

FINANCIAL INSTITUTIONS

CHAPTER 80-1-1

APPLICATIONS, REGISTRATIONS AND NOTIFICATIONS

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80-1-1-.01 Applications, Registrations and Notifications, Generally.

(1) Proposed activities in Georgia by financial institutions, whether they are in-state or out-of-state banks or holding companies, may require a form application, a letter application, a form registration, or merely a letter notification to the Department. Certain qualifying institutions may be eligible to shorten the form of application, and may benefit from an expedited processing time including shortened or consolidated notice periods. Such criteria for banks is provided at Department of Banking and Finance Rule 80-1-1-.10, and Rule 80-6-1-.13. Criteria for bank holding companies may be found at Rule 80-6-1-.16. Requirements for all banking institutions to conduct certain other activities have been streamlined to coordinate with federal requirements.

(2) Where forms are required, they may be obtained from the Department or most may be viewed or downloaded at the Department's Internet website.

(3) Other Applications. Within these Rules: Chapter 80-2-1 covers Credit Union activities; Chapter 80-3-1 covers Money Transmitters, Check Sellers, and Check Cashers; Chapter 80-6-1 covers Holding Companies; and Chapter 80-11-1 covers Mortgage Lenders and Brokers.

(4) The Department has made available on its Internet website an Applications Manual and a Statement of Policies with details of the procedures required for most activities of regulated institutions in Georgia. Interested persons should consult the Department's Statement of Policies, Rules, and applicable law which form the basis for Department decisions. Hard copies of both are available by written request for a nominal fee. The regulations provide an overview, the Applications Manual and Statement of Policies provide detailed instructions.

(5) Fees are provided in DBF Rule Chapter 80-5-1.

(6) References in these Rules to "Code Section", "O.C.G.A.", "Title", "Code of Georgia", and "Section" are to the Official Code of Georgia Annotated.

Authority Ga. L. 1919, p. 165, 1955, p. 201; 1960, pp.67, 72; 1963, pp. 602, 604; 1964, p. 689; 1967, p. 555; 1970, pp. 954, 958; O.C.G.A. § 7-1-603.

80-1-1-.02 Financial Institution Applications: Financial Institution Charter.

(1) An application form and package for chartering a Georgia state chartered financial institution is necessary. An organizing group should schedule an initial meeting with the Department to discuss chartering issues, at which time an application package will be distributed. An applicant holding company that has established a lawful banking business in Georgia which meets certain criteria may qualify for expedited processing. Rule 80-6-1.16 and the Applications Manual should be consulted to determine if the applicant meets the necessary criteria.

(2) Specific requirements for documents, meetings with the Department and publication of notices are contained in the Applications Manual and the Statement of Policies of the Department.

(3) Submission and completion of application.

(a) A statement in support of an Application for Approval of a Charter shall be filed with the Department of Banking and Finance. If the Department of Banking and Finance notifies the applicant of deficiencies in the application, the applicant must complete the application within thirty (30) days after receipt of such notification.

(b) An application will not be deemed to have been officially accepted until such time as the required fee has been paid and all portions of the application have been completed to the satisfaction of the Department of Banking and Finance.

Authority Ga. L. 1974, p. 733.

80-1-1-.03. Order of Investigation of Charter by Department. Amended.

(1) Applications will not be considered for investigation until accorded official acceptance in compliance with Rule 80-1-1-.02(3)(b), until any appropriate application to the Federal banking agency having jurisdiction has been accepted for filing by the Federal agency, and until any required publication of Notice of Filing is completed.

(2) Investigations of conflicting applications shall be conducted by the Department of Banking and Finance in order of receipt and official acceptance of the applications, in accordance with the above and as determined by the date of acceptance recorded by the Department of Banking and Finance or the date of receipt by the appropriate Federal agency, whichever is later.

Authority Ga. L. 1974, p. 733.

80-1-1-.04 Notification of Filing and Protest. Amended.

(1) Applicants will be notified of official acceptance (bank charter) or receipt (other) of applications for filing. For a charter application, the applicant shall cause a notice, in such form as the Department may prescribe, to be published in a newspaper of general circulation in the community in which the applicant's main office is located and in a newspaper of general circulation in any other community in which the applicant proposes to engage in business as notification to any interested parties of their right to comment or protest the application, unless otherwise provided in a rule or law pertaining to a specific transaction. Publication of notice for public comment on a bank charter application may commence no sooner than five (5) days prior to the date the application is mailed or delivered to the Department. The Applications Manual should be referenced for details regarding the publication requirements for each type of application.

(2) Any person desiring to comment upon or formally protest an application must notify the Department of Banking and Finance in writing within 15 days of the date of the publication of the notice in paragraph (1) or within 30 days in the case of a bank charter application. The comment period may be extended if official acceptance of a bank charter application is delayed.

(3) All comments and any notices of intent to protest with request for a public hearing filed on a timely basis shall be reviewed and considered by the Department. The Commissioner may grant or deny a request for hearing in connection with a protest of an application. The Commissioner shall hold a hearing if he/she determines that written comments are insufficient to make an adequate presentation of the issues raised or if he/she determines that a hearing would otherwise be in the public interest. If a hearing is to be held, the protester and the applicant will be notified of a date as established by the department. Intention to appear at such hearing must be filed by the protester in writing with the Department within 15 days from date of notification of hearing date. Failure to file such intentions shall constitute grounds for canceling any scheduled hearing.

(4) Notwithstanding other provisions of this regulation, final determination to grant, conditionally or otherwise, or deny any application shall be in the sole discretion of the Commissioner of Banking and Finance or his/her legally authorized representative, and such action shall be final; provided, however, unless specified in other law or regulation, no action shall be required before the expiration of 90 days after the date of filing of the application.

Authority Ga. L. 1925, p. 132; 1949, p. 308; 1951, pp. 287, 288; 1964, p. 338; 1974, p. 733; O.C.G.A. § 7-1-7.

80-1-1-.05 Public Hearing. Amended.

(1) Hearings described in this Rule are held for the purpose of giving the public an opportunity to voice protest of certain applications and are not intended to conform to hearings under the Georgia Administrative Procedures Act. Such hearing shall be a forum for the presentation of information which the Commissioner shall consider in ruling on an application.

(2) Hearings under this Rule shall be conducted in accordance with the following procedure:

(a) The presiding officer, who shall be appointed by the department in its sole discretion, will open the hearing with an explanation of the hearing procedure, identification of the parties, and statement of the application at issue.

(b) The applicant shall present a brief opening summary of the contents and purpose of the application.

(c) Following the applicant's statement, each person contesting the application shall present his or her data and material, oral or documentary. The contestants may agree, with the approval of the presiding officer, to have one of their number make their presentation.

(d) Following each contestant's presentation, the applicant shall have an opportunity to rebut, clarify or expand upon any information presented by the contestant with oral or documentary material.

(e) The applicant and contestants shall present their information in concise fashion and the presiding officer shall have the authority to limit such presentations if they are repetitive, inappropriate, or irrelevant.

(3) The Department shall have all of the testimony recorded, retain two copies of the transcript and each contestant and the applicant shall receive a copy. The contestants shall be jointly responsible for all the costs of the transcription of the testimony and for the hearing, unless an applicant requests the hearing, in which case the applicant shall bear the cost. No charge shall be assessed for the presiding officer unless the officer is not an employee of the department, in which case the cost shall be borne as above.

(4) The obtaining and use of witnesses is the responsibility of the parties. All witnesses will appear voluntarily, but any person appearing as a witness may be subject to questioning by the presiding officer. The refusal of a witness to answer questions may be considered by the Department in determining the weight to be accorded the testimony of that witness. Witnesses shall not be sworn.

(5) Formal rules of evidence shall not be applicable to these hearings. Documentary material shall be of a size consistent with ease of handling, transportation, and filing. While large exhibits may be used during the hearing, copies of such exhibits must be provided by the party in reduced size for submission as evidence. Two copies of all such documentary evidence shall be furnished to the Department, and one copy shall be furnished to each contestant and the applicant during the hearing.

(6) The presiding officer or any person designated by the Department shall be the final judge of all procedural questions not governed by this rule. The presiding officer shall have the authority to limit the amount of time available to each party and to impose such other limitations as he or she shall deem reasonable.

(7) In preparation for a final determination on the application, the Department shall review the exhibits and the testimony as recorded, and the presiding officer shall make a recommendation of findings to the Commissioner.

Authority Ga. L. 1925, p. 132; 1949, p. 308; 1951, pp. 287, 288; 1964, p. 338; 1974, p. 733.

80-1-1-.06 Application or Notice Requirements for Additional Banking Locations.

(1) Definitions of terms used in this regulation are provided in Code Section 7-1-600.

(2) Establishment of a branch office:

(a) New or additional branch offices may be established with the prior approval of the Department by regular application or by letter notification for certain qualified banks as provided below. The manner and criteria for establishment of branch offices is provided for in Code Section 7-1-602.

(b) The rules for processing regular applications for branch offices are the same as those for bank charters, contained in Department of Banking and Finance Rule numbers 80-1-1-.02, 80-1-1-.03 and 80-1-1-.04, with the exception of 80-1-1-.03(1). In lieu of official acceptance, the Department will notify applicants for branch offices of the date of receipt of the application.

(c) Regular processing time is 21 days from receipt of a completed application, or after the public comment period has expired, whichever is later.

(3) In lieu of an application, a bank which satisfies the qualifying criteria for expedited processing in paragraphs (1) through (4) of Rule 80-1-1-.10 may submit a letter form notification to establish a new branch office. The authority, manner and criteria for establishment of a branch office under this procedure are provided for in Code Section 7-1-602 and this Rule.

(a) The notice must include the following:

(i) The physical address of the branch office;

(ii) A statement regarding whether or not an insider is involved in the acquisition, construction, or leasing of the property;

(iii) The anticipated fixed asset investment for this proposal, and whether the bank will be in compliance with Code Section 7-1-262; and

(iv) A statement certifying that the applicant qualifies for the notice procedure under the applicable qualifying criteria.

(b) The Department will acknowledge a qualifying notice within two business days of receipt, or notify applicant that it does not qualify and may submit an application for regular processing.

(c) No state publication will be required.

(d) The approval to establish the branch office will be effective at the earlier of: an approval letter from the Department, or 10 business days from the date of acknowledged receipt.

(e) The Department may remove the notice from this expedited procedure or it may deny, revoke, or condition its approval where it finds that:

(i) Safety and soundness concerns of the Department dictate a more comprehensive review;

(ii) Any material adverse comment is received by or reported to the Department;

(iii) Other supervisory concerns, legal issues, or policy issues come to the attention of the Department; or

(iv) Any other good cause exists for denial or removal.

Authority O.C.G.A. §7-1-7; §7-1-61; and §7-1-602.

80-1-1-.07 Expansion or Extension of Banking Location.

(1) No application is necessary for an ATM, cash dispensing machine, night depository or point of sale terminal. Prior approval is required for a mobile banking service or courier service. The letter application should set out the location, ownership, and nature of the service.

(2) If notification is required for an extension adjacent to a banking location due to provisions in Code Section 7-1-603(d), such notification shall be in letter form and shall specify:

(a) Exact location of proposed extension;

(b) Distance of extension from bank and whether or not extension is connected to any banking location; and

(c) Cost of establishing the extension, and if site is to be leased, a copy of the proposed lease agreement.

Authority Ga. L. 1966, pp. 590, 591; 1973, pp. 526, 527; 1975, p. 475; O.C.G.A. § 7-1-6

80-1-1-.08 Procedures for Other Transactions, Expedited, Letter Form and Notice Only Applications.

(1) Conversion to state chartered bank. A meeting with the department should precede filing a letter form application, which application should include all of the information requested in the Applications Manual. Publication of Articles of Conversion and an investigation will be required.

(2) Other conversions. See Part 15 of Article 2 of Title 7 for conversions involving national banks and federal savings institutions.

(3) Mergers.

(a) Part 14 of Article 2 of Title 7 provides generally for mergers of state banks and trust companies, and Part 15 covers in-state mergers involving national banks.

(b) Interstate mergers are covered in Part 20 of Article 2 of Title 7, and when such mergers involve acquisitions by holding companies, Part 19 of Article 2 of Title 7 and Code Sections 7-1-605 through 7-1-608 may apply.

(c) The procedure for approval of a merger involves a letter application and for state banks a publication of Articles of Merger.

(4) Change in Control:

(a) A letter form notification to the department is required, together with a copy of any federal filing.

(b) The board of directors of the financial institution subject to a change in control shall be notified of the filing of the notice with the department unless the individuals involved request that such notice be withheld and, in the opinion of the department, they give a valid reason for withholding such notice.

(5) Fiduciary Powers. A full application as detailed in the Applications Manual is required for exercise of full trust powers. Exercise of limited trust services and a single trust service requires a letter form application. Request to perform a single trust service may be expedited. No publication is required.

(6) Creation and Operation of a Subsidiary of a Bank. Code Sections 7-1-261 and 7-1-288 provide for the ability of a bank to exercise powers incidental to banking and to create a separate subsidiary to effect such powers as may be financial in nature, incidental or complementary to the provision of financial services, subject in most cases to certain investment limitations. Most require a letter form application describing the activity, how it relates to the business of banking and finance, and what protections will be in place to deal with any associated risks.

(7) Relocation, Simultaneous Redesignation of two or more banking locations, and Closing of a banking location.

(a) Definitions:

(i) Relocation. The location of an existing banking location is to be changed to a new or additional location which is to be constructed, purchased or leased. The existing location may remain in service or be closed.

(ii) Redesignation. Where two existing bank locations exchange their designations, a redesignation occurs. A main office may become a branch office and vice versa. If the existing main office is closed when the main office is redesignated, closing procedures must be followed.

(iii) Closing. An existing bank location is shut down indefinitely. A closing requires a notification to the department and to customers (Code Section 7-1-110.1).

(b) Procedure for a Relocation. A bank meeting the qualifying criteria for expedited processing in sections (1) through (4) of Rule 80-1-1-.10 may submit a letter form notification to relocate an existing banking location. No state publication will be required under the notice procedure. The approval to relocate an existing banking location under the notice procedure will be effective at the earlier of: an approval letter from the department, or 10 business days from the date of acknowledged receipt. If the relocation proposal involves relocation of the bank's main office, additional procedures such as amendment of the bank's Articles of Incorporation may apply. Processing of regular applications on the department's form will normally be completed

within 21 days from receipt of a completed application, or after the public comment period has expired, whichever is later. The publication requirement for regular processing may be coordinated with any federally required notice. All relocations should include a notice to customers posted in a conspicuous place of the affected branch office for at least 30 days before relocating.

(c) Procedure for a Redesignation. A letter form request stating details of the proposed transaction should be submitted and all complete requests will receive expedited processing of seven (7) days.

(8) Changes in Capital Structure Involving Stock Redemption and Conversions. Code Sections 7-1-414 and 7-1-419 should be consulted. A complete letter form application describing the transaction should be acted upon within 10 business days of receipt.

(9) Letter form applications are required for the following other activities of banks. Related code sections are referenced.

(a) Name reservation and permission is treated in Code Sections 7-1-130, 7-1-131, 7-1-242 and 7-1-243. The department may approve a name for a bank holding company that is not distinguishable on the records of the Secretary of State from the name of a deposit taking financial institution wholly owned by that bank holding company. If such bank holding company subsequently sells the bank with a similar name the bank holding company may retain its name only if the subject bank's name is no longer in use.

(b) Amendment of Articles of Incorporation. Part 13 of Article 2 of Title 7. Required publication shall be made in the official organ of the county where the main office of the institution is located.

(10) A bank that meets the criteria in Rule 80-1-1-.10 and that wishes to invest in shares of stock of a bank engaged in providing banking or other financial services to depository financial institutions, which bank's ownership consists primarily of such depository financial institutions, may do so by filing a notice with the department fully describing the transaction at least 10 days before such investment is made;

(11) A bank that meets the criteria in Rule 80-1-1-.10 and that wishes to invest in shares of stock of:

(a) A bank service corporation created to provide support services for one or more financial institutions; or

(b) A corporation engaged in functions or activities that the bank is authorized to carry on may take advantage of expedited processing as provided in the department's Applications Manual.

Authority O.C.G.A. §7-1-61.

80-1-1-.09 Standards for Consideration of Applications Generally; Applications Manual and Statement of Policies; Trust Production Office Criteria.

(1) Standards for consideration of applications whether covered under this Rule Chapter or otherwise, shall in most cases include: evaluations of financial history and condition of the applicant; adequacy of applicant capital; future earnings prospects for applicant; character, capacity and ability of applicant management; consistency of corporate powers; convenience and needs of the public; and effects on competition. Department policies in regard to such evaluations are discussed in greater detail in the Department's Statement of Policies ("Policies"), Applications Manual ("Manual"), and in instructions accompanying applications. The Manual and Policies can be found at the Department's Internet website or may be ordered from the Department for a nominal fee.

(2) If the Department of Banking and Finance notifies the applicant of deficiencies in the application, the applicant must complete the application by curing the deficiencies within thirty (30) days after receipt of such notification.

(3) An application will not be deemed to have been filed and received until such time as the required application fee, and any other unpaid fee or fine owed to the Department, has been paid and all portions of the application have been completed to the satisfaction of the Department of Banking and Finance.

(4) Decisions on applications may be conditioned and may be nullified should the Department determine that circumstances are substantially different from those upon which the decision was based.

(5) Standards for approval of a trust production office shall include stability and financial condition of the bank or trust company with the trust powers; level of regulation by the state or federal regulator of bank or trust company in its home state; and consumer comment.

Authority Ga. L. 1970, p. 954; Ga. L. 1974, pp. 724, 733, 825; O.C.G.A. § 7-1-590.

80-1-1-.10 Qualifying Criteria for Expedited Processing for Applications by a Bank (Other than Charter).

The following criteria, when met and certified to by an applicant bank, shall, where permitted, qualify the bank to utilize a shorter application and/or an expedited process for approval.

(1) The depository institution must be well capitalized as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator;

(2) The depository institution must have received a CAMELS composite rating of "1" or "2" as a result of the most recent state or federal examination;

(3) The depository institution must have a satisfactory or better Community Reinvestment Act rating from its primary federal regulator at its most recent examination; and

(4) The depository institution must not be subject to any agreements, orders, prompt corrective action directives or other enforcement or administrative agreements with the Department or its primary federal regulator or other chartering authority.

(5) In addition, the Department may deny or remove from expedited processing any institution's application where it finds that:

(a) Safety and soundness concerns of the Department dictate a more comprehensive review;

(b) Any material adverse comment is received by the Department;

(c) Other supervisory concerns, legal issues, or policy issues come to the attention of the Department;

(d) If applicable, any acquisition of fixed assets would cause the institution to exceed the state fixed asset limitation; or

(e) Any other good cause exists for denial or removal.

In this event, the institution will be notified that expedited processing is not available, the reason, and instructions as to how to proceed.

Authority O.C.G.A. §7-1-61.

80-1-1-11 Acquisition of voting control of large financial institutions.

(1) Notice and approval to acquire voting control of a large state chartered financial institution. No person shall (a) acquire voting control of any large financial institution or (b) initiate or actively propose in opposition to the board of directors of the large financial institution any corporate action by a large financial institution, in each case without the prior approval of the Department, pursuant to the notice and approval procedures set forth in Part 10 of Title 7. The person shall provide a certification to the Department, along with a copy of the actual notification to the affected large financial institution, that it has filed an application with the Department under this Section. No application for acquisition of voting control of a large financial institution shall be considered complete until such certification and copy of the required notification are filed and accepted by the Department.

(2) Exceptions.

(a) Any person who acquires voting control of a large financial institution solely for the purpose of investment shall not be subject to the requirement set forth in subsection (1)(a) of this Rule 80-1-1-11.

(b) Any person who acquired voting control of a large financial institution prior to November 19, 2007, shall not be subject to the requirement set forth in subsection (1)(a) of this Rule 80-1-1-11, although subsection (1)(a) shall apply to any subsequent acquisition of voting securities of such large financial institution by such person.

(c) Any person who is (i) registered as an “investment company” under the Investment Company Act of 1940 and (ii) eligible to report its holdings on a Schedule 13G under Rule 13d-1(c) promulgated under the Securities Exchange Act of 1934 shall not be subject to the requirement set forth in subsection (1) of this Rule 80-1-1-.11.

(d) Any person who has voting control of less than one percent of a large financial institution shall not be subject to the requirement set forth in subsection (1)(b) of this Rule 80-1-1-.11.

(2) Definitions.

(a) Acting in concert. For purposes of this Rule 80-1-1-.11, acting in concert may include, without limitation, any of the following:

(1) knowing participation in a joint activity or interdependent conscious parallel action towards a common goal whether or not pursuant to an express agreement; or

(2) a combination or pooling of voting or other interests in the securities for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangement, whether written or otherwise.

A person or company which acts in concert with another person or company (“other party”) shall also be deemed to be acting in concert with any person or company who is also acting in concert with that other party, except that any tax-qualified employee stock benefit plan as defined in 12 CFR 563b.2(a)(39) will not be deemed to be acting in concert with its trustee or a person who serves in a similar capacity solely for the purpose of determining whether stock held by the trustee and stock held by the plan will be aggregated.

(b) Corporate action. For purposes of this Rule 80-1-1-.11, corporate action may include, without limitation, any of the following:

(i) an extraordinary corporate transaction, such as a merger, reorganization or liquidation involving a large financial institution or any of its subsidiaries;

(ii) a sale or transfer of a material amount of assets of a large financial institution or any of its subsidiaries;

(iii) any change in the present board of directors or management of a large financial institution, including any plan or proposal to change the number or term of directors or to fill any existing vacancies on the board;

(iv) any material change in the present capitalization or dividend policy of a large financial institution;

(v) any other material change to a large financial institution’s business or corporate structure;

(vi) changes in a large financial institution’s charter, bylaws or other instruments or other actions which may impede or facilitate the acquisition of control of a large financial institution by any person;

(vii) causing a class of securities of a large financial institution to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association;

(viii) a class of equity securities of a large financial institution becoming eligible for termination of registration pursuant to Section 12(g)(4) of the Securities Act of 1933; and

(ix) any action similar to any of those enumerated above.

(c) Large financial institution. A state-chartered financial institution or bank holding company having consolidated assets in excess of \$5 billion in the aggregate, as determined as of the end of the most recent fiscal quarter of the financial institution or bank holding company, as applicable, and set forth in its most recent quarter end financial statements filed pursuant to the Securities Exchange Act of 1934.

(d) Person. An individual or a corporation, partnership, limited liability company, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed in this paragraph.

(e) Solely for the purpose of investment. Held by the acquirer with no intention of participating in the formulation, determination or direction of the basic business decisions of the financial institution. Any person holding shares of a financial institution in a fiduciary capacity shall be deemed to hold such shares solely for the purpose of investment unless such person is acting in concert with a person other than its beneficiary. Any person exercising voting control in connection with a proposal of corporate action shall not be deemed to have acquired voting control solely for the purpose of investment intent.

(f) Voting control. The power of any person, acting directly or indirectly or acting in concert with one or more persons, to exercise the voting rights of five percent or more of any class of voting securities whether or not such voting rights are exercised by the shareholder with the rights to dispose of the shares giving rise to such voting rights. A person shall be deemed to have the power to vote securities that it has the right to acquire in the future.

Authority O.C.G.A. § 7-1-61.