

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



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*SONNY PERDUE
GOVERNOR*

*ROB BRASWELL
COMMISSIONER*

*SPECIAL EDITION
IMPORTANT NOTICE
PROPOSED RULEMAKING*

June 30, 2008

**NOTICE OF PROPOSED RULEMAKING
AND
OPPORTUNITY TO COMMENT**

**PROPOSED AMENDMENT TO RULES AND REGULATIONS
OF
DEPARTMENT OF BANKING AND FINANCE
STATE OF GEORGIA**

To all interested persons:

Pursuant to the provisions of 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 Georgia Department of Banking and Finance hereby gives notice of its intent to adopt new and amended rules.

A synopsis and purpose precedes each proposed rule change, with background information and explanation where applicable.

Comments to the Department of Banking and Finance must be received by July 31, 2008, no later than 4:30 p.m. Please send all comments to:

Rob Braswell, Commissioner
Georgia Department of Banking and Finance
2990 Brandywine Road, Suite 200
Atlanta, GA 30341-5565

Fax: (770) 986-1654 or 1655

The Department shall review all comments, may contact commenters to discuss their suggestions, and after the comment period has closed will prepare the final rules. The Department will consider the proposed new rules for adoption at a meeting at 10:00 a.m. on August 4, 2008, at the offices of the Department of Banking and Finance at Suite 200, 2990 Brandywine Road, Atlanta, Georgia 30341. Notice and a copy of the final rules adopted will be e-mailed to persons who have made a special request, and will be made available on our website at <http://dbf.georgia.gov/>. Other interested parties may receive a copy of the final rule by contacting the Department at (770) 986-1633, after August 4, 2008.

2008 Rules and Regulations Proposed Changes: Synopsis, Purpose and Background

80-1-5-.02 Real Estate Loans.

Currently, Department Rules permit interest only loans for single family owner-occupied residential loans for a period not to exceed ten (10) years. An interest only amortization provision has been eliminated. This proposal is an effort to provide parity for Georgia state-chartered financial institutions. The Department would advise caution regarding the usage of interest only loans, noting that they should only be extended to appropriate credit-worthy borrowers after a proper financial and credit analysis.

80-1-11-.02 Confidential Records.

An authority citation has been added to this Rule. No substantive changes have been made.

80-3-1-.02 Check Cashers.

A change has been added to require registrants to post their registration in public view. Additionally, a form number change has been made.

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

A fine has been added for licensees and registrants that fail to post their license or registration as required. The fine is \$500 for each instance of non-compliance.

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.

A non-refundable application investigation fee has been included in the license fees for check sellers and money transmitters. This application fee is consistent with application investigation fees paid by all other licensees.

80-5-1-.03 Examination, Supervision, Registration, Application and Other Fees for Financial Institutions and Nonbank Subsidiaries of Banks or Holding Companies.

Subparagraph (2)(1) was redundant and has been deleted. The common bond application fee can be found at Rule 80-5-1-.06(a).

80-11-2-.01 Location Requirement and Minimum Retention Period.

A citation correction has been made to this Rule. No substantive changes have been made.

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

A provision was added to require the maintenance of certain information relative to employees, including date of hire, criminal background check, and date the Department website was reviewed to verify eligibility for employment. Also, clarifications are proposed to subpart 1(f) of the Rule detailing what constitutes payroll records and specifying that copies of such records must be maintained by a licensee or registrant for employees or contractors even if the filing of these forms with the Internal Revenue Service was done by an agent.

80-11-3-.01 Administrative Fines.

This Rule has been changed to meet the requirements contained in 7-1-1004(i). Violations of the Rule which occurred prior to July 1, 2007, that resulted in administrative action reflect a 3 year look-back period for employees. Violations of the Rule which occurred on or after July 1, 2007, that resulted in administrative action reflect a 5 year look-back period for employees. The fine for violations of these rules has been increased to \$5,000.

PROPOSED RULES

80-1-5-.02 Real Estate Loans.

(1) A real estate loan (including a leasehold) within the meaning of Part 365 of the Federal Deposit Insurance Corporation's rules and regulations, including 12 C.F.R. 365.1 and 365.2 and the Interagency Guidelines for Real Estate Lending Policies in Appendix A, and 12 C.F.R. 208.51 and the guidelines contained in 12 C.F.R. Part 208 in the case of Federal Reserve member banks, shall comply with the Real Estate Lending Standards of the above laws.

(a) Interest only loans shall be permitted for single family owner-occupied residential loans (not to exceed one hundred percent (100%) of the fair market value of the property pledged); ~~which may be made for a period not to exceed ten (10) years, after which time sufficient principal payments must be made on a regular basis to amortize the loan in accordance with Rule 80-1-5-.02(1)(b).~~

(b) Amortization requires that there will be a reduction of the principal of the debt during the life of the loan sufficient to repay the loan. Such reductions must occur at regular intervals and, if extended indefinitely, must amortize the loan over not more than forty (40) years; provided, however, nothing in this subsection shall limit the use of any mortgage contract which might result in negative amortization (lack of sufficient payment to pay all accrued interest) interest only loans or extended repayment periods due to fluctuations in interest rates or to graduated payments, provided that the terms of the contract contemplate full amortization of the loan.

(2) The limitations in O.C.G.A. §7-1-285 for banks will be strictly enforced. If a loan could be made without real estate as security, a bank will not be penalized for adding real estate as

collateral in an abundance of caution. A notation in the loan file must indicate this lack of reliance on the real estate and must meet general safety and soundness standards for credit risk. This does not constitute a waiver of federal law requirements, and the soundness of the loan should always be considered.

(3) Except as provided herein or otherwise according to statute, banks may not acquire directly or indirectly an ownership interest in real estate without the prior written approval of the Department. No approval is necessary for a bank to acquire an interest in real estate, where acting pursuant to policies adopted by its board, a bank agrees by written commitment to participate in the financing of the purchase, development, or improvement of such real estate, provided:

(a) The written commitment provides for termination through sale or otherwise of the bank's ownership interest upon the earlier of substantial repayment of the underlying financing or ten (10) years;

(b) The bank's ownership interest in the real estate does not exceed the lesser of

1. The equity interest of the borrower, or

2. Twenty-five percent (25%) of the appraised value of the completed project upon which the lending commitment is based;

(c) Where the bank's interest is in the form of stock in a corporation which owns the real estate, the investment in the stock shall not exceed the lesser of

1. Fifty percent (50%) of the stock of the corporation, or

2. Twenty-five percent (25%) of the appraised value of the real estate owned by the corporation which is subject to the written commitment to finance. Provided, the foregoing shall not prohibit any bank from taking an ownership position through a wholly owned subsidiary, except that the subsidiary's interest shall be limited as set forth in subsections (a) and (b) of this section;

(d) Where the financing associated with the direct investment in real estate is subject to participation with other lenders, the aggregate direct investment by all such lenders may not exceed the limitations set forth in subparagraph (ii) of this section;

(e) The bank's ownership participation as provided herein is approved by its board of directors prior to the execution of any written commitment or is otherwise consistent with a previously adopted provision of the bank's loan policies governing such participation;

(f) The bank's ownership investment involving any single borrowing entity, when aggregated with investments through any lending transaction with such borrowing entity, is otherwise subject to the provisions of this regulation and the provisions of O.C.G.A. §7-1-285 and

O.C.G.A. §7-1-286, to the same extent as would be applicable if such equity investment were itself an extension of credit; and

(g) The aggregate direct or indirect investment in such real estate for all such purposes set forth herein shall not exceed the statutory capital base of the bank.

Authority Ga. L. 1974, pp. 733, 795-797; Ga. L. 1983, Act No. 255, effective March 16, 1983; Ga. L. 1989, p. 1252; O.C.G.A. §7-1-61; O.C.G.A. § 7-1-286.

80-1-11-.02 Confidential Records.

(1) Consistent with Code Sections 7-1-70 and 7-1-1009, the following records of the Department of Banking and Finance are declared to be in the nature of examination reports obtained by or for the confidential use of the Department in ascertaining the true condition of the bank or other regulated entity and, therefore, shall not be available for inspection except as specifically authorized by the Commissioner:

(a) Reports of Examination;

(b) Reports of Investigation of Applications to the Department;

(c) Reports of Independent Audits;

(d) All correspondence, other records and documents not expressly made available by Rule 80-1-11-.01.

(2) Any examination reports, reports of investigation or other information obtained from another supervisory or regulatory agency or from law enforcement shall be treated as the property of the provider and will not be available for inspection. Requests for such information should be made to the provider directly.

Authority Ga. L. 1974, pp. 733, 736-738; O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-70.

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, ~~and Registrant~~ 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 provided 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 19-6~~) (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 19-6~~ 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.

(e) All candidates for employment shall be provided a copy of this subsection by the licensee or registrant.

(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 mobile facilities maintain a regular schedule of times and locations at which they provide check cashing services and such schedule is filed with the Department.

(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; §7-1-704; §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 Rules relative to advertising as set forth in Rules 80-3-1-.02(2)(b) and 80-3-1-.02(4)(a) and (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-.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.

~~(e)~~ (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 thirty dollars (\$30) processing fee for each set of fingerprint cards required to be submitted with the application.

(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 lenders and brokers, licensees and registrants.

(a) Lenders. The annual 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 and one additional branch office. Any additional branch offices included in the initial application shall be assessed a fee of three hundred fifty dollars (\$350). 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. Application, investigation (initial) and license fee must be received by the Department on or before the first day of April of each year. An application and/or license fee not received on or before the first day of April of each year will be assessed a late fee of three hundred dollars (\$300). An application and/or license fee not received prior to the first day of June of each year cannot be assured of issuance or renewal prior to July 1. Applicants may not conduct a mortgage business without a current license or registration.

(b) Brokers. The annual and renewal application and license fee for mortgage brokers shall be five hundred dollars (\$500) which covers the main office and one additional branch office. Any additional branch offices included in the initial application shall be assessed a fee of three hundred fifty (\$350). A fee of three hundred fifty dollars (\$350) will be assessed for each additional office not initially registered, located in Georgia at which mortgage brokering activity is conducted. 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. Application, investigation (initial) and license fee must be received by the Department on or before the first day of April of each year. An application and/or license fee not received on or before the first day of April of each year will be assessed a late fee of three hundred dollars (\$300). An application and/or license fee not received prior to the first day of June of each year cannot be assured of issuance or renewal prior to July 1. Applicants may not conduct a mortgage business without a current license or registration.

(c) Lender Registrants. The annual 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 the first day of April of each year.

(d) Broker Registrants. The annual 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 the first day of April of each year.

(e) All license, investigation, registration, supervision and late fees 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.

(f) 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(d).

(g) 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).

(h) Application for a subsequent additional office of a licensee not included in the initial application shall be accompanied by a nonrefundable fee of three hundred fifty dollar (\$350), as provided in O.C.G.A. §7-1-1006. A fee of three hundred fifty dollars (\$350) will be assessed for any additional branch offices beyond the one included in the initial application.

(i) No fee is assessed for a wholly owned subsidiary of a lender who files and keeps current a proper notification statement.

(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).

(k) The fee for name permission application investigations shall be one hundred fifty dollars (\$150). The fee is non-refundable.

(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.

80-5-1-.03 Examination, Supervision, Registration, Application and Other Fees for Financial Institutions and Nonbank Subsidiaries of Banks or Holding Companies.

(1) Examinations. That portion of annual appropriations allocable to regular examination and supervision activities shall be assessed in accordance with the following scale for depository financial institutions:

(a)

If the amount of Total Assets is:		Assessment will be:		
Over	But Not Over	This Amount	Plus	Of Excess Over
0	1,700,000	0	0.001800	* 0
1,700,000	15,000,000	3,060	0.000230	1,700,000
15,000,000	85,000,000	6,119	0.000190	15,000,000
85,000,000	185,000,000	19,419	0.000100	85,000,000
185,000,000	915,000,000	29,419	0.000095	185,000,000
915,000,000	1,825,000,000	98,769	0.000085	915,000,000
1,825,000,000	5,470,000,000	176,119	0.000072	1,825,000,000
5,470,000,000	18,240,000,000	438,559	0.000056	5,470,000,000
18,240,000,000	36,485,000,000	1,153,679	0.000050	18,240,000,000
36,485,000,000	45,000,000,000	2,065,929	0.000040	36,485,000,000
45,000,000,000	57,000,000,000	2,406,529	0.000035	45,000,000,000
57,000,000,000	92,000,000,000	2,826,529	0.000030	57,000,000,000
92,000,000,000	130,000,000,000	3,876,529	0.000025	92,000,000,000
130,000,000,000	180,000,000,000	4,826,529	0.000023	130,000,000,000
180,000,000,000		5,976,529	0.000020	180,000,000,000

* Minimum assessment is \$350.

Note: Total Assets and resultant assessment may be rounded to the nearest dollar.

(b) All other financial institutions, including credit card banks, bankers banks, central credit unions, and related corporations not covered elsewhere in this Section, licensees and registrants under Article 4 (Sale of Checks) and 4A (Check Cashers) of Chapter 1 of Title 7, O.C.G.A., licensees and registrants under Article 13 (Georgia Residential Mortgage Act), and trust departments shall pay an examination fee at the rate of \$65 per examiner-hour but not less than \$500 unless such examination is conducted in conjunction with another ongoing examination in which case there shall be no minimum charge. The above per hour charge shall be compensation for the work of department examiners as well as any necessary, qualified outside assistance. The \$500 minimum charge may be waived by the Commissioner or his/her designee when such charge clearly exceeds the hours spent on an examination. Check casher fees for examination shall be remitted to the state treasury net of any fees paid by the Department for examination by a third party.

(c) Notwithstanding the provisions of subsection (b) above, licensees under Article 13 shall pay the actual cost incurred by the Department in the conduct of an out of state examination, including personnel costs, transportation costs, meals, lodging and other incidental expenses, in addition to \$65 per examiner hour spent on the examination.

(d) If an examination or supervisory visit is conducted of any financial institution during the same calendar year in which a previous examination has already been conducted, the institution

shall pay expenses, including personnel costs, transportation costs, meals, lodging and other incidental expenses, and an additional examination fee at the rate of \$65 per examiner-hour required for such examination.

(e) The Department may discount or surcharge all examination and supervision fees herein provided to assure that anticipated revenues of the Department will fund the annual appropriation by the General Assembly.

(f) The Department may also require reimbursement for direct expenses, such as transportation costs, meals, lodging, etc. associated with out-of-state examinations or supervisory visits for any regulated entity, including money services businesses.

(2) Banking applications:

(a) Applicants for new branch offices or relocations of financial institutions shall pay an investigation fee of \$1,250 for each application. Simple redesignations of existing bank locations require only prior notification in writing. Branch Offices established under the notice procedure shall pay a fee of \$500.

(b) Applicants for approval of new bank, trust company, state savings or mutual savings bank or savings and loan, or building and loan charters shall pay an investigation fee of \$20,000 for each application. Bank charter applications qualifying for expedited processing will be assessed an investigation fee of \$10,000. Applicants for approval of a new credit card bank or a special purpose bank shall pay an investigation fee of \$25,000. Prior to commencing business, successful applicants shall pay a supervisory and examination fee covering the preopening organizational supervision and initial operating supervision of the new institution in the amount of \$5,000.

(c) Applicants for approval for a company to become a bank holding company, other than for a de novo bank, may receive regular or expedited processing. Regular processing is \$3,500; expedited processing is \$2,500. Formation of a holding company simultaneously with formation of a de novo bank requires a regular processing fee of \$3,500, which, if applicable, is reduced by the fee for a new state charter.

(d) Applicants for a bank holding company to acquire five (5) percent or more but less than twenty-five (25) percent of the outstanding voting stock of financial institutions, or for review of a change of control shall pay an investigation fee of \$3,500 for each such application, provided, however, the Commissioner may waive or reduce such investigation fee in the case of a merger under emergency conditions as determined by the Department or in cases of:

(i) Interstate transactions where a comparable fee has already been paid for an earlier, related transaction among the same entities and where the resulting holding company pays an annual registration fee of \$1,000; or

(ii) Interstate transactions involving no Georgia state banks where the resulting holding company with branches or banks in Georgia pays an annual registration fee of \$1,000.

(e) Applicants for a bank holding company to acquire more than twenty-five (25) percent of the outstanding voting stock of financial institutions, shall pay an investigation fee of \$6,000. Expedited processing for these acquisitions is \$4,500. The fee for an intrastate and a covered interstate merger of banks or bank holding companies is \$4,500, reduced by a Department fee for a simultaneous acquisition if it has been paid. The Commissioner, however, may waive or reduce such investigation fee in the case of a merger under emergency conditions as determined by the Department or, in cases of:

(i) Interstate transactions where a comparable fee has already been paid for an earlier, related transaction among the same entities and where the resulting holding company pays an annual registration fee of \$1,000; or

(ii) Interstate transactions involving no Georgia state banks where the resulting holding company with branches or banks in Georgia pays an annual registration fee of \$1,000.

(f) Applicants for license to operate an international agency shall pay an investigation fee of \$5,000. In the event the application is denied, \$2,000 representing the applicant's initial license fee shall be refunded. International bank agencies and domestic international banking facilities shall pay an annual license or registration fee of \$2,000, on the first day of April of each year. Renewal licenses shall be issued for a twelve month period.

(g) Depository financial institutions, except credit card banks, bankers banks, and central credit unions shall pay an annual supervision fee as part of the examination fee prescribed in Rule 80-5-1-.03.

(h) All other financial institutions supervised by the Department who are not already covered by this chapter, except international agencies, shall pay an annual supervision fee of \$500, due on or before January 31 of each year.

(i) The investigation fee for conversion to a state bank is \$20,000.

(j) If a bank satisfies the banking factors set out in the Department's Statement of Policies, the fee to exercise a single trust power is \$250 and the processing is expedited to 7 days. A completed letter form application to exercise limited trust powers will be reviewed in 15 days; the fee is \$750. A bank that desires to exercise full trust powers files a regular application including a copy of the FDIC application. A complete application will be reviewed in 30 days; the fee is \$1,250. A new trust company, which must be affiliated with a Georgia bank, requires an investigation fee of \$20,000.

(k) Regular applications to establish or acquire a subsidiary of a bank shall require a fee of \$500. Banks qualified to file expedited applications according to the criteria in DBF Rule 80-1-1-.10 are not subject to a fee.

~~(1) A credit union that applies for a residential group common bond shall include an application fee of \$1,250 to cover the amount of administrative time involved in reviewing this type of common bond group.~~

(3) General rules for fees; holding companies with subsidiaries in Georgia.

(a) Fifty (50) percent of fees payable under the provisions of subsections (a), (b), (c), (d), (e) and (i) of Section (2) of this Rule may be rebated to the applicant upon withdrawal of the application prior to the performance of any field investigation which might be required. Actual amounts rebated shall be at the discretion of the Department based upon the administrative time devoted to consultation with the applicant and processing of the application. 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 \$1,000. Each Georgia bank holding company or a holding company that owns a Georgia bank shall pay on or before January 31 of each year an additional \$500 for each Georgia non-bank subsidiary corporation of the bank holding company, excluding subsidiaries assessed pursuant to Paragraph 80-5-1-.03(1)(a) and subsidiaries paying an annual license or registration fee pursuant to Paragraph 80-5-1-.02(4), as of June 30 preceding the due date of January 31.

(b) Applications covering more than one transaction (branch, acquisition, merger, etc.), which require the Department to separately analyze each application shall pay the applicable fee for each transaction.

(c) The annual assessment rates included in subparagraph (1)(a) above will normally be used in connection with any annual assessment of depository financial institutions having banking offices in more than one state including Georgia. The Commissioner, however, will have the discretion to deviate from the rates included in the assessment schedule and other rates and charges including application fees in order to facilitate or implement interstate efforts to regulate and supervise multi-state banks or for parity reasons.

Authority Ga. L. 1974, pp. 709, 732, 733; Ga. L. 1976, Act 762; 1990, p. 739; 1993, p. 543; O.C.G.A. §7-1-41; §7-1-61.

80-11-2-.01 Location Requirement and Minimum Retention Period.

(1) Any person required to be licensed or registered under Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated ("licensee" or "registrant") must maintain required books, accounts and records at the principal place of business. Should a licensee or registrant wish to maintain such records elsewhere, it must notify the department in writing prior to said books, accounts, and records being maintained in any place other than the designated principal place of business. Such notification shall be submitted to the Department of Banking and Finance, 2990 Brandywine Road, Suite 200, Atlanta, Georgia 30341.

(2) Books, accounts and records maintained at a location other than the principal place of business shall be made available to the department within five (5) business days from the date of

written request by the department and at a reasonable and convenient location acceptable to the department.

(3) "Principal place of business" means the location designated as the main office by the licensee or registrant in the initial written application for licensure or registration or as amended thereafter in writing to the department.

(4) All books, records and accounts required by Rule 80-11-2-.02(1) (b), (c), (d), (e), (f), (g), (h), (j) and (m) and Rule 80-11-2-.03 must be maintained for a period of five (5) years. All books, records and accounts required by Rule 80-11-2-02(1)(a), (i), (k) and (l) and by Rule 80-11-2-.04 must be maintained and kept complete for a period of five (5) years from the final disposition of the loan application to which the records relate (e.g. five (5) years from date application denied or cancelled or five years from date mortgage loan closed).

(5) Any books, accounts or records required to be maintained by Chapter 80-11-2 of the Rules of the Department of Banking and Finance may be maintained in their original form, on microfiche or other electronic media, provided: (i) that the records shall be made available to the department as provided in this Rule; and (ii) at the request of the department, the records shall be printed on paper for inspection or examination.

(6)(a) The penalty for maintaining books, accounts and records at a location other than the principal place of business without written notification to the department may be suspension of the license or registration, other appropriate administrative action or fine.

(b) 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.

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

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

(1) Any person 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 (W-2's), and 1099 forms filed by the licensee or registrant with the Internal Revenue Service by the licensee or registrant, or its agent on behalf of individuals employed by the licensee or registrant ~~in its mortgage brokerage and/or lending business~~ 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 of employment, 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.

80-11-3-.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, 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 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 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, 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 licensee or registrant who hires or retains an employee who is a felon as described in O.C.G.A. §7-1-1004(d), which employee has not complied with the remedies provided for in O.C.G.A. §7-1-1004(d), 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 for violations prior to July 1, 2007. Any licensee or registrant who employs any ~~other~~ person against whom a final cease and desist order ~~has been~~ was issued for a violation that occurred BEFORE July 1, 2007 within the preceding three (3) 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 ~~has been~~ was revoked within three (3) years of the date such person was hired pursuant to O.C.G.A. § 7-1-1004(g) shall be subject to a fine of ~~one thousand dollars (\$1,000)~~ five thousand dollars (\$5,000) per such employee and ~~their~~ its license or registration will be subject to revocation or suspension;

(10.1) Hiring Persons Otherwise Disqualified from Conducting a Mortgage Business for violations on or after July 1, 2007. Any licensee or registrant who employs any ~~other~~ person against whom a final cease and desist order has been issued for a violation that occurred ON OR AFTER July 1, 2007 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(g) 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, 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 \$6.50 fees. 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 \$6.50 fee to the Department, pursuant to O.C.G.A. §7-1-1011 and Rule 80-5-1-.04. Any remittance of the \$6.50 fees that is received after it is 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 \$6.50 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 \$6.50 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, 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, 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. 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 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. The GRMA in 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.

(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. §7-1-1016 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 Exam. 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 exam.

(22) Repealed. Reserved.

(23) Background Checks. Any licensee who fails to perform background checks on covered employees in accordance with the provisions of O.C.G.A. §7-1-1004(d), (e) and (f) 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, 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.