transaction;
2. Date of the check, draft, or money order (hereafter referred to as "check");
3. Check number;
4. Name and location or routing number of the payor bank;
5. Name of the Drawer of the check;
6. Name, address, and identifying number (social security, driver's license, passport, etc.) of the person negotiating the check;
7. Amount of the check; and
8. Amount of fee charged for cashing the check.

All other transactions not falling into the categories above may be listed by name of person negotiating the check, amount of check and amount of fee charged. Required information may be maintained through microfilm or other reviewable and reproducible facsimile of the check.

(c) A Daily Cash Reconciliation shall be maintained summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business. Such reconciliation shall separately reflect cash received from the sale of checks, redemption of returned items, bank cash withdrawals, cash disbursed in cashing of checks, and bank cash deposits.

(d) Records required under subsections (b) and (c) may be maintained in combined form, hand or machine posted, or automated.

(e) A General Ledger containing records of all assets, liabilities, capital, income and expenses shall be maintained. The General Ledger shall be posted from the Daily Record of Checks Cashed or other record of original entry, at least quarterly, and shall be maintained in such manner as to facilitate the preparation of an accurate trial balance of accounts in accordance with generally accepted accounting practices. A consolidated General Ledger reflecting activity

at two or more locations under the same license or registration may be maintained provided books of original entry are separately maintained for each location.

(f) An original written authorization or other evidence of verification shall be maintained, attesting to the fact that said corporation has authorized its officers and employees or specific officers or employees to present checks, drawn by the corporation payable to cash or drawn by any party payable to the corporation, to a licensee or registrant for cashing. A check casher shall not cash a check payable to persons other than natural persons unless the payee has on file such a written authorization or verification indicating that the payee has authorized the presentation of such checks on behalf of the payee.

(g) For all entities cashing checks, each customer cashing a check shall be offered the option of receiving a receipt showing the name of the licensee or registrant (or trade name of the licensee or registrant), the transaction date, amount of the check, and the fee charged.

(6) Personnel: Licensees and Registrants.

(a) Every licensee or registrant shall maintain personnel files for its employees.

(b) Each candidate for employment involved with the check cashing function must have a Georgia Crime Information Center (GCIC) criminal history background check performed prior to hiring. A copy of this GCIC criminal history background check shall be maintained in the employee's personnel file until one year after termination of employment by the licensee or registrant. Each person in a supervisory position shall complete a Financial and Biographical Information Report (Form MSB-3) as prescribed by the Department, an authorization for Criminal Background Check, and fingerprint record. Prior to promotion to a supervisory position involved in the check cashing function, or not later than thirty (30) days following promotion to a supervisory position the licensee or registrant shall cause an independent credit report and a criminal background check to be performed on the person promoted. The foregoing documents shall be retained in the personnel file until one year after termination of employment by the licensee or registrant. A "supervisory position" shall mean any position occupied by a person responsible for the day-to-day job performance of one or more other persons or responsible for the overall management of any check cashing outlet except on a temporary (less than one month) basis and irrespective of the number of subordinates employed.

(c) Persons found to have been convicted of an offense punishable as a felony involving moral turpitude in this state may not be employed by a licensee or registrant without compliance with O.C.G.A. § 7-1-702.

(d) Persons found after investigation to have materially misstated information on Form MSB-3 shall be terminated from employment; provided, however, the licensee or registrant may continue employment, subject to review by the Department, by placing in the personnel file a complete statement of extenuating circumstances considered valid reasons for continuing employment.

(7) All checks, drafts, and money orders drawn on a financial institution domiciled in the United States and cashed pursuant to a license or registration under Article 4A of Title 7, O.C.G.A., shall be sent for deposit to the licensee's or registrant's account at a depository

financial institution domiciled within the United States or sent for collection not later than close of business on the next business day after the date on which the check was cashed.

(8) Each licensee, registrants, and exemptee shall maintain a principal location at which the books and records are maintained and which is accessible to the Department for examination during normal business hours. The Department may examine registrants and exemptees to verify qualification for exemption from licensing. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department) or for material withholding of information or misrepresentation shall be revocation of the license, registration, or exempt status. The business of the licensee may be conducted through additional outlets, including those operated as mobile facilities, provided that mobile facilities maintain a regular schedule of times and locations at which they provide check cashing services, file the schedule with the Department, and comply with local licensure requirements at each location at which business is conducted.

(9) Sale of Business; Closing of Check Cashing Business.

(a) A licensed check casher or registrant shall notify the Department in writing within fifteen (15) days of the permanent closing of its check cashing business and shall surrender its original license or registration to the Department at that time.

(b) A licensed or registered check casher shall notify the Department in writing thirty (30) days prior to the sale of the check cashing business when such sale results in a change in ownership. Licenses or registrations issued by the Department shall not be transferred or assigned, or subject to a change in ownership without prior written application to and approval by the Department. Any license or registration that is transferred, assigned or subject to a change in ownership without prior approval of the Department shall be regarded as invalid under law. Engaging in the business of cashing checks under a license or registration that has been transferred, assigned or otherwise acquired without prior approval by the Department shall subject a person to fines and administrative action.

Authority O.C.G.A. §7-1-61; §7-1-688; §7-1-707.3; §7-1-704; §7-1-709.

80-3-1-.07. Administrative Fines and Penalties.

(1) Check Cashers. As authorized under O.C.G.A. Article 4A of Chapter 1 of Title 7, including O.C.G.A. §7-1-707(e)(6), the Department establishes the following fines and penalties for violation of the laws and rules governing check cashers. Except as otherwise indicated, these fines and penalties apply to any person, partnership, association, or corporation engaged in the business of cashing checks, drafts, or money orders for a consideration that is required to be licensed or registered under O.C.G.A. Article 4A of Chapter 1 of Title 7 (“licensee” or “registrant”). The Department, at its sole discretion, may waive or modify a fine based upon the gravity of the violation, history of previous violations, and such other facts and circumstances as have contributed to the violation.

(a) Books and Records. If the Department in the course of an examination or investigation, finds that a licensee or registrant has failed to maintain their books and records or failed to certify to the books and records according to the requirements of O.C.G.A. § 7-1-705(b) and Rules 80-3-1-.02(1) or 80-3-1-.02(5), such licensee or registrant shall be subject to a fine of one thousand dollars (\$1,000) for each type of record listed in Rules 80-3-1-.02(1) or 80-3-1-.02(5) which is not in compliance or which is absent or uncertified.

(b) Excessive Fees. If the Department, in the course of an examination or investigation, finds that a licensee or registrant has charged check cashing fees in excess of the amount set forth in O.C.G.A. § 7-1-706, such licensee or registrant shall be subject to a fine of one thousand dollars (\$1,000) per occurrence and its license or registration will be subject to revocation or suspension.

(c) Posting of Charges. Any licensee or registrant who does not display, at all locations, a notice stating the charges/fees for cashing checks in accordance with O.C.G.A. § 7-1-705(a) shall be subject to a fine of five hundred dollars (\$500).

(d) Operating Without Proper License or Registration. Any person who acts as a check casher prior to receiving a current license or registration required under O.C.G.A. Article 4A of Chapter 1 of Title 7, or who acquires a check cashing business and operates without their own license, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars (\$1,000) per day and their check casher application will be subject to denial or their license or registration will be subject to revocation or suspension, as applicable.

(e) Felons. Any licensee or registrant that hires or retains an employee who is a felon as described in O.C.G.A. § 7-1-702(b), when such employee has not complied with the remedies provided for in O.C.G.A. § 7-1-702(b) for each conviction, may be fined five thousand dollars (\$5,000) for each such employee and their license or registration will be subject to revocation or suspension.

(f) Employee Background Checks. Any licensee or registrant that hires or retains an employee involved with the check cashing function for whom a Georgia Crime Information Center (GCIC) criminal background check has not been performed prior to employment, will be subject to a fine of one thousand dollars (\$1,000) per occurrence. Proof of the required GCIC criminal background check must be retained in the employee's personnel file until one year after termination of employment by the licensee. Notwithstanding compliance with this requirement to perform a GCIC criminal background check prior to employment, failure to maintain criminal background checks as required will result in a fine of one thousand dollars (\$1,000) for each employee personnel file that is missing this documentation.

(g) Examination Fees. Any licensee or registrant that does not submit payment to the Department, within sixty (60) days of the fee statement date, for examination fees charged in accordance with O.C.G.A. § 7-1-704(b) and Rule 80-5-1-.03(1) shall be subject to a fine of five hundred dollars (\$500) and their license or registration will be subject to revocation or suspension.

(h) Other Business Activities. Any licensee or registrant found to have violated any law of this state by conducting any other business that is not lawful in conjunction with the check

cashing business, shall be subject to a fine of five thousand dollars (\$5,000) and its license or registration will be subject to revocation or suspension.

(i) Advertising. Any person who has been designated as a registrant by the Department and who violates the law and/or Rules pertaining to advertising set forth in O.C.G.A. § 7-1-700(4) and Rule 80-3-1-.02(4)(b) shall be subject to a fine of five hundred dollars (\$500) for each such violation and may be required to surrender its registration and apply for a license, if the Department determines that is the proper designation based upon the nature of the violation(s).

(j) Advertising – “No Identification Required.” A licensee or registrant that advertises that it will cash checks with no identification required will be subject to a fine of one thousand dollars (\$1,000).

(k) Check Cashing Identification Requirements. No licensee or registrant shall cash checks without identification of the bearer of such check. Failure to comply with the requirements of O.C.G.A. § 7-1-705(f) shall subject the licensee or registrant to a fine of one thousand dollars (\$1,000) per occurrence.

(l) Failure to Submit to Exam. The penalty for refusal to permit an investigation or examination of books, accounts, and records, by the Department shall be revocation of license or registration and a five thousand dollars (\$5,000) fine. “Refusal” shall be determined according to Department Rules, examination policies and procedures, but shall require at least two (2) attempts to schedule an examination.

(m) Consumer Complaints. Any licensee or registrant who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department’s correspondence to such licensee or registrant, shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence. Repeated failure to properly respond, as reasonably determined by the Department, may result in revocation of license or registration.

(n) Failure to Notify the Department of Change in Ownership. Any licensee, registrant or other person who fails to notify and obtain the Department’s approval of a change in ownership shall be subject to a fine of five thousand dollars (\$5,000) and administrative action by the Department.

(o) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee or registrant has failed to comply with the requirements referred to in Rule 80-3-1-.03(3) entitled “Money Service Businesses Compliance with Federal Requirements,” such licensee or registrant shall be subject to a fine of one thousand dollars (\$1,000) for each instance of non-compliance.

(p) Failure to Post Required License or Registration. Any licensee or registrant that fails to post a copy of its license or registration in prominent view of each teller window or other customer service station, and at each public entrance to a licensed or registered check cashing business as required shall be subject to a fine of five hundred dollars (\$500) for each instance of non-compliance.

(2) Check Sellers and Money Transmitters. As authorized under Article 4 of Chapter 1 of Title 7, O.C.G.A. § 7-1-689(f), the Department establishes the following fines and penalties for violation of the laws and rules governing sale of check companies and money transmitters. Except as otherwise indicated, these fines and penalties apply to any person, partnership, association, or corporation engaged in the business of transmitting money or selling or issuing checks, money orders, or any other instrument, order, or device for the payment or transmission of money or monetary value that is required to be licensed under O.C.G.A. Title 7, Article 4 (“licensee”). The Department, at its discretion, may waive or modify a fine based upon the gravity of the violation, history of previous violations, and such other facts and circumstances as have contributed to the violation.

(a) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain their books and records according to the requirements of O.C.G.A. § 7-1-687.1, such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each type of record listed in O.C.G.A. § 7-1-687.1 which is not in compliance.

(b) Operating Without Proper License. Any person who acts as a check seller or money transmitter prior to receiving a current license required under O.C.G.A. Article 4 of Chapter 1 of Title 7, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars (\$1,000) per day of such operation and their application will be subject to denial or their license or registration will be subject to revocation or suspension, as applicable.

(c) Felons. Any licensee that hires or retains an employee who is a felon as described in O.C.G.A. § 7-1-682(c), when such employee has not complied with the remedies provided for in O.C.G.A. § 7-1-682(c) for each conviction before such employment, may be fined five thousand dollars (\$5,000) for each such employee and their license will be subject to revocation or suspension.

(d) Locations and Agents. Any licensee that does not give timely notice to the Department of new locations or agents beyond those previously reported as required in O.C.G.A. § 7-1-686(b) and Rules 80-3-1-.01(2) and 80-3-1.01(4), shall be subject to a fine of five hundred dollars (\$500) for each location or agent not reported.

(e) GCIC Background Checks on Employees and Agents. Any licensee that does not obtain a Georgia Crime Information Center (GCIC) criminal background check on employees or agents involved with the check selling function prior to the initial date of hire shall be subject to a fine of one thousand dollars (\$1,000). Proof of the required GCIC criminal background check must be retained by the licensee until one year after termination of employment by the licensee. Failure to maintain criminal background checks as required will result in a fine of one thousand dollars (\$1,000) per employee personnel file absent such documentation.

(f) Agents. Any licensee that does not give notice of any agent whose agency certificate has been revoked or suspended by the licensee as required by Rule 80-3-1.01(4), shall be subject to a fine of five thousand dollars (\$5,000) for each agent suspension or revocation not reported in writing to the Department.

(g) Failure to Provide Receipt. A licensed money transmitter, or its authorized agent, that does not provide the customer with a written receipt or other evidence of acceptance as required in Rule 80-3-1-.01(8), shall be subject to a fine of one thousand dollars (\$1,000) per transaction where the receipt was not provided.

(h) Examination Fees. Any licensee that does not submit payment to the Department, within sixty (60) days of the fee statement date, for examination fees charged in accordance with O.C.G.A. § 7-1-684.1 and Rule 80-5-1-.03(1) shall be subject to a fine of one thousand dollars (\$1,000) and their license will be subject to revocation or suspension.

(i) Other Business Activities. Any licensee found to have violated any law of this state by conducting any other business that is not lawful in conjunction with the sale of check or money transmission business, shall be subject to a fine of five thousand dollars (\$5,000) and their license will be subject to revocation or suspension.

(j) Failure to Report. Any licensee who fails to provide required reports as established by the Department from time to time, including the Semi-Annual Reports within the designated time periods established by the Department, shall subject the licensee to a fine of five thousand dollars (\$5,000) for each such occurrence. Repeated failure to provide timely Reports as required may result in revocation of license, registration, or exempt status.

(k) Failure to Submit to Exam. The penalty for refusal to permit an investigation or examination of books, accounts, and records, to the Department shall be revocation of the license or registration and a one thousand dollars (\$1,000) fine. "Refusal" shall be determined according to the Department's Rules, examination policies and procedures, but shall require at least two (2) attempts to schedule an examination.

(l) Consumer Complaints. Any licensee who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department's correspondence to such licensee, shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence. Repeated failure to properly respond, as reasonably determined by the Department, may result in revocation of license.

(m) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee or registrant has failed to comply with the requirements referred to in Rule 80-3-1-.03(3) entitled "Money Service Businesses Compliance with Federal Requirements," such licensee or registrant shall be subject to a fine of one thousand dollars (\$1,000) for each instance of non-compliance.

(3) All fines levied by the Department are due within thirty (30) days from date of assessment and must be paid prior to renewal of the annual license or registration, reapplication for a license or registration, or any other activity requiring Departmental approval.

(4) All fines collected by the Department net of the cost of recovery, which cost may include any cost of hearing and discovery in preparation for hearing, shall be paid into the state treasury to the credit of the general fund or may be paid as provided in O.C.G.A. § 7-1-704(d).

Authority O.C.G.A. § 7-1-61; § 7-1-688; § 7-1-707.

80-5-1-.01 General.

(1) The annual appropriation for the Department of Banking and Finance as enacted by the General Assembly and signed into law, after adjustment for any differences between departmental revenue collections and departmental expenditures for the preceding fiscal year, shall be prorated among the financial institutions supervised or regulated by the Department.

(2) That portion of the annual appropriation prorated to each financial institution shall be assessed against such institutions. Annual assessments are for the Department's fiscal year, July 1 through June 30. Assessments for depository institutions are based upon each financial institution's assets reported on either a December 31 or June 30 Report of Condition for a partial year. All financial institutions with a June 30 or December 31 Call Report, including those acquired, converted, and or merged into a federal or national institution or into another state institution will also be assessed, either for a full year or for a partial year, as appropriate. Assessments for a full year will be mailed on or about December 1, and are due and payable no later than January 31. A late payment penalty may be assessed for the full year billing at any time after January 31. Assessments for a partial year will be prorated for the number of full and partial months as a state institution and will be mailed as soon as practical and shall be due and payable upon receipt. A late payment penalty may be assessed for the partial year billing fourteen days after bill issuance.

(3) Newly chartered banks will not be assessed for the first three full months plus any partial month from the begin business date. Thereafter, annual assessments as set forth herein shall apply. The assessment period for newly chartered banks shall begin on the first day of the month after the first three full calendar months from the begin business date.

(4) Assessment fees for state chartered institutions merging or converting into federal or national institutions after July 1, but prior to the date that assessments are due and payable, will be prorated based on the number of full and partial months the institution operated as a state institution.

(5) Assessment fees for one or more state chartered institutions that merge into another state institution after July 1, but prior to the date that assessments are due and payable, will be assessed on the combined total assets and offices of the merged institutions as of June 30. State institutions that merge after the assessment date on or about December 1, shall pay the full assessment for each institution as billed on or about December 1.

(6) Assessment fees for a state institution that fails and is acquired by a federal or national institution after July 1, but prior to the date that assessments are due and payable, will be prorated based on the number of full and partial months the institution operated as a state institution. Assessment fees for a state institution that fails and is acquired by a state institution after July 1, but prior to the date that assessments are due and payable, will be assessed on the combined total assets and combined offices of the merged institutions as of June 30. State institutions that fail after the date that assessments are due and payable, will pay the full assessment for each institution as billed on the December 1 assessment.

(7) Assessment fees for a national bank that fails and is acquired by a state institution after July 1 will be prorated based on the number of full and partial months the institution operated as a state institution.

(8) The Department has made available an Applications Manual at its Internet website, which manual includes the fees for each type of application, registration and notification.

(9) The Department has policies which provide that certain qualifying institutions may expedite applications or submit shortened forms of applications. The fees for these expedited processes have been reduced accordingly. Criteria for banks to qualify is found at Rule 80-1-1-.10; for bank holding companies at Rule 80-6-1-.13.

Authority Ga. L. 1974, pp. 705, 732, 733, 921; Ga. L. 1976, Act 762.

80-5-1-.02 License, Registration and Supervision Fees for Check Cashers and Sellers, Money Transmitters, Representative Offices and Mortgage Lenders and Brokers; Due Dates.

(1) Check sellers and money transmitters.

(a) The annual license fee is two thousand dollars (\$2,000).

(b) The annual renewal license fee is two thousand dollars (\$2,000) for check sellers and one thousand dollars (\$1,000) for money transmitters and shall be due and must be received by the Department on or before the first day of November of each year. Where the person or corporation engages in both the sale of checks and money transmission, the higher of the two fees shall be due and payable. Annual license renewal fees not received prior to November 1 will be assessed a late fee of three hundred dollars (\$300) and cannot be assured of issuance or renewal prior to January 1.

(c) An additional non-refundable application investigation fee of two hundred fifty dollars (\$250) will be assessed.

(d) All check seller and money transmitter licenses shall expire on December 31 of each year.

(2) Check Cashers.

(a) The annual license fee is five hundred dollars (\$500).

(b) The annual renewal license fee is five hundred dollars (\$500).

(c) An initial investigation and supervision fee shall be seven hundred fifty dollars (\$750) for the first year. It is not refundable, but if the license is granted it shall satisfy the annual fee for the first license period.

(d) Initial and renewal license fees shall also include an additional fifty dollars (\$50) for the second and each additional location, plus a fee in an amount as directed by the Department to cover the cost of the required number of fingerprints for each individual background check.

(e) Annual renewal license fees shall be due and must be received by the Department on or before the first day of August of each year. Annual renewal license fees not received prior to the first day of August of each year will be assessed a late fee of three hundred dollars (\$300) and cannot be assured of renewal prior to October 1. Applicants may not operate a check cashing business without a current license.

(f) Check cashers desiring exemption pursuant to Rule 80-3-1-.02(4)(b) and designated as Registrants shall file an initial application and pay a registration fee of two hundred dollars (\$200) and an annual renewal application and fee of one hundred dollars (\$100) due and must be received by the Department on or before the first day of August of each year. Annual renewal fees not received prior to the first day of August of each year will be assessed a late fee of one hundred dollars (\$100) and cannot be assured of renewal prior to October 1.

(g) An initial investigation and supervision fee shall be three hundred dollars (\$300) for the first year. It is not refundable, but if the license is granted it shall satisfy the annual fee for the first registration period.

(h) All check cashers licenses and registrants shall expire on September 30 of each year.

(3) Registrants of representative offices, trust production offices, business production offices, and loan production offices shall file a registration statement, as prescribed by the Department, and shall pay a registration fee of one hundred fifty dollars (\$150) on or before the first day of January of each year. Such fee is intended to cover the costs of responding to questions or complaints from consumers with regard to these entities doing business in Georgia and is in lieu of registration under O.C.G.A. § 16-14-15, as provided in O.C.G.A. § 7-1-11. Registrants of international bank representative offices shall pay a registration fee of one thousand dollars (\$1,000). Each bank holding company supervised by or registered with the Department shall pay on or before January 31 of each year an annual registration fee of one thousand dollars (\$1,000). Each Georgia bank holding company or holding company that owns a Georgia bank must pay five hundred dollars (\$500) for each additional Georgia subsidiary corporation in those categories, provided, however, any registrant required to register and pay a fee by another paragraph of this chapter shall only be required to pay one fee which shall be the higher fee.

(4) Mortgage licensees and registrants.

(a) Lenders. The initial and renewal application and license fee for mortgage lenders shall be one thousand dollars (\$1,000). The initial one thousand dollars (\$1,000) fee covers the main office. Any branch offices included in the initial application shall be assessed a fee of three hundred fifty dollars (\$350) each. A fee of three hundred fifty dollars (\$350) will be assessed for each additional office not initially registered, if such office is located in Georgia, and if mortgage lending activity is conducted at the office. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and license fees plus a twenty dollar (\$20) fee for each approved branch office located in Georgia, must be

received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and license fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will be considered to be expired. Applicants may not conduct a mortgage business without a current license or registration.

(b) Brokers. The initial and renewal application and license fee for mortgage brokers shall be five hundred dollars (\$500). The initial five hundred dollar (\$500) fee covers the main office. Any branch offices located in Georgia shall be assessed a fee of three hundred fifty (\$350) each. Brokers include loan processors. Processors are defined in Rule 80-11-4-.07. Such a processor may have a separate main office and other branch offices where mortgage loan processing is done. The offices will be treated the same as brokers' offices. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and license fees must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and license fee, plus a twenty dollar (\$20) fee for each approved branch office located in Georgia, that is not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will be considered to be expired. Applicants may not conduct a mortgage business without a current license or registration.

(c) Mortgage Loan Originators. The initial and renewal application and license fee for mortgage loan originators shall be one hundred dollars (\$100), due prior to December 1 of each year. Subsequent renewal application fees must be received by the Department on or before December 1 of each year or the applicant will be assessed a late fee of one hundred dollars (\$100). A renewal application is not deemed received until all required information, including a renewal fee in the appropriate amount, has been provided by the licensee. A renewal application, containing all of the required information along with the correct fees that is not received by the Department on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will be considered to be expired. Effective August 1, 2010, applicants may not conduct mortgage loan origination activity without a current license.

(d) Lender Registrants. The initial and renewal application and registration fee for mortgage lenders required to register but not be licensed with the Department shall be one thousand dollars (\$1,000), due on or before December 1 of each year. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and registration fees must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and registration fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will be considered to be expired. Applicants may not conduct a mortgage business without a current license or registration.

(e) Broker Registrants. The initial and renewal application and registration fee for mortgage brokers required to register but not be licensed with the Department shall be five hundred dollars (\$500), due on or before December 1 of each year. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and

registration fees must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and registration fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will be considered to be expired. Applicants may not conduct a mortgage business without a current license or registration.

(f) All license, investigation, registration, and supervision fees, late fees and assessed civil penalties must be paid prior to renewal of the annual license or registration, reinstatement of a license or registration, reapplication for a license or registration or any other approval from the Department.

(g) All late fees collected by the Department, net of the cost of recovery, which cost shall include any cost of hearing and discovery in preparation for hearing, shall be paid into the state treasury to the credit of the general fund or may be paid as provided in O.C.G.A. § 7-1-1018(e).

(h) Applicants for approval to acquire directly or indirectly ten percent (10%) or more of the voting shares of a corporation or ten percent (10%) or more of the ownership of any other entity licensed to conduct business as a mortgage lender and/or a mortgage broker under O.C.G.A. Article 13 (otherwise called change of control) shall pay a nonrefundable investigation, application and processing fee of five hundred dollars (\$500).

(i) Application for an additional office of a licensee shall be accompanied by a nonrefundable fee of three hundred fifty dollar (\$350), as provided in O.C.G.A. §7-1-1006.

(j) The fee for initial application for approval by the Department for a school or education provider shall be five hundred dollars (\$500). An application for approval will be on a form provided by the Department at its website. The fee is nonrefundable. The fee for annual renewal of such approval is two hundred fifty dollars (\$250).

(5) The Department may discount or surcharge all supervision or license fees herein provided to assure funding of annual appropriations by the General Assembly.

Authority Ga. L. 1974, pp. 705, 732, 733, 921; Ga. L. 1976, Act 762, p. 168; 1990, p. 739; 1993, p. 543; O.C.G.A. § 7-1-41; § 7-1-61; § 7-1-685; O.C.G.A. § 7-1-701; O.C.G.A. § 7-1-703; O.C.G.A. § 7-1-716; O.C.G.A. § 7-1-721; § 7-1-1001.1; and § 7-1-1005.

80-5-1-.04 Levy, Collection, Remittance and Refunds of Georgia Residential Mortgage Act Per Loan Fee.

(a) Each borrower who obtains a mortgage loan as defined in O.C.G.A. § 7-1-1000(21) shall pay to the department a per loan fee of \$10.00. The \$10.00 fee will be due if the loan is a residential mortgage loan as defined in the Georgia Residential Mortgage Act, and if a security deed, a modification of a security deed, or other form or modification of a security interest is recorded. A change to a security instrument made solely for the purpose of correcting a clerical

error will not be subject to a \$10.00 fee. Any person who closes mortgage loans that are subject to regulation under Article 13, regardless of whether said person is required to be licensed or registered under the Georgia Residential Mortgage Act, shall act as collecting agent for payment to the department of said per loan fee for each mortgage loan closed by that person. A mortgage loan shall be deemed to have been closed by a person if such person is indicated as the secured party on the security deed or any other loan document that establishes a lien on the residential real estate taken as collateral for the mortgage loan.

(b) The fees payable under the provisions of subsection (a) shall be payable to the department by the collecting agent, who is the person responsible for remittance of such fees on a semiannual basis. More specifically, such fees for the period January 1 through June 30 of each year shall be remitted to the department no later than the first business day of September of each year and such fees for the period July 1 through December 31 of each year shall be remitted to the department no later than the first business day of March of each year. The department may mail a fee statement form to persons making residential mortgage loans in Georgia. Whether or not a form is received, a fee statement indicating the number of mortgage loans closed during the applicable reporting period by the person remitting the payment shall be enclosed with the payment. Such fee statement shall be in a format substantially similar to the following:

GEORGIA RESIDENTIAL MORTGAGE ACT
FEE STATEMENT
SEMIANNUAL STATEMENT OF PER LOAN FEES

1. Name of entity remitting the fees: _____

2. Mortgage Lender or Broker License or Registration Number (if applicable): _____

3. Bank or Credit Union FDIC or NCUA Number: _____

4. Fee Statement Period: (Please check all periods that apply.)

January 1 through June 30, 200__*.
Number of Loans: _____

July 1 through December 31, 200__*.
Number of Loans: _____

5. I hereby certify that no loans requiring a \$10.00 fee have been closed by the above named entity:

(Print Name and title)

(Signature)

6. Total Dollar Amount Enclosed: \$_____ (10.00 x number of loans closed.)

(Total enclosed must equal \$10.00 multiplied by the number of loans indicated above.)

7. Name and telephone number of person to contact with questions concerning this form:

8. Name and signature of person completing this form:

(Print Name and title)

(Signature)

* Enter applicable year.

Authority Ga. L. 1974, pp. 732, 733; Ga. L. 1988, p. 243; 1993, p. 543; O.C.G.A. § 7-1-41; § 7-1-61; § 7-1-1012.

80-5-1-.05 Other Charges and Fees.

(1) The department may from time to time establish reasonable charges for copies of records and publications of the department consistent with the provisions of Code Section 50-18-71. Copies of records of the department available for public inspection shall be made by department personnel. Persons requesting copies of such records shall pay 25 cents per page of copy as provided in subsection (c) of Code Section 50-18-71 plus an additional charge of 25 cents per page copied as provided in subsection (d). In no event shall the aggregate charge be less than \$3. One copy of any department publication not available electronically may be provided without charge to financial institutions paying supervision fees pursuant to Rule 80-5-1-.02.

(2) Requests for non-consumer related letter rulings submitted by persons other than persons under the direct supervision of the department shall be accompanied by a fee of \$250.

(3) A charge of \$1,500 shall be paid by parties requesting public hearings before the department pursuant to Rule Chapter 80-1-1. In addition, where a hearing officer not regularly employed by the department conducts the hearing, the actual charge for the services of such person shall be paid.

(4) Persons requesting affidavits certifying to the authenticity of any documents or to the validity of any outstanding charter or license shall pay a fee of \$25 in addition to any copy charges.

(5) Each person required to submit fingerprint cards to the department for any reason, including but not limited to: initial application, change in control, addition of new officer or director or person managing the business, or expanded background check of an employee, shall submit to the department a money order or certified check in an amount as directed by the

department a fee to cover the cost of the required number of fingerprints for each individual background check.

(6) The fee for name permission application investigations shall be \$150. The fee is non-refundable.

Authority Ga. L. 1974, pp. 732, 733; Ga. L. 1988, p. 243; 1993, p. 543; O.C.G.A. § 7-1-41; § 7-1-61; § 7-1-1004.

80-5-1-.07 License Renewal Periods and Requirements for Mortgage Brokers, Mortgage Lenders, and Mortgage Originators.

(a) For purposes of this Article the Nationwide Mortgage Licensing System and Registry (NMLSR) is defined as a uniform multi-state administration of an automated licensing system for mortgage brokers and mortgage lenders. The department's participation in the NMLSR is authorized by O.C.G.A. § 7-1-1003.5.

(b) All applications for new licenses or registrations must be made through NMLSR. Fees for new applications include an initial Department investigation fee and the appropriate application fee for the application type. Applications for new licenses and registrations which are approved between November 1 and December 31 in any year will not be required to file a renewal application for the next calendar year. All fees are non-refundable.

(c) All licenses and registrations issued pursuant to the Act shall expire on December 31 of each year, and an application for renewal shall be made annually between November 1 and December 31 each year. Subsequent renewal applications and/or license fees must be received on or before December 1 of each year or the applicant will be assessed a late fee as set forth in these rules by license or registration type. A renewal application is not deemed received until all required information and corresponding fee have been provided by the licensee. A renewal application and/or license fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will be considered to be expired. Any license or registration which is not renewed prior to December 31 will require the applicant to file a reinstatement application in order to conduct mortgage business in the State after that date.

Authority O.C.G.A. § 7-1-1003.5.

80-11-1-.01 Disclosure Requirements.

(1) Written disclosure required before acceptance of fees. Any person required to be licensed or registered under Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated

("Article 13") must make the following disclosures in writing to the applicant prior to accepting an application fee, property appraisal fee, credit report fee, or any other third-party fee from an applicant for a residential mortgage loan.

(a) The amounts of the application fee, the credit report fee, the property appraisal fee and/or any other third-party fees;

(b) Whether all or any part of such fees or charges is refundable prior to settlement of the mortgage loan, and the terms and conditions for obtaining a refund if all or any part of the fees or charges is refundable;

(c) The specific services which will be provided or performed for the application fee;

(d) In cases where the fees are being accepted by a mortgage lender or mortgage broker that such lender or broker cannot guarantee approval of the loan application or acceptance into a particular loan program. Further, lender or broker may not use the terms "closing" or "settlement" to refer to a transaction unless the transaction meets the definition of settlement in paragraph (2) of this rule.

(2) For purposes of this Rule, the term "settlement" or "closing" means the process of executing legally binding documents regarding a lien on residential property and the disbursement of funds necessary to effect the transaction. Where a federally required right of rescission applies to a transaction, the settlement or closing date will be the date the binding documents are signed, not the disbursement date.

(3) Some or all of the disclosures required by paragraph (1) of this Rule may appear on forms used to comply with otherwise applicable state or federal laws.

(4) The disclosures required in paragraph (1) of this Rule shall be acknowledged in writing by the applicant and a copy of the acknowledgment maintained by the lender or broker required to make the disclosure, and a copy of the acknowledgment shall be given to the applicant. In instances of mail applications, the disclosures required by paragraph (1) must be included in the mail application package with a request that a signed acknowledgment form be returned to the mortgage broker or lender required to make the disclosure. A copy of this request shall be kept by the mortgage broker or lender. In instances of applications taken by telephone, the disclosures required by paragraph (1) must be mailed or delivered to the applicant with a request that a signed acknowledgment form be returned to the mortgage broker or lender required to make the disclosure. A copy of this request shall be kept by the mortgage broker or lender.

(5) For purposes of paragraph (1) of this Rule, "application fee" means any fee advanced prior to settlement by the applicant to the mortgage broker or lender in connection with an application for a mortgage loan, including any charge for soliciting, processing, placing or negotiating a mortgage loan. The term does not include payments to be remitted to third party service providers, such as appraisal fees or fees for credit reports.

(6) Good Faith Estimate to be provided by broker. Every broker, including every home improvement dealer and manufactured home dealer required to be licensed or registered under

Article 13 shall provide applicants for mortgage loans the good faith estimate disclosure as required by federal law.

(7) Good Faith Estimate to be provided by Lender. Every lender required to be licensed or registered under Article 13 shall provide applicants for mortgage loans the good faith estimate disclosure as required by federal law.

(8) Foreclosure Disclosure.

(a) Every lender, and every broker who closes mortgage loans in the broker's own name with funds provided by others and which loans are assigned within 24 hours of the funding of the loan to the mortgage lender providing the funding of such loans (i.e. table funding), required to be licensed or registered under Article 13 shall disclose in writing to each applicant for a mortgage loan that failure to meet every condition of the mortgage loan may result in the loss of the applicant's property through foreclosure. The disclosure shall be made at or before the time of settlement. The disclosure shall include the following language in at least ten-point bold-faced type:

"O.C.G.A. § 7-1-1014(3) requires that we inform you that if you fail to meet any condition or term of the documents that you sign in connection with obtaining a mortgage loan you may lose the property that serves as collateral for the mortgage loan through foreclosure."

(b) The applicant shall be required to sign the disclosure and the lender or broker, as applicable, shall keep a copy of the signed disclosure.

(c) This disclosure requirement may be satisfied by a substantially similar disclosure as required by federal law.

Authority Ga. L. 1974, p. 733; Ga. L. 1993, p. 543; O.C.G.A. § 7-1-61; § 7-1-261.

80-11-1-.02 Advertising Requirements.

Any advertisement of a mortgage loan that is subject to regulation under O.C.G.A. Title 7, Chapter 1, Article 13 and that is made, published, disseminated or circulated in this state shall comply with the requirements set forth below.

(a) Advertisements for mortgage loans shall not be false, misleading, or deceptive.

(b) Advertisements for mortgage loans shall not indicate in any manner that the interest rates or charges for loans are in any way recommended, approved, set or established by the state or by any law of the state.

(c) All solicitations or advertisements, including business cards and websites, for mortgage loans disseminated in this state by persons required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 shall contain the name, license number, valid unique Nationwide

Mortgage Licensing System and Registry (NMLSR) identifier, and an office address of the licensee or registrant advertising the mortgage loan, which name, address, and license number shall conform with the name, license number, valid unique NMLSR identifier and office address on record with the Department of Banking and Finance.

(d) All advertisements disseminated in this state by persons required to be licensed under O.C.G.A. Title 7, Chapter 1, Article 13 in any media, whether print or electronic, shall contain the words “Georgia Residential Mortgage Licensee” or, if an entity is licensed in more than one state, the licensee’s advertisement may list Georgia as a state in which the licensee is licensed.

(e) All advertisements for mortgage loans shall comply with all applicable federal and state laws.

(f) For purposes of this Rule, "advertisement" means material used or intended to be used to induce the public to apply for a mortgage loan. Such term shall include any printed or published material, audio or visual material, website, or descriptive literature concerning a mortgage loan subject to regulation under O.C.G.A. Title 7, Chapter 1, Article 13 whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, electronic, billboard or similar display. The term advertisement shall not include promotional materials containing fifteen words or fewer relating to the mortgage business of the entity which material does not contain references to a specific rate or product, such as balloons, hats, pencils or pens, and calendars.

(g) Every mortgage broker or mortgage lender required to be licensed or registered shall maintain a record of samples of its advertisements (including commercial scripts of all radio and television broadcasts) for examination by the Department of Banking and Finance.

(h) An advertisement shall not include an individual’s loan number, loan amount, or other publicly available information unless it is clearly and conspicuously stated in bold-faced type at the beginning of the advertisement that the person disseminating it is not authorized by, acting on behalf of, or otherwise affiliated with the individual’s lender, which shall be identified by name. Such an advertisement shall also state that the loan information contained therein was not provided by the recipient’s lender.

Authority Ga. L. 1974, p. 733; Ga. L. 1993, p. 543; O.C.G.A. § 7-1-61; § 7-1-1004.3; § 7-1-1012; § 7-1-1016.

80-11-1-.04 Branch Managers.

(1) A “branch manager” shall mean a person who supervises daily activities in Georgia of a licensee, whether at a main or branch location, and regardless of job title.

(2) No branch manager shall be permitted to manage a location in Georgia without being approved by the department. A branch manager may be put in place subject to departmental approval, but the department must receive a complete application for approval within 15 calendar days of the placement. No individual may serve as the branch manager of more than one location

of a licensee unless the licensee can demonstrate that the proposed branch manager will be able to effectively manage these locations to ensure that they operate in compliance with state and federal law, and that the manager can adequately supervise the daily functions performed by the employees at the locations. In order to qualify for the employee exemption, an employee must be supervised on a daily basis by the licensee. Considerations by the department in determining whether a branch manager may supervise more than one location will include: proximity of branches to each other, volume of business at each, experience level of proposed manager and plans to handle the supervision.

(3) The department shall conduct a background check, obtain a credit report, and require a financial statement and such other pertinent information as it may require to satisfy itself that the location will be operated by the branch manager responsibly and in compliance with the laws and rules of this state.

(4) The applicant must submit two sets of fingerprints, along with a money order or certified check payable to the department in the appropriate amount set by the department in order for the department to cause to be administered the expanded background check as required by O.C.G.A. § 7-1-1004 (k).

Authority O.C.G.A. § 7-1-61; § 7-1-1006; § 7-1-1012.

80-11-2-.02 Minimum Requirements for Books and Records.

(1) Any mortgage broker or lender required to be licensed or registered under Article 13 ("licensee" or "registrant") must maintain the following books, accounts and records:

(a) Copies of all disclosure documents required by Rule 80-11-1-.01;

(b) Samples of advertisements as required by Rule 80-11-1-.02;

(c) Copies of all written complaints by customers and written records of disposition;

(d) Copies of examination reports prepared by any agency, division or corporate instrumentality of the United States, the State of Georgia or any other state, which reports pertain to the mortgage brokerage and/or lending business of the licensee or registrant and are not prohibited from being disclosed to the Department of Banking and Finance by state or federal law;

(e) Copies of reports required to be prepared and/or submitted by the licensee or registrant to any agency, division, or corporate instrumentality of the United States, the State of Georgia or any other state, which reports pertain to the mortgage brokerage and/or lending business of the licensee or registrant and are not prohibited from being disclosed to the Department of Banking and Finance by state or federal law;

(f) Copies of all payroll records, including federal and state withholding tax forms, W-2's, and 1099 forms filed with the Internal Revenue Service by the licensee or registrant, or its agent on behalf of individuals employed by the licensee or registrant or on behalf of individuals acting as independent contractors in the mortgage brokerage and/or lending business of the licensee or registrant;

(g) A general ledger and subsidiary records sufficient to produce, when requested by the department, an accurate monthly statement of assets and liabilities and a cumulative profit and loss statement for the current operating year.

(h) All checkbooks, bank statements, deposit slips and canceled checks which pertain to the mortgage brokerage and/or lending business of the licensee or registrant;

(i) Supporting documentation for all expenses and fees paid by the mortgage broker on behalf of the customer, which documentation indicates the amount paid and the date paid;

(j) Copies of all credit report bills received from all credit reporting agencies for the most recent five year period;

(k) Documentation to indicate a consumer had a choice of attorney, if attorneys' fees are intended to be excluded from a points and fees calculation under the Georgia Fair Lending Act;

(l) An indication of whether each loan has points and fees of 5% or more, as calculated under the Georgia Fair Lending Act, and

(m) Documentation to support the source and purpose for each receipt of monies in any form in an amount greater than \$100 and documentation to identify the recipient and purpose of each payment of monies in any form in an amount greater than \$100 by the licensee or registrant in its mortgage brokerage and/or lending business in order that the receipts may be reconciled to bank deposits and to books of the licensee or registrant.

(n) Employee file for each employee. The employee file must contain all documents related to hiring the employee, including criminal background check, date employment began, and date the Department's website was reviewed to verify eligibility for employment.

(2) Failure to maintain the books, accounts and records required under paragraph (1) above may result in suspension of the license or registration or other appropriate administrative action and will subject the licensee or registrant to fines in accordance with regulations prescribed by the department.

Authority Ga. L. 1993, p. 543; O.C.G.A. § 7-1-61; § 7-1-1012.

80-11-2-.04 Mortgage Loan Files.

(1) Any person who is acting as a mortgage broker and who is required to be licensed under O.C.G.A. Title 7, Article 13, whether as a broker or a lender ("licensee"), shall maintain a loan file for each mortgage loan transaction. The files shall be maintained in an alphabetical or numerical sequence in the principal place of business or in each branch office where mortgage loans are originated, provided that the branch office is indicated on the licensee's initial written application for licensure or written amendment thereto.

(2) Each loan file shall contain the following:

(a) Copy of the signed mortgage loan application with the Nationwide Mortgage Licensing System and Registry (NMLSR) unique identifier of the mortgage loan originator if the application form is received by the licensee;

(b) Copy of credit report if the credit report is pulled or ordered by the licensee;

(c) Copy of the appraisal and the order for such appraisal if the appraisal is ordered by the licensee;

(d) Copy of signed closing statement (HUD-1) or documentation of denial or cancellation of loan application;

(e) Copies of the disclosure documents required by Rule 80-11-1-.01;

(f) Copies of all contracts, letters, notes and memos regarding the customer, including but not limited to lock-in agreements and commitment agreements; and

(3) For canceled loans, a licensee shall maintain a copy of any unsigned mortgage loan application if taken.

(4) Failure to maintain files and required documentation (incidental and isolated clerical errors or omissions shall not be considered a violation) may be grounds for suspension of the license or other appropriate administrative action and will subject the licensee to fines in accordance with regulations prescribed by the Department.

Authority Ga. L. 1993, p. 543.

80-11-3-.01 Administrative Fines.

(1) As authorized under Article 13 of Chapter 1 of Title 7, O.C.G.A. § 7-1-1018(g) and § 7-1-1005(d), the Department establishes the following fines and penalties for violation of the Georgia Residential Mortgage Act ("GRMA") or its rules. Except as otherwise indicated, these fines and penalties apply to any person who is acting as a mortgage lender or broker and who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 ("licensee" or

"registrant"). The Department, at its sole discretion, may waive or modify a fine based upon the gravity of the violation, history of previous violations, and such other facts and circumstances as have contributed to the violation.

(2) All fines levied by the Department are due within thirty (30) days from date of assessment and must be paid prior to renewal of the annual license or registration, reinstatement of a license or registration, or reapplication for a license or registration, or any other activity requiring Departmental approval.

(3) All fines collected by the Department, net of the cost of recovery, which cost shall include any cost of hearing and discovery in preparation for hearing, shall be paid into the state treasury to the credit of the general fund or may be paid as provided in O.C.G.A. § 7-1-1018(d).

(4) Dealing with Unlicensed Persons. Any licensee or registrant or any employee of either who purchases, sells, places for processing or transfers (or performs activities which are the equivalent thereof) a mortgage loan or loan application to or from a person who is required to be but is not duly licensed under the GRMA shall be subject to a fine of one thousand dollars (\$1,000) per transaction and the licensee or registrant shall be subject to suspension or revocation. Licensees are responsible for the actions of their employees.

(5) Relocation of Office. Any mortgage broker or mortgage lender licensee who relocates their main office or any additional office and does not notify the Department within thirty (30) days of the relocation in accordance with O.C.G.A. § 7-1-1006(e) shall be subject to a fine of five hundred dollars (\$500).

(6) Unapproved Offices. In addition to the application, fee and approval requirements of O.C.G.A. § 7-1-1006(f), any licensee who operates an unapproved branch office shall be subject to a fine of five hundred dollars (\$500) per unapproved branch office operated and their license will be subject to revocation or suspension;

(7) Change in Ownership. Any person who acquires ten percent (10%) or more of the capital stock or a ten percent (10%) or more ownership of a mortgage broker or mortgage lender licensee without the prior approval of the Department in violation of O.C.G.A. § 7-1-1008 shall be subject to a fine of five hundred dollars (\$500) and their license or registration will be subject to revocation or suspension;

(8) Doing Business Without a License or in Violation of Administrative Order. Any person who acts as a mortgage broker or mortgage lender prior to receiving a current license or registration required under O.C.G.A. Title 7, Chapter 1, Article 13, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars (\$1,000) per transaction and their mortgage lender or broker application will be subject to denial or their license or registration will be subject to revocation or suspension.

(9) Hiring a Felon. Any mortgage broker or mortgage lender licensee or registrant who hires or retains an employee who is a felon as described in O.C.G.A. § 7-1-1004(h), which employee has not complied with the remedies provided for in O.C.G.A. § 7-1-1004(h), may be fined five

thousand dollars (\$5,000) per employee found to be in violation of such provision and their license or registration will be subject to revocation or suspension.

(10) Hiring Persons Otherwise Disqualified from Conducting a Mortgage Business. Any mortgage broker or mortgage lender licensee or registrant who employs any person against whom a final cease and desist order has been issued for a violation that occurred within the preceding five (5) years, if such order was based on a violation of O.C.G.A. § 7-1-1013 or based on the conducting of a mortgage business without a required license or exemption, or whose license was revoked within five (5) years of the date such person was hired pursuant to O.C.G.A. § 7-1-1004(o) shall be subject to a fine of five thousand dollars (\$5,000) per such employee and its license or registration will be subject to revocation or suspension;

(11) Books and Records Violations. If the Department, in the course of an examination or investigation, finds that a licensee or registrant has failed to maintain their books and records according to the requirements of O.C.G.A. § 7-1-1009 and Rule Chapter 80-11-2, such licensee or registrant may be subject to a fine of one thousand dollars (\$1,000) for each violation of a books and records requirement listed in Rule Chapter 80-11-2.

(12) Maintenance of Loan Files. Any person who is required to be licensed under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or any lender acting as a broker who fails to maintain a loan file for each mortgage loan transaction as required by Rule 80-11-2-.04 or who fails to have all required documents in such file shall be subject to a fine of one thousand dollars (\$1,000) per file not maintained or not accessible, or per file not containing required documentation.

(13) Payment of \$10.00 fees and filing of fee statement form. Any person who acts as the collecting agent at a closing of a mortgage loan transaction subject to the Georgia Residential Mortgage Act, is liable for payment of the \$10.00 fee to the Department, pursuant to O.C.G.A. § 7-1-1011 and Rule 80-5-1-.04. The filing of a fee statement form and the remittance of any \$10.00 fees collected made after the date on which they are due shall subject the person to a late fee of one thousand dollars (\$1,000) for each due date missed. If the Department finds that a person has not, through negligence or otherwise, submitted \$10.00 fees within six months of the due date, it may impose an additional one thousand dollars (\$1,000) fine for failure to remit fees. Repeated failure to submit \$10.00 fees may be grounds for revocation of license.

(14) Repealed. Reserved.

(15) Reporting of Violation of Law or Discharge of Employee for Same. Any person required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage lender or broker, who fails to report prohibited acts or the discharge of employees for dishonest acts, pursuant to O.C.G.A. § 7-1-1007(d) shall be subject to a fine of one thousand dollars (\$1,000) per act not reported in writing to the Department within 10 days of knowledge of such act.

(16) Prohibited Acts. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or mortgage lender who violates the provisions of O.C.G.A. § 7-1-1013 shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation and his or her license shall be subject to suspension or

revocation. Misrepresentations as defined in O.C.G.A. § 7-1-1000 are subject to fine and include but are not limited to: (i) inaccurate or false identification of applicant's employer; (ii) significant discrepancy between applicant's stated income and actual income; (iii) omission of a loan to applicant, listed on loan application, which was closed through same lender or broker; (iv) false or materially overstated information regarding depository accounts; (v) false or altered credit report; and (vi) any fraudulent or unauthorized document used in the loan process. A fine of one thousand dollars (\$1,000) shall be assessed for any other violation of O.C.G.A. § 7-1-1013. The Department shall upon written request provide evidence of the violation.

(17) Branch Manager Approval. Any person who is required to be licensed or registered as a mortgage broker or mortgage lender shall be subject to a fine of five hundred dollars (\$500) for operation of a branch with an unapproved branch manager and the license will be subject to revocation or suspension. No such fine shall be levied while Department approval is pending if timely application for approval is made pursuant to Rule 80-11-1-.04.

(18) Education and Experience Requirements. Any mortgage broker licensee subject to the experience and education requirements who fails to meet such requirements shall be fined one thousand dollars (\$1,000) for operating a mortgage business without meeting licensing standards, and their license or registration will be subject to revocation or suspension.

(19) Failure to Fund. O.C.G.A. § 7-1-1013(3) prohibits failure "to disburse funds in accordance with a written commitment or agreement to make a mortgage loan." If the Department finds, either through a consumer complaint or otherwise, that a lender or a broker acting as a lender has failed to disburse funds in accordance with closing documents, which include legally binding executed agreements indicating a promise to pay and a creation of a security interest, a fine of five thousand dollars (\$5,000) per transaction may be imposed and its license or registration may be subject to revocation or suspension.

(20) Advertising. Any person who is required to be licensed or registered as a mortgage broker or mortgage lender who violates the regulations relative to advertising contained in O.C.G.A. § 7-1-1004.3 and § 7-1-1016 or the advertising requirements of department Rule 80-11-1-.02 shall be subject to a fine of five hundred dollars (\$500) for each violation of law or rule.

(21) Failure to Submit to Examination or Investigation. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department) shall be revocation of the license or registration and a five thousand dollars (\$5,000) fine. Refusal shall be determined according to Department examination policies and procedures, but shall require at least two attempts to schedule an examination or investigation.

(22) Repealed. Reserved.

(23) Background Checks. Any licensee who fails to perform proper background checks on covered employees in accordance with the provisions of O.C.G.A. § 7-1-1004(h), (i), and (k) shall be subject to a fine of one thousand dollars (\$1,000) for each employee on whom the required background check was not conducted.

(24) Change in Officers. Any licensee who fails to notify the Department of a change in principals of the company without the proper approval of the Department in violation of O.C.G.A. § 7-1-1006(e) shall be subject to a fine of five hundred dollars (\$500).

(25) Georgia Fair Lending Act. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or mortgage lender who violates any provision of Chapter 6A of Article 13, the Georgia Fair Lending Act, shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation and their license will be subject to revocation or suspension.

(26) Consumer Complaints. Any licensee or registrant who fails to respond to a consumer complaint or fails to respond to the Department within the time periods specified in the Department's correspondence to such person shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence. Repeated failure to properly respond to consumer complaints may result in revocation of license.

(27) Failure to Perform Timely Background Checks. If the ten (10) day requirement for submission of background information to the proper law enforcement authorities is not met, the employer shall be subject to a one thousand dollars (\$1,000) fine.

Authority O.C.G.A. § 7-1-61; § 7-1-1012.

80-11-4-.05 Knowing Purchase, Sale or Transfer of Loan or Loan Application from Unlicensed Entity.

(1) It is prohibited for any person to knowingly purchase, sell or transfer a mortgage loan or loan application to or from an unlicensed mortgage loan originator, mortgage lender or broker, unless that entity is exempt from licensing. It is expected that all persons who purchase loans use reasonable diligence to determine whether the entities they do business with are licensed. To that end, the department has provided various means to determine whether an entity is licensed.

(a) A list of current licensees is provided at the department's Internet website. It is updated nightly with the exception of weekends and holidays.

(b) The department's website also contains information pertaining to all denied, revoked and sanctioned licenses. It is updated weekly.

(c) The department responds to telephone inquiries from 8:00 a.m. to 4:30 p.m. each weekday (except holidays) and provides current information to callers.

(2) Obtaining a copy of an entity's annual license shall not be sufficient evidence of a current license since revocation proceedings occur throughout the year.

(3) Failure by a licensee to exercise reasonable diligence to determine whether an entity is licensed may result in a fine or other administrative action, including, but not limited to, license revocation.

Authority O.C.G.A. § 7-1-1012; § 7-1-1002.

80-11-4-.07 Loan Processors as Brokers.

(1) Mortgage brokers include persons who directly or indirectly solicit, process, place or negotiate or offer mortgage loans for others. A loan processor is a mortgage broker and will require a mortgage broker license to process loans on Georgia real property that meet the definition of “mortgage loan” in O.C.G.A. § 7-1-1001(13).

(2) A loan processor employed as a W-2 employee of a Georgia Residential Mortgage Act licensee who meets all of the qualifications for exemption under O.C.G.A. § 7-1-1001 does not require a license. A loan processor who works as an independent contractor or who owns or controls a company that does loan processing is required to have a license.

(3) Generally, to process a loan means to collect and/or verify from a borrower or other person, information that is necessary to underwrite or to submit for underwriting, a mortgage loan application package. Activities including but not limited to the following may qualify as loan processing:

(a) Reviewing, and processing real estate loan applications.

(b) Ordering, obtaining and evaluating credit reports, real estate appraisals, flood certifications, location surveys, termite inspections, well/septic inspections, surveys, etc.

(c) Ordering, obtaining, and evaluating real property ownership information, including a title insurance policy insuring lender’s valid lien position. Title insurance companies that handle only title insurance for a particular loan are not loan processors.

(d) Communicating with applicants as necessary to obtain additional information needed to process a loan.

(e) Obtaining verifications of income, employment, address, etc. as requested by a broker, lender or mortgage loan originator.

(f) Performing escrow account analyses; taking steps required to establish escrow accounts.

(g) Providing certain real estate loan disclosures on behalf of lender.

(h) Compiling and transmitting completed real estate loan application packages to lenders.

(i) Maintaining, collecting, and/or reporting any data necessary to comply with applicable statutory and regulatory requirements.

(4) Persons who are otherwise exempt from licensing in O.C.G.A. § 7-1-1001, so long as they provide only the services contemplated in their exemption, will not be considered loan processors.

Authority O.C.G.A. § 7-1-61; § 7-1-1012.

80-11-4-.08 Restrictions on Employment and Licensing.

(1) No person who has been an officer, director, partner or ultimate equitable owner of a licensee that has had its license revoked, denied or suspended, may perform any of those roles at another licensee or registrant for five years from the date of the final order.

(2) Felony convictions; restrictions on the employee and the licensee:

(a) O.C.G.A. § 7-1-1004 provides that no person employed by or directing the affairs of any licensee may be a convicted felon. Licensees are obligated by that statute to do their own background checks on covered employees. Licensees, however, are responsible to see that no convicted felons are employed or direct the affairs of their business. The department administers fingerprint checks on officers and directors and others where needed.

(b) O.C.G.A. § 7-1-1004 provides for remedies to “cure” a prior felony. These remedies must be completed and in place prior to employment. Hiring or continuing to employ a felon subjects a licensee to revocation of its license.

(c) If a licensee discovers that an employee or director/officer is a felon who has not satisfactorily “cured” the conviction, the violation of O.C.G.A. § 7-1-1004 must be immediately corrected or the license will be subject to revocation. Such individuals with felony convictions are ineligible for an employee exemption and are in violation of O.C.G.A. § 7-1-1019, also a felony, and O.C.G.A. §§ 7-1-1019, 7-1-1004 and 7-1-1002. The licensee employer is in violation of O.C.G.A. §§ 7-1-1004 and 7-1-1002.

(d) A cease and desist order to a person for failure to meet the employee exemption due to a violation of the felony provisions of O.C.G.A. § 7-1-1004 shall become final in 30 days without a hearing. Such a person must show within those 30 days, by certified court documents that the record is erroneous, or, that the “cure” provisions in O.C.G.A. § 7-1-1004 were completed prior to employment, in order to stop the order from becoming final. In the event such proof is provided, the order will be rescinded.

(3) Cease and desist orders may be issued against persons required to be licensees or registrants or against employees of those parties. All of the provisions of O.C.G.A. § 7-1-1018, including injunction, apply to actions against all such persons.

(4) The Department may regularly publish on its website, or through other means, information identifying persons and natural persons to whom final administrative actions have been issued.

Authority O.C.G.A. §§ 7-1-61; 7-1-1004; 7-1-1012, and 7-1-1018.

80-11-5-.01 Mortgage Loan Originator Licensure Requirements.

(1) Unless exempt from licensure pursuant to O.C.G.A. § 7-1-1001, effective August 1, 2010, a mortgage loan originator may not engage in the business of mortgage loan origination without obtaining and maintaining a current Georgia mortgage loan originator's license issued through the National Mortgage Licensing System and Registry (NMLSR).

(2)(a) Unless a mortgage loan originator is employed by an exempt entity, no mortgage loan originator may work in the state of Georgia without having proper sponsorship on record with the NMLSR by a licensed or registered Georgia mortgage broker or mortgage lender. For purposes of this Rule Chapter, "sponsorship" means the authorization for a mortgage loan originator to conduct business as an employee under and on behalf of a specific mortgage broker or mortgage lender's license or registration. Sponsorship must be initiated and maintained by the licensed or registered mortgage broker or mortgage lender employing a mortgage loan originator.

(b) Sponsorship must be accepted by the Department. Once established, a sponsorship can be removed by either the employing licensee or registrant or by the mortgage loan originator. It shall be the responsibility of every licensee or registrant to ensure that the status of a mortgage loan originator is correctly reflected at all times on the NMLSR.

(3) A mortgage loan originator shall have coverage under the surety bond of his or her licensed or registered mortgage broker or mortgage lender employer, or under a surety bond maintained by the loan originator.

(a) A surety bond covering the mortgage loan originator shall have a stated term of one year or more and shall expire a minimum of twelve (12) months from the date of issuance. The bond requirement is continuous in nature.

(b) A mortgage loan originator operating under the bond of his or her mortgage licensee or registrant employer must be covered continuously under his or her employer's bond under his or her name of record under the NMLRS and ensure such coverage is in effect during the time that the mortgage loan originator is engaged in making Georgia mortgage loans for that employer.

(c) A mortgage loan originator required to obtain his or her own surety bond coverage shall obtain a bond in the amount of at least \$10,000 for mortgage loan originators that originate between \$1 dollar and \$10 million dollars annually, or a bond in the amount of at least \$15,000 for mortgage loan originators that originate greater than \$10 million dollars annually. The bond obtained by a mortgage loan originator must be provided to the Department in a form acceptable to the agency. All other provisions concerning surety bond coverage maintained by a mortgage

loan originator's employer must be met by mortgage loan originators maintaining their own coverage.

(d) Surety bonds provided to the Department are deemed to be records of the Department and will not be released or returned to licensees or to the entities by which they were issued.

(4) Mortgage loan originator bond coverage shall not be canceled by either the employing licensed or registered mortgage broker or mortgage lender, the mortgage loan originator licensee or the corporate surety except upon notice to the Department by registered or certified mail or statutory overnight delivery with return receipt requested. The cancellation shall not be effective less than thirty (30) days after receipt by the Department of such notice.

Authority O.C.G.A. § 7-1-1001.1; § 7-1-1002; § 7-1-1003.2; and § 7-1-1004.

80-11-5-.04 Renewals.

(1) Mortgage loan originator licenses shall expire on December 31st of each calendar year. A mortgage loan originator must meet the following requirements in order to have his or her license renewed:

(a) A mortgage loan originator must continue to meet the minimum standards for license issuance.

(b) Timely submission of a complete renewal application and corresponding fee.

(c) A loan originator must satisfy the continuing education requirements of O.C.G.A. § 7-1-1004(g). The applicant must obtain on an annual basis eight (8) hours of approved continuing education in mortgage courses from an NMLSR approved provider. Of these eight (8) hours, seven (7) hours must be obtained in course work addressing the subjects identified in O.C.G.A. § 7-1-1004(g)(1), and at least one (1) hour of continuing education must be obtained in coursework addressing the Georgia Residential Mortgage Act, specifically any changes made to the statute and its corresponding regulations.

(d) Courses taken to meet the approved continuing education requirements of the NMLSR for any state shall be accepted as credit towards continuing education requirements in Georgia, with the exception that one (1) hour of the required courses must cover laws and regulations related to Georgia mortgage licensure, not that of another state.

(e) Continuing education credits are only valid in the calendar year in which the courses are taken. Credits earned during November 1 through December 31 will be excluded from consideration for continuing education credit hours earned for the subsequent renewal period. When continuing education hours are obtained by a mortgage loan originator, only credit hours obtained from January 1 to October 31 shall be considered for purposes of meeting the eight (8) hours of continuing education required in the subsequent renewal period.

(f) Upon submitting an application to renew a license, failure to document to the Department's satisfaction proof of completion of eight (8) continuing education hours by October 31 will subject the licensee to a one thousand dollar (\$1,000) fine. The failure to obtain and document proof of completion of these hours by December 31 with payment of the one thousand dollar (\$1,000) fine shall result in the expiration of the mortgage loan originator's license.

(2) A mortgage loan originator whose license has not been active for a period of up to five (5) years shall provide proof of completion of the continuing education requirements for the last year in which the license was held in order to reinstate it. Should reinstatement of an expired license be sought for a license that has not been active for five (5) consecutive years or more, such reinstatement application will require that the applicant again meet the testing requirements set forth in O.C.G.A. § 7-1-1004 (e) and (f). If a person has worked as a registered loan originator at any time during the lapsed license period, the period of time the registered mortgage loan officer was employed in this capacity shall not count toward the calculation of the time period for the continuing education and testing requirements of this paragraph.

Authority O.C.G.A. §§ 7-1-1004(e)(4); 7-1-1004.2; 7-1-1005.

80-11-5-.07 Information on the Nationwide Mortgage Licensing System and Registry.

It shall be the sole responsibility of each mortgage loan originator applicant and licensee to keep current at all times his or her information on the Nationwide Mortgage Licensing System and Registry, including, but not limited to, his or her employment history, e-mail address, telephone numbers, facsimile number, and residential history. The Department shall have no responsibility for any communication not received by an applicant or licensee due to his or her failure to maintain current contact information on the Nationwide Mortgage Licensing System and Registry as required.

Authority: O.C.G.A. §§ 7-1-61 and 7-1-1003.