

STATE OF GEORGIA DEPARTMENT OF BANKING AND FINANCE



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*BRIAN P. KEMP
GOVERNOR*

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COMMISSIONER*

*SPECIAL EDITION
IMPORTANT NOTICE
PROPOSED RULEMAKING*

December 7, 2020

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

**PROPOSED ENACTMENT OF RULES AND REGULATIONS
BY
DEPARTMENT OF BANKING AND FINANCE
STATE OF GEORGIA**

To all interested persons:

Pursuant to the provisions of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., and by the authority of O.C.G.A. §§ 7-1-61, 7-1-690, 7-1-706.1, 7-1-1012, and other cited statutes, the Department of Banking and Finance hereby gives notice of its intent to adopt new rules.

A synopsis and purpose precedes the proposed rules.

Comments to the Department of Banking and Finance must be received by the close of business on **Wednesday, January 6, 2021**. Please send all comments to:

Oscar B. Fears, III, Deputy Commissioner
Georgia Department of Banking and Finance
2990 Brandywine Road, Suite 200
Atlanta, GA 30341-5565
Fax: (770) 986-1654 or 1655
Email: bfears@dbf.state.ga.us

The Department shall review all comments, may contact commenters to discuss their suggestions, and, after the comment period has closed, intends on promulgating final rules. The Department will consider the proposed new rules for adoption at a meeting **at 1:00 p.m. on Friday, January 8, 2021**, 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 rules by contacting the Department at (770) 986-1633, after **Friday, January 8, 2021**.

2020 Rules and Regulations

Proposed Changes: Synopsis, Purpose and Background

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

The proposed amendment reflects the provisions in House Bill 781 (“HB781”) reducing the period of time the Department has to review a branch application from 90 days to 30 days as well as removing the publication requirement for branch applications. The proposed amendment also changes the terminology of “letter notification” to “expedited application” to more accurately reflect the treatment of such documents received by the Department. In addition, the proposed amendment provides that the Department will utilize its best efforts to confirm receipt of an expedited branch application or notify the applicant that it does not qualify for expedited treatment. Finally, in lieu of repeating the grounds for denial of expedited treatment, the rule has been amended to simply cross-reference Rule 80-1-1-.10.

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

The proposed amendment reflects the provision in HB781. The amendment details the situations when an extension can be opened by a bank without providing the Department notice or filing an application, those situations where notice must be provided to the Department of the operation of an extension, and the situations in which an application must be submitted to the Department and approval obtained from the Department prior to the operation of an extension.

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

The proposed amendment removes the reference to conversions of state banks to national banks as the language simply references the applicable Code sections. The proposed amendment also removes those portions of the merger language that again simply reference the applicable Code sections. In addition, the proposed amendment eliminates the reference to the closing of a branch location as it simply references the applicable Code section. The proposed amendment also modifies the requirements around the processing of relocating or re-designating a branch and aligns the relocation definition with federal law. Finally, the processes for opening and closing a representative office by a state-chartered bank are set forth in the proposed amendment.

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

The proposed amendment strikes the requirement that the Department approve the opening of a trust production office as state-chartered banks are authorized under O.C.G.A. § 7-1-591 to operate a representative office upon registering with the Department.

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

The proposed amendment restructures the rule to make clear that the Department will notify an applicant that it does not qualify for expedited processing under any circumstance and not just for “other” good cause for the denial of the application or removal of the application from expedited processing.

80-1-5-.02 Real Estate Loans

The proposed amendment removes the complex provisions for when a bank can acquire an ownership interest in real property outside of O.C.G.A. §§ 7-1-262 and 7-1-263 and replaces it with a requirement that a bank receive prior written approval from the Department prior to such acquisition.

80-1-8-.01 Dormant Accounts: Service Charges

The proposed amendment reflects language in O.C.G.A. § 44-12-197(c)(1) that prior written notice must be provided to a depositor prior to imposing dormant account charges. The proposed amendment also defines the term “corresponded” for purposes of determining when the timeframe starts to run for the purpose of determining dormancy.

80-1-10-.09 Assets Acquired – Debts Previously Contracted (“D.P.C.”)

The proposed amendment clarifies that a number of the provisions in the rule apply to both appraisals and evaluations performed on other real estate. The proposed amendment also increases the dollar threshold from \$250,000 to \$400,000 for the discretionary performance of an evaluation instead of an appraisal on other real estate that is residential property. Finally, the proposed amendment sets forth the circumstances in which the Department can reject an evaluation and require the bank to obtain a new evaluation or an appraisal.

80-1-10-.10 Bank as Lessor of Real Estate

The proposed rule provides that after obtaining the prior written approval of the Department a bank may lease excess real estate as long as the bank or an affiliate or subsidiary of the bank occupies at least 67% of the premises. The proposed rule also sets forth the information that must be contained in the application.

80-1-12-.01 Dividends

The rule sets forth the circumstances under which a bank can pay a dividend without approval from the Department. The Department’s proposed amendment revises the formula to determine the dividend amount that can be paid without approval as the current formula and its application has resulted in frequent confusion and disparate calculations between the Department and the industry. It is the Department’s belief that the proposed amendment will eliminate this confusion.

80-1-15-.01 Automated Teller Machine (“ATM”) and Night Depository

The proposed amendment eliminates the limitations on staffed ATMs as the operation of such staffed locations are controlled by the Department’s rules on representative offices.

80-1-15-.02 Mobile Banking Units

The proposed amendment increases the flexibility for banks to provide services from mobile locations with notification to the Department. The proposed amendment also seeks to align some of the provisions with federal rules. Finally, the proposed amendment limits the scope of this rule to banks.

80-1-15-.03 Courier Services

The proposed amendment seeks to align the rule with federal provisions, which includes the renaming of courier services to messenger services. The proposed amendment also restructures the rule to provide greater clarity. Finally, the proposed amendment limits the scope of this rule to banks.

80-1-15-.04 Account Service Representatives

The proposed amendment limits the scope of this rule to banks.

80-1-15-.05 School Savings and Banking Education Programs

The proposed amendment limits the scope of this rule to banks. The proposed amendment also clarifies that such program must be carried out on school premises or a facility utilized by the school.

80-2-4-.05 Credit Union as Lessor of Real Estate

The proposed amendment corrects a typographical error in a citation.

80-2-4-.08 Application or Notice Requirements for Branch Offices

The proposed rule reflects the provisions in HB781 setting forth the processes for submission and the standards to be applied by the Department in reviewing a credit union branch office application.

80-2-4-.09 Relocation or Simultaneous Re-designation of Two or More Credit Union Locations

The proposed rule sets forth the procedures for a credit union to relocate an existing branch as well as the procedures for a credit union to re-designate a branch office to a main office and the main office, if it is not closed, to a branch office.

80-2-11-.01 Automated Teller Machine (“ATM”) and Night Depository

The proposed rule reflects certain language in Rule 80-1-15-.01 and provides that the operation of an ATM by a credit union does not constitute a banking business within the State.

80-2-11-.02 Mobile Credit Union Units

The proposed rule provides that credit unions can operate mobile units and sets forth the limitations and restrictions on such activity. The proposed rule reflects language in Rule 80-1-15-.02.

80-2-11-.03 Account Service Representatives

The proposed rule provides that credit unions can have account service representatives and sets forth the limitations and restrictions on such activity. The proposed rule reflects language in Rule 80-1-15-.04.

80-2-11-.04 School Savings and Banking Education Programs

The proposed rule provides that credit unions can participate in school savings and banking education programs and sets forth the limitations and restrictions on such activity. The proposed rule reflects language in Rule 80-1-15-.05.

80-2-11-.05 Expansion or Extension of a Branch Location

The proposed rule reflects the provisions in HB781. The rule details the situations when an extension can be opened by a credit union without providing the Department notice or filing an application, those situations where notice must be provided to the Department of the operation of an extension, and the situations in which an application must be submitted to the Department and approval obtained from the Department prior to the operation of an extension.

80-2-12-.01 Loans Generally, Interpretations and Rulings

The proposed amendment reflects the provisions in HB781 related to the revisions to the legal lending limit. The amendment defines certain terms, details when the legal lending limit is calculated, enumerates exemptions from the legal lending limit, sets forth the approval process that must be employed by the Board of Directors or Credit Committee for certain loans, identifies the process by which deposits can be regarded as collateral for loans, and describes when overdrafts are considered an extension of credit for purpose of the legal lending limit.

80-2-12-.04 Assets Acquired – Debts Previously Contracted (“D.P.C.”)

The proposed amendment clarifies that a number of the provisions in the rule apply to both appraisals and evaluations performed on other real estate. The proposed amendment also increases the dollar threshold from \$250,000 to \$400,000 for the discretionary performance of an evaluation instead of an appraisal on other real estate that is residential property. Finally, the proposed

amendment sets forth the circumstances in which the Department can reject an evaluation and require the credit union to obtain a new evaluation or an appraisal.

80-2-12-.05 Combination of Debt for Legal Lending Purposes

The proposed rule reflects the provisions in HB 781 related to the revisions to the legal lending limit. In particular, the rule sets forth the circumstances where liabilities of a group of one or more persons or corporations or both shall be combined with the liabilities of another group of one or more persons or corporations or both for purposes of the credit union's legal lending limit.

80-3-1-.01 Payment Instrument Sellers and Money Transmitters

The proposed amendment provides that the license's activity statement shall be filed on an annual basis instead of a quarterly basis while the money service businesses call report is filed on a quarterly basis. In addition, the proposed amendment provides that if the average daily outstanding amount for a calendar quarter exceeds the licensee's surety bond by more than 10%, the licensee is required to provide additional bond coverage.

80-3-1-.02 Check Cashers

The proposed amendment eliminates the requirement that advertisements for check cashers indicate that they are licensed by the Department but instead contain the assigned unique identifier number and clearly indicate that the number was assigned by the Nationwide Licensing System and Registry.

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

The proposed amendment reflects the proposed change to Rule 80-3-1-.02, cross-references an additional rule for books and records violations, and corrects a typographical error.

80-5-1-.01 General

The proposed amendment clarifies the assessment process for depository institutions, in particular the assessment process in the event of an acquisition, conversion, or chartering of a new entity during the assessment period.

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

The proposed amendment reflects the provisions in HB781 by eliminating the requirement that registrants of representative offices register with the Department on an annual basis. In addition, the proposed revision reduces the application and renewal fee for an additional location for installment lenders from \$500 to \$400.

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

The proposed amendment eliminates the application fee for a new branch office or branch relocation if the application is processed as an expedited application. The proposed amendment also provides that a re-designation of existing bank locations must be accompanied by an application but does not require an application fee.

80-5-1-.06 Fees for Credit Unions

The proposed amendment provides that the application fee for a new branch office or branch relocation is \$1,250 if it is a regular application but that there is no fee if it is an expedited application. The proposed amendment also provides that a re-designation of existing credit union locations must be accompanied by an application but does not require an application fee. Finally, the proposed amendment provides that the application fee for a de novo credit union is \$20,000.

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

The proposed amendment strikes this rule and moves the text to Rule 80-11-4-.12 with the other mortgage rules.

80-5-2-.01 Temporary Changes in Operating Hours

The proposed amendment provides that required notices under this rule must be posted at the impacted locations as well as the financial institution's website. In addition, the proposed amendment strikes the provision that permits temporary changes in operations of a location simply because an office or alternative location is available.

80-5-2-.02 Temporary Closings

The proposed amendment strikes a provision that appears to limit the ability of a financial institution to close a location in response to an emergency.

80-5-2-.03 Permanent Closings

The proposed amendment provides that the closing must be disclosed on the financial institution's website. In addition, the proposed rule provides that the notice posted at the impacted location along with the disclosure on the website must be forwarded to the Department.

80-5-2-.04 Effects of Compliance

The proposed amendment strikes this rule as it simply provides that a financial institution that complies with the Code or the rules authorizing it to alter its hours of operations can, in fact, alter its hours of operation.

80-6-1-.04 Audits

The proposed amendment provides that unqualified opinion audits will be provided to the Department upon request but that all other audits, along with the letter to management, shall be provided to the Department within fifteen days of receipt of the audit by the holding company. The proposed amendment also provides that the failure of a holding company to obtain the required opinion audit shall be reported to the Department.

80-11-1-.02 Advertising Requirements

The proposed amendment reflects the provisions in HB781 relating to the change in the advertising provisions for mortgage lenders and mortgage brokers.

80-11-1-.03 Place of Business Requirements; Definitions

The proposed amendment reflects the provision in HB781 eliminating the Georgia physical place of business requirement for certain mortgage brokers.

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

The proposed amendment provides that if a licensee wishes to maintain records at a location other than its principal place of business, a notice shall be provided to the Department through the Nationwide Multistate Licensing System and Registry.

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

The proposed amendment strikes the requirement that licensees review the Department's website in order to determine the eligibility of individuals for hire, but licensees are still required to review NMLS Consumer Access to confirm eligibility prior to hiring an employee.

80-11-3-.01 Administrative Fines

The proposed amendment strikes the language authorizing a fine for the failure to check the Department's website in order to determine the eligibility of an individual for hire. In addition, the proposed amendment clarifies that the fine for failure to timely perform background checks on employees applies to each employee whose background was not checked in a timely manner.

80-11-4-.03 Licensing Requirements; Registrants; Exemptions; Term for Bond

The proposed amendment strikes certain language related to surety bonds as the provisions are duplicative of O.C.G.A. §§ 7-1-1003.2 and 7-1-1007 and most of the terms of surety bonds are standardized through the Nationwide Multistate Licensing System and Registry.

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

The proposed amendment incorporates the provisions of 12 U.S.C. § 5117 related to certain unlicensed mortgage loan originators having temporary authority to act as a mortgage loan originator. In addition, the proposed amendment provides that information related to the licensure status of an entity is available on NMLS Consumer Access.

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

The proposed amendment corrects typographical errors.

80-11-4-.12 License Renewal Periods and Requirements for Mortgage Brokers, Mortgage Lenders, and Mortgage Originators

This proposed rule is the entire text from Rule 80-5-1-.07 as the Department believes this rule logically should be located with the other mortgage rules.

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

The proposed amendment incorporates the provisions of 12 U.S.C. § 5117 related to certain unlicensed mortgage loan originators having temporary authority to act as a mortgage loan originator.

80-13-1-.13 Dividends

The rule sets forth the circumstances under which a trust company can pay a dividend without approval from the Department. The Department's proposed amendment revises the formula to determine the dividend amount that can be paid without Department approval as the current formula and its application resulted in frequent confusion and disparate calculations between the Department and other financial institutions. It is the Department's belief that the proposed amendment will eliminate this confusion.

80-14-2-.04 Installment Loan Files

The proposed amendment corrects typographical errors.

80-14-4-.01 Licensing Requirements and Exemptions

The proposed amendment sets forth the circumstances under which a licensee can utilize the employees of an affiliated licensee, a licensee with a common individual or entity, that owns or controls 20% or more of each licensee.

80-14-5-.01 Loan Contract, Disclosures, and Limitations

The proposed amendment permits the initial payment on an installment loan to be due no later than 45 days after the loan is made. The proposed amendment also provides that a single payment loan must be due no later than ninety (90) days after the loan is made.

CHAPTER 80-1-1

APPLICATIONS, REGISTRATIONS AND NOTIFICATIONS

- 80-1-1-.06 Application or Notice Requirements for Additional Banking Locations.
- 80-1-1-.07 Expansion or Extension of Banking Location.
- 80-1-1-.08 Procedures for Other Transactions, Expedited, Letter Form and Notice Only Applications.
- 80-1-1-.09 Standards for Consideration of Applications Generally; Applications Manual and Statement of Policies; ~~Trust Production Office Criteria.~~
- 80-1-1-.10 Qualifying Criteria for Expedited Processing for Applications by a Bank (Other than Charter).

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~~ expedited application 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 ~~and~~, 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 a ~~regular~~ 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~~ an expedited application 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~~ expedited application 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 expedited application~~ procedure under the applicable qualifying criteria.

(b) ~~Unless it has previously issued an approval letter under subparagraph (c), The~~ the Department will use its best efforts to acknowledge a qualifying ~~notice expedited application within two business days of receipt,~~ or notify the applicant that it does not qualify ~~for expedited processing and may submit an application for regular processing within two business days of receipt of such notice.~~

~~—(c) No state publication will be required.~~

(~~dc~~) 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.

(~~ed~~) The Department may remove the notice from this expedited procedure for any of the reasons set forth in paragraph (5) of Rule 80-1-1-.10. ~~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; 7-1-602; and 7-1-603.

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

(1) No ~~application notification~~ is necessary for an extension that is 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 any other extension is located within the boundary lines of a single contiguous area of property owned or leased by the bank and used as a banking location or if it is within 200 yards of such banking location, then the bank must provide written notice to the Department of such extension. If notification is required for an extension adjacent to a banking location due to provisions in Code Section 7-1-603(d), s~~Such notification shall be in letter form and shall specify:

(a) Exact location of proposed extension;

(b) The nature of service that will be provided at the extension;

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

(d) Ownership of the location; and

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

(3) For all other extensions that are not addressed in paragraphs (1) and (2), a bank must obtain prior approval from the Department by submitting a letter form application.

Authority: ~~Ga. L. 1970, p. 954, Ga. L. 1974, pp. 724, 733, 825, O.C.G.A. Sec. §§ 7-1-590, Ga. L. 1966, pp. 590, 591, 1973, pp. 526, 527, 1975, p. 475, O.C.G.A. Sec. 7-1-603.~~

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 Reserved.~~

(3) Mergers. The procedure for approval of a merger involves the filing of a letter application to the Department and, if a state bank is the surviving financial institution, the publication of Articles of Merger.

~~(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 ~~and~~; Simultaneous Re-designation 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~~ moved to a new or additional location which is to be constructed, purchased or leased within the same immediate vicinity of the existing branch. ~~The existing location may remain in service or be closed.~~

(ii) Re-designation. Where two existing bank locations exchange their designations, a re-designation occurs. Under a re-designation, a branch office becomes the main office and the A main office, if it is not closed, 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. In the event the bank does not qualify for expedited processing, a form application should be submitted to the Department, which Processing of regular applications on the department's form will normally be completed processed within 21-30 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~~ banking location as well as on the

bank's website at least 30 days before relocating. In addition, if any relocation proposal involves relocation of the bank's main office, additional procedures such as amendment of the bank's Articles of Incorporation may apply.

- (c) Procedure for a Re-designation. Upon receipt of Aa letter form request ~~stating setting forth the~~ details of the proposed ~~transaction re-designation,~~ the Department will review and ~~process such request within seven (7) days.~~ should be submitted and all complete requests will receive expedited processing of seven (7) days. In the event the bank intends on closing the former main office as part of a re-designation, then the closing procedures for a bank location must be followed.
- (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.
- (12) Opening and closing of a representative office. Prior to opening a representative office, a Georgia state-chartered bank must register the location with the Department by filing a letter form registration with the Department. Prior to closing a representative office, a bank must

post notice of the closing at such location at least 30 days in advance of the intended closure. The bank must also disclose the fact of the closure on its website at least 30 days in advance of the intended closure and such notice shall be posted for at least 30 consecutive days. Within two days of providing the notice, the bank must forward to the Department a copy of the notice posted at the representative office as well as the disclosure contained on its website to the Department.

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 obtained from the Department.
- (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~~61.

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. ~~Sec. §§~~ 7-1-61; 7-1-79.

CHAPTER 80-1-5

LOANS AND DISCOUNTS

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

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 CFR 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.

(2) 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 O.C.G.A. § 7-1-285, related Department rules and regulations, or requirements of federal law, and the soundness of the loan should always be considered.

(3) Except as expressly authorized by O.C.G.A. §§ 7-1-262 or 7-1-263, banks may not acquire directly or indirectly any ownership interest in real estate without the prior written approval of the Department.

~~(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: O.C.G.A. §§ 7-1-61; 7-1-286.

CHAPTER 80-1-8

DORMANT ACCOUNTS

80-1-8-.01 Dormant Accounts: Service Charges.

80-1-8-.01 Dormant Accounts: Service Charges

(1) Dormant accounts are hereby defined as follows:

- (a) Demand Deposit Accounts are deemed to be dormant when the depositor, which for the purposes of this rule shall include a member in the case of credit unions and a shareholder in the case of savings and loan associations, has neither increased or decreased the amount of the deposit nor corresponded with the financial institution regarding the deposit for a period of not less than twelve months immediately preceding the determination.
- (b) Time and Savings Deposits, including Certificates of Deposit, are deemed to be dormant when the depositor has neither increased or decreased the amount of the deposit or shares nor corresponded with the financial institution regarding the deposit or shares for a period of not less than five (5) years from the date upon which the deposit or share first became eligible for withdrawal.
- (c) Certified and Official Checks shall be deemed to be dormant when they have not been presented for payment within two (2) years of the date of issue, or if the issuing financial institution has not had correspondence with the registered owner of the check for a period of two (2) years immediately preceding the determination of dormancy.
- (d) For purposes of this regulation, the term, "Demand Deposit Accounts," shall include share draft accounts in the case of credit unions, as well as any "Time" or "Savings" account which by its terms is due and payable, either in whole or in part, within less than ninety days or upon less than ninety days notice by the depositor.
- (e) For purposes of this regulation, the term "corresponded" or "correspondence" includes, but is not limited to:

(i) any communication, indication of interest, or relationship set forth in O.C.G.A. § 44-12-197(a) (2)-(5); or

(ii) a depositor accessing an online account.

- (2) Where the signature card or other evidence of the financial institution's contractual obligation relative to a deposit account does not make provision for maintenance or service charge on a dormant account as heretofore described, such a charge may be assessed in an amount not to exceed \$5.00 per month. Service charges or maintenance charges assessed pursuant to contractual authority governing the account shall not exceed the greater of \$5.00 per month or the per month service charge which the financial institution otherwise assesses against active accounts. No service charge or maintenance charge may be assessed for the dormancy period beyond the first twelve months. No service charge or maintenance charge may be assessed unless the financial institution provides written notice prior to the initial imposition of the charges pursuant to O.C.G.A. § 44-12-197(c)(1). Dormant account service charge or maintenance charge may be charged against the account at any time prior to escheat of the account balance under the provisions of the Disposition of Unclaimed Properties Act so long as the total service charge or maintenance charge does not exceed the amount which could have been assessed during the first twelve months of dormancy pursuant to the governing contract between the parties or this regulation.

Authority: O.C.G.A. ~~See-~~§ 7-1-61.

CHAPTER 80-1-10

FIXED ASSETS AND ASSETS ACQUIRED D.P.C.

80-1-10-.09 Assets Acquired – Debts Previously Contracted (“D.P.C.”).

80-1-10-.10 Bank as a Lessor of Real Estate.

80-1-10-.09 Assets Acquired - Debts Previously Contracted ("D.P.C.")

- (1) All assets acquired through foreclosure or in lieu of foreclosure and all "Other Real Estate" acquired in such manner or otherwise shall be ~~initially appraised valued~~ six (6) months prior to or three (3) months following the acquisition by an independent appraiser knowledgeable in the fair market value of such assets or, in the alternative, evaluated by a qualified officer of the bank in conformity with the Evaluation Content portion of the Interagency Appraisal and Evaluation Guidelines (hereinafter “evaluation”) if the book value of the property is less than two (2) percent of the statutory capital base of the bank, ~~\$250~~400,000 for residential property, or \$500,000 for commercial property whichever amount is greater. Appraisals or evaluations subsequent to the initial ~~appraisal-valuation~~ are required if, based upon a review of the following factors, there is a reasonable basis to determine that the prior ~~appraisal-valuation~~ is no longer reliable as a reasonable estimate of the property's fair market value: volatility of local market; changes in terms and availability of financing; natural disasters; limited or over supply of competing properties; improvements to the subject property or competing properties; lack

of maintenance of the subject or competing properties; changes in underlying economic and market assumptions, such as capitalization rates and lease terms; changes in zoning, building materials, or technology; and environmental contamination. In the event there is no basis to determine that the initial ~~appraisal-valuation~~ is no longer reliable, then appraisals or evaluations shall be at intervals of not more than five (5) years.

- (2) All requests for permission to hold assets acquired through foreclosure or in lieu of foreclosure and to hold other types of "Other Real Estate" beyond limitations imposed by statute must include a statement as to efforts made to dispose of the asset, reasons for the failure of such efforts, plans for disposal of the asset during the extended ownership period, a copy of the most recent appraisal or evaluation, and a statement as to the estimated annual cost of carrying the asset and estimated annual income produced by the asset.
- (3) Extension of statutory ownership periods will not be granted for income purposes.
- (4) Property subject to this rule shall be initially carried on the books of the bank at the fair market value determined by independent appraisal or evaluation, unless otherwise provided, less the estimated costs to sell the property ("new basis"). This valuation shall be determined as of the date the bank takes legal title to or physical possession of the property, whichever event occurs first. Subsequently, the carrying value shall be subject to write-down or write-up based upon the most recent appraisal or evaluation. However, the property must be carried at the lower of the current fair market value less the estimated costs to sell the property or the new basis. The new basis may be adjusted upward in the event the bank makes any permanent capital improvements, subject to the limitations in paragraph (5), necessary to prepare the property for sale but the adjustment in the new basis shall be the lower of the increase in the fair market value of the property after the capital improvements or the amount expended to make the capital improvements. Non-capital improvements and expenses necessary to carrying and maintaining the property (taxes, legal fees, insurance, yard maintenance, etc.) shall be expenses and not added to the carrying value. Income earned from the property, other than from conversion or sale, shall be credited to income and shall not reduce the carrying value of the property.
- (5) A bank may make permanent capital improvements to property subject to this rule if the improvements are:
 - (a) Reasonably calculated to reduce any shortfall between the property's fair market value and the bank's investment in the property;
 - (b) Not made for the purpose of speculation; and
 - (c) Consistent with safe and sound banking practices.
- (6) Appraisals or evaluations obtained pursuant to this rule shall be for the purpose of determining the current fair market value of the property. Appraisals found to reflect other than current fair market value or found to have been performed by persons unfamiliar with such class of property or lacking independence (~~where required~~) from the owner of such property may be rejected by the Department and new appraisals required. Evaluations found to reflect other

than current fair market value or found to have been performed by persons unfamiliar with such class of property or lacking independence (where required) from the owner of such property may be rejected by the Department and new evaluations or appraisals required.

Authority: O.C.G.A. § 7-1-61.

80-1-10-.10. Bank as a Lessor of Real Estate

- (1) Pursuant to O.C.G.A. § 7-1-261(a)(1), a bank may acquire and hold real estate the bank occupies or intends to occupy primarily for the transaction of its business or the business of any subsidiary or affiliate. Subject to compliance with the provisions of this rule as well as the Department's prior written approval, a bank may lease excess real estate.
- (2) For purposes of this rule, the phrase "occupy primarily" means occupation and use, on a full-time basis, of at least sixty-seven (67) percent of the square footage of each individual premise by the bank or an affiliate or subsidiary of the bank.
- (3) The underlying real estate must have been acquired in good faith and for permissible purposes. Nothing herein shall be deemed to authorize a bank to acquire real estate for speculative purposes.
- (4) The bank may not lease real estate to a third-party if it raises safety and soundness concerns.
- (5) The application for approval to lease real estate to a third-party shall contain, at a minimum, the following information:

 - (a) A detailed description of the lease that is contemplated, including but not limited to, the terms of the lease, a description of the proposed lessee's operations, the relationship, if any, between the bank and the proposed lessee, the real estate that is proposed to be leased, and the percentage of the real estate that will be occupied by lessee;
 - (b) The total amount of the bank's fixed assets that will be leased in the event the lease is approved;
 - (c) An affirmative statement that there is no involvement by any director, committee member, officer or employee of the bank or any related interest of such individuals with the individual or entity that is the proposed lessee. In the event there is any such involvement, then it should be detailed in the application; and
 - (d) A copy of the resolution adopted by the Board of Directors authorizing the lease of the specific premises to the proposed lessee.

Authority: O.C.G.A. §§ 7-1-61; 7-1-262.

CHAPTER 80-1-12

DIVIDENDS, MANAGEMENT FEES, ETC.

80-1-12-.01 Dividends.

80-1-12-.01 Dividends

- (1) The Board of Directors of any state-chartered bank in this State may declare and the bank may pay dividends on its outstanding capital stock without any requirement to notify the Department or request the approval of the Department under the following conditions:
 - (a) Total classified assets at the most recent examination of the bank, the conclusions of which may have been presented to the Board of Directors, do not exceed eighty (80) percent of Tier 1 Capital plus the Allowance for Loan Losses as reflected at such examination; and
 - (b) The aggregate amount of dividends declared or anticipated to be declared in the calendar year:
 - (i) ~~does not exceed fifty (50) percent of the net profits, after taxes but before dividends, income that is attributable to the bank that is a Subchapter C-Corporation for the previous calendar year as reported on the Consolidated Reports of Income, Schedule RI-Income Statement; or, provided, however, a bank that files federal income taxes as a Subchapter S-Corporation may pay an additional amount of dividends without Department approval equivalent to fifty (50) percent of the income taxes which the bank would have had to pay in the prior year as a Subchapter C-Corporation~~
 - (ii) does not exceed seventy-five (75) percent of the net income that is attributable to the bank that is a Subchapter S-Corporation for the previous calendar year as reported on the Consolidated Reports of Income, Schedule RI-Income Statement; and
 - (c) The ratio of Tier 1 Capital to Adjusted Total Assets shall not be less than six (6) percent.
- (2) Any dividend to be declared by the Board of Directors of a bank at a time when each of the foregoing conditions does not exist must be approved, in writing, by the Department prior to the payment thereof pursuant to the provisions of Section 7-1-460(a)(3) of the Code of Georgia. Requests for approval of dividends shall be on forms prescribed by the Department.
- (3) The definition of Tier 1 Capital and Adjusted Total Assets as used herein shall be consistent with the definition contained in the Statement of Policies of the Department and the definition utilized by the Federal Regulatory Agencies.

Authority: ~~Ga. L. 1974, pp. 853-855~~O.C.G.A. §§ 7-1-61; 7-1-460.

CHAPTER 80-1-15
EXTENSIONS OF EXISTING
OFFICES AND FACILITIES

- 80-1-15-.01 Automated Teller Machine ("ATM") and Night Depository.
- 80-1-15-.02 Mobile Banking Units.
- 80-1-15-.03 ~~Courier-Messenger~~ Services.
- 80-1-15-.04 Account Service Representatives.
- 80-1-15-.05 School Savings and Banking Education Programs

80-1-15-.01 Automated Teller Machine ("ATM") and Night Depository

- (1) An ATM machine, which by definition in O.C.G.A. § 7-1-603 takes deposits, and a night depository may be established anywhere in this state. Establishment of an ATM machine in this state does not constitute doing a banking business here. ~~The ATM of a financial institution not authorized to do a banking business in this state must be unstaffed.~~
- (2) ~~The term "unstaffed" shall mean that any persons employed by a sponsoring financial institution shall not be empowered to open new accounts at the location, or, both close loans and disburse proceeds at the location. Combination with a staffed facility that performs any of these functions is not permitted unless the staffed facility is doing a lawful banking business.~~ Combinations of facilities such as a loan production office, deposit production office and an ATM or cash dispensing machine are permitted ~~subject to the limitations in this rule.~~

Authority: O.C.G.A. ~~See §§~~ 7-1-61; 7-1-603.

80-1-15-.02 Mobile Banking Units

- (1) ~~Financial institutions~~Banks may provide unlimited banking services through mobile banking units ~~provided such units stop at predetermined locations where the institution is authorized to operate that do not have a single, permanent site and use a vehicle that travels to various locations to enable customers to conduct the business of banking.~~
- (2) ~~A mobile branch may provide banking services at various regularly scheduled locations or it may be open in a defined area at varying times and locations. If the mobile branch provides banking services at regularly scheduled locations, then it~~ During each stop, the mobile banking unit shall be accessible to banking customers for intervals of not less than two hours and each such stop shall be utilized at least once each week in accordance with a published schedule available on the bank's website. Such schedule may be altered or amended as provided for in regulations concerning operating hours of branch offices. In all circumstances, each mobile branch is required to maintain logs indicating the specific locations and times in which the mobile unit is operating in order to track branch activities.

- (3) Each ~~financial institution~~bank providing mobile banking unit services shall carry adequate fidelity, robbery, and hazard insurance coverage commensurate with the risks associated with the operation of such units.
- (4) Disclosures shall be given to all customers regarding when deposits will be credited and when checks or other withdrawals will be debited.
- (5) Since a mobile unit will function as a branch, application ~~for approval should~~must be made ~~by letter as prescribed in the Applications Manual~~as it is for all other branches. ~~Expedited processing will be available in most cases.~~
- (6) ~~Financial institutions~~Banks may ~~alter the banking service area set forth in paragraph 2 of this Rule by submitting advance written notification to the Department~~seek a waiver to provide mobile banking unit services outside of the required frequency in paragraph 2 of this Rule by submitting a written waiver request to the Department. ~~The waiver request shall include the proposed schedule and reason for the waiver request. The Department shall take into consideration competitive, financial, managerial, safety and soundness, and other concerns in evaluating any waiver request. The Department is authorized to impose conditions on the grant of any request for a waiver. The Department's waiver may be rescinded if the mobile banking unit is operated in a manner inconsistent with the approval or if other violations of law occur as a result of the mobile banking unit's operation.~~

Authority: O.C.G.A. § 7-1-602.

80-1-15-.03 Courier Messenger Services

- (1) ~~Definitions. For purposes of this Rule, the below terms shall be defined as follows:~~
 - (a) ~~"Branching" shall mean the receipt of deposits, payment of checks, or lending of money.~~
 - (b) ~~"Messenger service" shall mean any service used by a bank and its customers to pick up from and deliver to, specific customers at locations such as their homes or offices, items related to transactions between the bank and such customers.~~
 - (a) ~~"Branching" activities or items shall be related to receipt of deposits, payment of checks, or lending of money.~~
 - (b) ~~A "courier service" shall mean any service used by a financial institution and its customers to pick up from and deliver to, specific customers at locations such as their homes or offices, items related to transactions between the bank and such customers.~~
 - (c) ~~A "third party" shall be defined as a party other than the financial institution, who owns the service and its facilities (or rents these from a party other than the financial institution), and who employs the personnel engaged in the provision of the service. The third party must:~~
 - i. ~~Be available to the general public;~~

- ~~ii. Retain ultimate discretion as to the limits of its geographic area and the customers it will serve;~~
- ~~iii. Maintain ultimate responsibility for its scheduling and routing;~~
- ~~iv. Operate under a separate name from the financial institution and not advertise the service as being provided by the financial institution;~~
- ~~v. Assume full responsibility for items in transit, including the provision of adequate insurance to cover all potential contents during holdups, to cover employee fidelity and any other losses while items are in the custody and control of the service; and~~
- ~~vi. Act as the agent for the customer while the items are picked up, carried and delivered.~~

~~(2) Branching Items Transported by a Third Party.~~

~~—Banks may establish and operate a messenger service or use, with its customers, a third-party messenger service. Financial institutionsBanks may provide use the courier messenger services for the pick up from and delivery toto transport items related to the bank’s transactions with its customers without the messenger service being approved as a branch provided that the messenger service does not perform any branching functions. customers, items that relate to the branching function, using a courier service established and operated by a third party. Such services may be provided anywhere in the state and generally the service will not be considered branchingIn establishing or using such a messenger service, a bank must establish terms and conditions in order to ensure compliance with this Rule and safe and sound banking practices.~~

~~(3) Branching Items Transported by Banks' Courier Service.~~

~~—A bank may establish its own courier service to carry items related to branching, and such service may operate anywhere permitted by state law in any state where the courier service is to be performed. Generally, this service will be considered branching, but will require a simplified application, which will be expedited in most cases. Details are found in the Applications ManualBanks may use, with its customers, a messenger service to pick up from, and deliver to, customers items related to branching functions without the messenger service being approved as a branch so long as the messenger service is established and operated by a third-party. Under no circumstance will such messenger service be authorized to perform branching functions. In using such a messenger service, the bank must establish terms and conditions in order to ensure compliance with this Rule and safe and sound banking practices.:-~~

~~(4) Courier of Non-Branching Items.~~

~~— Financial institutions may provide courier services for the pick up and delivery of items related to non-branching activities. They may do so by establishing their own service or by use of a third party service. Such services may be provided anywhere and generally will not be considered branching. The Department will review the facts and circumstances and determine whether a messenger service is established by a third-party. —However, a messenger service will always be established by a third party if:~~

- (a) — A party other than the bank owns the messenger service and its facilities (or rents these from a party other than the bank), and who employs the personnel engaged in the provision of the service;
- (b) — The party retains ultimate discretion as to the limits of the geographic area and the customers it will serve;
- (c) — The party maintains ultimate responsibility over its scheduling and routing;
- (d) — The party operates under a separate name from the bank and does not advertise the service as being provided by the bank;
- (e) — The party assumes full responsibility for all items in transit, including the provision of adequate insurance to cover employee fidelity and any other losses while items are in the custody and control of the party; and
- (f) — The party acts as the agent for the customer while the items are picked-up, transported, and delivered.

(5) ~~Operation and Conditions.~~

- ~~(a) The bank, in establishing or contracting for the use of courier services, must establish conditions and limitations to comply with this regulation and with safe and sound banking practices.~~
- (ba) The bank may defray all or part of the costs incurred by the customer for use of the courier-messenger service, consistent with safety and soundness and prudent fiscal policy. Any payment by the bank may not exceed the actual charge for the services rendered.
- (eb) The bank shall deem items for deposit to be received by the bank at the time they are credited to the customer's account at the bank or a branch office.
- (ec) The bank shall deem items representing withdrawals to be paid when the items are delivered to the courier-messenger service.

(6) Banks may provide messenger services for the pick-up and delivery of items related to or not related to branching. They may do so by establishing their own service or by use of a third-party service. Such services may be provided anywhere and will not be considered branching.

Authority: O.C.G.A. ~~Sees. §§~~ 7-1-61; 7-1-602.

80-1-15-.04 Account Service Representatives

~~Financial institutions~~Banks lawfully doing a banking business in Georgia may provide for account service representatives to visit public events and commercial locations including governmental, educational, and health facilities for the purpose of opening deposit accounts and providing services incidental thereto; provided, access to such locations and facilities is available to other financial institutions on a nondiscriminatory basis. Account paying and receiving services may not be provided during such visits other than an initial deposit to a new account.

Authority: O.C.G.A. ~~§~~See: 7-1-602.

80-1-15-.05 School Savings and Banking Education Programs

~~Financial institutions~~Banks lawfully doing a banking business in Georgia may participate in school savings and banking education programs, where such programs: are provided for minors in order to promote thrift or to provide banking and financial education; are supervised by a school official or an organization affiliated with the school on school premises or at a facility utilized by the school; and are in a location where the ~~financial institution~~bank ~~can legally perform a banking business in accordance with Code Sections 7-1-601 and 7-1-602~~would otherwise be authorized to have a branch. School savings program deposits are not considered received until they have been delivered to a representative of and at the participating ~~financial institution~~bank. Under a school savings program, checks are not considered paid until received by the participating ~~financial institution~~bank either directly or through a messenger acting as agent for the customer. These programs shall not be considered ~~banking locations of the type defined in Code Section 7-1-600,~~a branch office, provided the above provisions are met.

Authority: O.C.G.A. ~~Secs. §§~~§§ 7-1-241; 7-1-261.

CHAPTER 80-2-4

INVESTMENT OF CREDIT

UNION FUNDS

80-2-4-.05 Credit Union as Lessor of Real Estate

80-2-4-.08 Application or Notice Requirements for Branch Offices.

80-2-4-.09 Relocation or Simultaneous Re-designation of Two or More Credit Union Locations.

80-2-4-.05. Credit Union as a Lessor of Real Estate

- (1) Pursuant to O.C.G.A. § 7-1-650(8)(~~A~~), a credit union may purchase, hold, and convey real estate the credit union occupies or intends to occupy primarily for the transaction of its business. Subject to compliance with the provisions of this rule as well as the Department's prior written approval, a credit union may lease excess real estate.
- (2) For purposes of this rule, the phrase "occupy primarily" means occupation and use, on a full-time basis, of at least sixty-seven (67) percent of the square footage of each individual premise by the credit union or by a credit union and a wholly owned subsidiary of the credit union.
- (3) The underlying real estate must have been acquired in good faith for permissible purposes and with the intent of providing services to the credit union's members. Nothing herein shall be deemed to authorize a credit union to acquire real estate for speculative purposes.
- (4) The credit union may not lease real estate to a third-party if it raises safety and soundness concerns.
- (5) The application for approval to lease real estate to a third-party shall contain, at a minimum, the following information:
 - (a) A detailed description of the lease that is contemplated, including but not limited to, the terms of the lease, a description of the proposed lessee's operations, the relationship, if any, between the credit union and the proposed lessee, the real estate that is proposed to be leased, and the percentage of the real estate that will be occupied by lessee;
 - (b) The total amount of the credit union's fixed assets that will be leased in the event the lease is approved;
 - (c) An affirmative statement that there is no involvement by any director, committee member, officer or employee of the credit union or any related interest of such individuals with the individual or entity that is the proposed lessee. In the event there is any such involvement, then it should be detailed in the application; and
 - (d) A copy of the resolution adopted by the Board of Directors authorizing the lease of the specific premises to the proposed lessee.

Authority: O.C.G.A. § 7-1-61.

80-2-4-.08 Application or Notice Requirements for Branch Offices.

- (1) Branch offices may be established with the prior approval of the Department by regular application or by expedited application for certain qualified credit unions as provided in paragraph (3).

- (2) Unless the provisions related to an expedited application in paragraph (3) is satisfied, a credit union must submit an application to the Department in order to obtain approval to establish a branch office. An application will not be deemed to have been accepted by the Department until all portions of the application have been completed to the satisfaction of the Department. If the Department notifies the credit union of deficiencies in the application, the credit union must complete the application within thirty (30) days of receipt of the notification of the Department. The Department will approve or deny an application for a branch office within thirty (30) days of receipt of a completed application.
- (3) In lieu of an application, a credit union is authorized to submit an expedited application to establish a new branch office subject to the below conditions.
- (a) The credit union must meet the following criteria:
- (i) The credit union must be well capitalized as defined by the capital requirements of the Department and the NCUA;
 - (ii) The credit union must have received a CAMELS composite rating of "1" or "2" as a result of the most recent state or federal examination;
 - (iii) The credit union must not be subject to any agreements, orders, or other enforcement or administrative agreements with the Department or the NCUA; and
 - (iv) Total investments in fixed assets do not exceed sixty (60) percent of total equity capital and reserves (excluding the allowance for loan losses).
- (b) The expedited application 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 credit union will be in compliance with Rule 80-2-4-.02; and
 - (iv) A statement certifying that the credit union qualifies for expedited processing under subparagraph (a).
- (c) Unless it has previously issued an approval letter under subparagraph (d), the Department will attempt to acknowledge receipt of an expedited application or notify the applicant that it does not qualify for expedited processing and may submit an application for regular processing within two business days of receipt of such notice.
- (d) The approval to establish a branch office will be effective at the earlier of the approval letter from the Department or 10 business days from the date of acknowledged receipt.
- (e) Notwithstanding the above, the Department may deny or remove from expedited processing any credit union's application 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 the Department;
- (iii) Other supervisory concerns, legal issues, or policy issues come to the attention of the Department;
- (iv) If applicable, any acquisition of fixed assets would cause the institution to exceed the fixed asset limitation; or
- (v) Any other good cause exists for denial or removal.

In this event, the credit union 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; 7-1-79; 7-1-655.

80-2-4-.09 Relocation or Simultaneous Re-designation of Two or More Credit Union Locations.

- (a) Definitions:
 - (i) Relocation. The location of an existing branch location is to be moved to a new or additional location which is to be constructed, purchased or leased within the same immediate vicinity of the existing branch.
 - (ii) Re-designation. Where two existing credit union locations exchange their designations, a re-designation occurs. Under a re-designation, a branch office becomes the main office and the main office, if it is not closed, becomes a branch office.
- (b) Procedure for a Relocation. A credit union meeting the qualifying criteria for expedited processing in sections (3) of Rule 80-2-4-.08 may submit a letter form notification to relocate an existing branch or main office location. The approval to relocate such existing 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. In the event the credit union does not qualify for expedited processing, a form application should be submitted to the Department, which will normally be processed within 30 days from receipt of a completed application. All relocations should include a notice to members posted in a conspicuous place of the affected location as well as on the credit union's website at least 30 days before relocating. In addition, if any relocation proposal involves relocation of the credit union's main office, additional procedures such as amendment of the credit union's Articles of Incorporation may apply.
- (c) Procedure for a Re-designation. Upon receipt of a letter form request setting forth the details of the proposed re-designation, the Department will review and process such request within seven (7) days. In the event the credit union intends on closing the former

main office as part of a re-designation, then the closing procedures for a branch location must be followed.

Authority: O.C.G.A. § 7-1-61.

CHAPTER 80-2-11

CREDIT UNION FIXED ASSET EXTENSIONS OF EXISTING OFFICES AND FACILITIES; AUXILIARY SERVICES

~~80-2-11-.01 Repealed Automated Teller Machine (“ATM”) and Night Depository.~~

80-2-11-.02 Mobile Credit Union Units.

80-2-11-.03 Account Service Representatives.

80-2-11-.04 School Savings and Banking Education Program.

80-2-11-.05 Expansion or Extension of Branch Location.

80-2-11-.01 Automated Teller Machine (“ATM”) and Night Depository

An ATM machine, which by definition in O.C.G.A. § 7-1-664 takes deposits, and a night depository may be established anywhere in this state. Establishment of an ATM machine in this state does not constitute doing a banking business here.

80-2-11-.02 Mobile Credit Union Units

- (1) A credit union may provide unlimited banking services through mobile credit union units that do not have a single, permanent site and use a vehicle that travels to various locations to enable members to conduct the business of banking.
- (2) A mobile branch may provide banking services at various regularly scheduled locations or it may be open in a defined area at varying times and locations. If the mobile branch provides banking services at regularly scheduled locations, then it shall be accessible to credit union members in accordance with a published schedule available on the credit union’s website. In all circumstances, each mobile branch is required to maintain logs indicating the specific locations and times in which the mobile unit is operating in order to track branch activities.
- (3) Each credit union providing mobile credit union unit services shall carry adequate fidelity, robbery, and hazard insurance coverage commensurate with the risks associated with the operation of such units.
- (4) Disclosures shall be given to all members regarding when deposits will be credited and when checks or other withdrawals will be debited.
- (5) Since a mobile unit will function as a branch, application for approval must be made as it is for all other branches.

(6) Credit unions may alter the banking service area set forth in paragraph 2 of this Rule by submitting advance written notification to the Department.

Authority: O.C.G.A. § 7-1-665.

80-2-11-.03 Account Service Representatives

Credit unions lawfully doing a banking business in Georgia may provide for account service representatives to visit public events and commercial locations including governmental, educational, and health facilities for the purpose of opening deposit accounts and providing services incidental thereto; provided, access to such locations and facilities is available to other credit unions on a nondiscriminatory basis. Account paying and receiving services may not be provided during such visits other than an initial deposit to a new account.

Authority: O.C.G.A. §§ 7-1-61; 7-1-241.

80-2-11-.04 School Savings and Banking Education Programs

Credit unions lawfully doing a banking business in Georgia may participate in school savings and banking education programs, where such programs: are provided for minors in order to promote thrift or to provide banking and financial education; are supervised by a school official or an organization affiliated with the school on school premises or at a facility utilized by the school; and are in a location where the credit union would otherwise be authorized to have a branch. School savings program deposits are not considered received until they have been delivered to a representative of and at the participating credit union. Under a school savings program, checks are not considered paid until received by the participating credit union either directly or through a messenger acting as agent for the customer. These programs shall not be considered a branch office, provided the above provisions are met.

Authority: O.C.G.A. §§ 7-1-241; 7-1-650.

80-2-11-.05 Expansion or Extension of Branch Location

- (1) No notification is necessary for an extension that is an ATM, cash dispensing machine, night depository or point of sale terminal.
- (2) If any other extension is located within the boundary lines of a single contiguous area of property owned or leased by the credit union and used as a branch location or if it is within 200 yards of such branch location, then the credit union must provide written notice to the Department of such extension. Such notification shall be in letter form and shall specify:
 - (a) Exact location of proposed extension;
 - (b) The nature of service that will be provided at the extension;

- (c) Distance of extension from credit union;
- (d) Ownership of the location; and
- (e) Cost of establishing the extension, and if site is to be leased, a copy of the proposed lease agreement.
- (3) For all other extensions that are not addressed in paragraphs (1) and (2), a credit union must obtain prior approval from the Department by submitting a letter form application.

Authority: O.C.G.A. § 7-1-664.

CHAPTER 80-2-12

CREDIT UNION LOANS

80-2-12-.01 Loans Generally, Interpretations and Rulings

80-2-12-.04 Assets Acquired – Debts Previously Contracted (“D.P.C.”)

80-2-12-.05 Combination of Debt for Legal Lending Limit Purposes

80-2-12-.01 Loans Generally, Interpretations and Rulings

- (1) Lending limitations of Code Section 7-1-658~~(d)~~ shall be computed quarterly ~~with balances reflected on the credit union's statement of condition on the last calendar day of the preceding quarter as reported on the credit union's most recently filed call report; provided, however, that if significant capital changes occur after the filing of the call report which causes the net worth of the credit union to increase or decrease by 5 percent or more, then the legal lending limit will be immediately recalculated at the time of the capital change and it will be effective until the filing of the next call report. In determining whether the net worth capital has increased or decreased by 5 percent or more, each credit union will utilize the dollar amount reported on the applicable call report and recalculate its net worth if the dollar amount increases or decreases by 5 percent or more during the applicable time period.~~
- (2) Where the lending limitations are reduced by recalculation, existing debt which was in conformity with the legal limitations at the time it originated shall not be construed to be non-conforming with new legal limitations; provided, however, in the absence of agreements to the contrary and originating at the time such debt originated regarding repayment programs for the debt in question, any extension, renewal, rollover or the like of the existing debt shall be considered to be a new loan and must conform to the new, lower lending limitations. Demand notes in excess of resultant lower lending limitations or included in aggregate debts in excess of such limitations must be called for maturity within six (6) months after it has been determined that the new lending limits are applicable; provided, such

~~notes may be wholly or partially renewed on a demand basis or otherwise where the aggregate debt of the borrower conforms to the new lending limits.~~

~~(2) Where the credit union has documented the appointment of loan officers in lieu of a credit committee, the duties assigned by law or regulation to the credit committee shall be performed by those duly appointed. Where law or regulations specifically require action by the Board of Directors, such actions may not be delegated to loan officers. Loans in excess of 50 percent of a credit union's maximum loan limitation or such lower limit as the Board of Directors shall establish shall be acted upon by loan officers specifically designated to approve such loans. No person shall have the authority to disburse funds of the credit union for any loan which has been approved by such person.~~

(3) "Indirect" loans as used in Code Section 7-1-658 shall mean loans made for the substantial benefit of a third party where repayment of the loan is dependent on activities of the third party rather than solely dependent on the resources of the borrower and subject to the provisions of Rule 80-2-12-.05.

(4) Loans by a credit union to any wholly-owned subsidiary of the credit union, which subsidiary is located within an approved office of the credit union and which has agreed to abide by all laws, rules and regulations applicable to the credit union shall be exempt from the twenty-five (25) percent maximum lending limit of the credit union.

~~(5) Wherever approval of the Board of Directors or Credit Committee is required, such approval must be a specific, prior, and written approval of each extension of credit, except that advances made under a master note covering a specific purpose or project need not receive specific approval where such approval was accorded the master note. Annual approval of a line of credit may be used where interest rate, repayment terms, and anticipated collateral are clearly identified and current credit information is on file. Commodity, floor-plan and discount lines of credit which are anticipated to exceed five (5) percent of the legal lending limit may be approved annually to be deemed appropriate by the Board of Directors without each transaction receiving specific prior approval. Advances made under a master note covering a specific purpose or project need not receive specific approval provided in Code Section 7-1-658(f) where such approval was accorded the master note. Annual approval of a line of credit may be used where interest rate, repayment terms, and anticipated collateral are clearly identified and current credit information is on file.~~

(6) In determining whether or not a loan in excess of the five (5) percent limitation is secured by "good collateral and other ample security," the lack of a perfected lien, inadequate insurance, and insufficient margins between collateral value and the amount of the loan shall be prima facie evidence of inadequate security to the debt.

(7) A borrower's savings accounts or certificate of deposits in the lending credit union will be regarded as collateral to a loan when they are not subject to check or withdrawal, mature on or after the loan which is secured, are under the sole control of the credit union, and are properly assigned. Where, according to the terms of the deposit contract, the deposit is eligible for withdrawal before the secured loan matures, the credit union must establish

internal procedures to prevent release of the security without the lending credit union's prior consent. If proper procedures are in place, such deposits will be considered as collateral. Where deposit balances are properly taken as collateral to a loan, the loan may be reduced to the extent of the deposit in determining the amounts loaned for either secured or unsecured legal lending limitations, as applicable.

~~(4) A "secured loan" within the meaning of Code Section 7-1-658(e)(1) includes loans supported by:~~

~~(a) a financial statement on any endorser, guarantor or co-maker, properly signed, which is not more than eighteen months old, if the loan is to be considered secured, and such statement must reflect adequate income to service the loan and unencumbered equity sufficient to protect the loan.~~

~~(b) "Adequate collateral". The lack of a perfected lien, inadequate insurance, required margins between collateral value and the amount of the loan shall be prima facie evidence of inadequate security to the debt.~~

~~(c) Properly assigned deposit accounts when they are not subject to check or withdrawal, mature on or after the loan which is secured, and are under the sole control of the credit union. Where deposit balances are properly taken as collateral to a loan, the loan may be reduced to the extent of the deposit in determining the amounts loaned for either secured or unsecured legal lending limitations, as applicable.~~

~~(58) In determining the primary collateral basis upon which a loan is granted, that portion of the collateral having the greatest market value shall be assumed to be the primary collateral and the credit worthiness of the individual and of the endorser, guarantor or co-maker, shall not be considered in determining conformity with the law unless proper, current, financial information is in file on the borrower, or endorser, guarantor or co-maker.~~

~~(69) In determining amounts loaned, all amounts guaranteed or insured by any instrumentality of the United States government shall be deducted to the extent of the guaranty or insurance coverage. Immediate and deferred participations on loans by an instrumentality of the United States government shall also be excluded. Where the source of repayment of a loan, i.e. lease payments, is guaranteed by an instrumentality of the United States government and such guarantee is assignable and has been assigned to the credit union, such loan may be excluded to the extent of the guarantee.~~

~~(710) Except as provided in this paragraph, exposures in the form of insufficient funds checks held beyond the permissible return date and overdrafts shall be considered "extensions of credit" solely for the purpose of determining compliance with the legal limitation as it applies to the maker of the check or owner of the overdraft. Such exposures shall also be subject to applicable the requirements for prior written approval and adequate-ample collateral where the total indebtedness of the borrower exceeds five (5) percent of the credit union's net worth. Such exposures will not be considered extensions of credit for purposes of compliance with this rule the above legal loan limitations and requirements, provided that the exposure is inadvertent, which requires that:~~

- (a) The extension(s) do not exceed the aggregate amount of \$1,000 at any one time; and
- (b) The account is not overdrawn or the insufficient funds check held for more than five business days.

(11) Extensions of credit to political subdivisions of the State of Georgia authorized to levy taxes or backed by the taxing authority of another political subdivision shall qualify for exemption from the twenty-five (25) percent loan limitation under the provisions of O.C.G.A. § 7-1-658(g), only where such extension of credit otherwise conforms with the provisions of Georgia Constitution, Article 9, Section 5.

(12) Pursuant to O.C.G.A. § 7-1-658(h), a loan or extension of credit to a leasing company for the purpose of purchasing equipment for lease shall be considered a loan to the lessee, provided that:

(a) The credit union documents the basis for its reliance on the lessee as the primary source of repayment before the loan is extended to the leasing company;

(b) The loan is made without recourse to the leasing company;

(c) The credit union receives a security interest in the equipment and, in the event of default, may proceed directly against the equipment and the lessee for any deficiency resulting from the sale of the equipment;

(d) The leasing company assigns all of its rights under the lease to the credit union;

(e) The lessee's lease payments are assigned and paid to the credit union directly by the lessee; and

(f) The lease terms are subject to the same limitations that would apply to a credit union acting as a lessor.

(13) The Department shall promulgate a form which may be used to document compliance with the requirements for approval of loans and obligations in excess of 5 percent of the net worth of the credit union by members of the board of directors or credit committee as set forth in O.C.G.A. § 7-1-658(e).

~~(8) The Department of Banking and Finance shall consider the liabilities of separate persons, corporations and entities to be combined for lending limit purposes, when there is no evidence of a separate source of repayment, there is an apparent lack of ability to service the obligation from the operations of the separate person or corporation without relying on a related source of repayment, or where the separate entities make common use or are dependent upon funds of the group. "Related" shall mean connected by corporate or business structure or by common use or dependence upon funds, facilities or personnel.~~

80-2-12-.04 Assets Acquired - Debts Previously Contracted ("D.P.C.")

- (1) All assets acquired through foreclosure or in lieu of foreclosure and all "Other Real Estate" acquired in such manner or otherwise shall be ~~initially appraised~~valued six (6) months prior to or three (3) months following the acquisition by an independent appraiser knowledgeable in the fair market value of such assets or, in the alternative, evaluated by a qualified officer of the credit union in conformity with the Evaluation Content portion of the Interagency Appraisal and Evaluation Guidelines (hereinafter "evaluation") if the book value of the property is less than two (2) percent of the net worth and allowance for loan and lease losses of the credit union, ~~\$250~~400,000 for residential property, or \$500,000 for commercial property whichever amount is greater. Appraisals or evaluations subsequent to the initial ~~appraisal-valuation~~ are required if, based upon a review of the following factors, there is a reasonable basis to determine that the prior ~~appraisal-valuation~~ is no longer reliable as a reasonable estimate of the property's fair market value: volatility of local market; changes in terms and availability of financing; natural disasters; limited or over supply of competing properties; improvements to the subject property or competing properties; lack of maintenance of the subject or competing properties; changes in underlying economic and market assumptions, such as capitalization rates and lease terms; changes in zoning, building materials, or technology; and environmental contamination. In the event there is no basis to determine that the initial ~~appraisal-valuation~~ is no longer reliable, then appraisals or evaluations shall be at intervals of not more than five (5) years.
- (2) All requests for permission to hold assets acquired through foreclosure or in lieu of foreclosure and to hold other types of "Other Real Estate" beyond limitations imposed by statute must include a statement as to efforts made to dispose of the asset, reasons for the failure of such efforts, plans for disposal of the asset during the extended ownership period, a copy of the most recent appraisal or evaluation, and a statement as to the estimated annual cost of carrying the asset and estimated annual income produced by the asset.
- (3) Extension of statutory ownership periods will not be granted for income purposes.
- (4) Property subject to this rule shall be initially carried on the books of the credit union at the fair market value determined by independent appraisal or evaluation, unless otherwise provided, less the estimated costs to sell the property ("new basis"). This valuation shall be determined as of the date the credit union takes legal title to or physical possession of the property, whichever event occurs first. Subsequently, the carrying value shall be subject to write-down or write-up based upon the most recent appraisal or evaluation. However, the property must be carried at the lower of the current fair market value less the estimated costs to sell the property or the new basis. The new basis may be adjusted upward in the event the credit union makes any permanent capital improvements, subject to the limitations in paragraph (5), necessary to prepare the property for sale but the adjustment in the new basis shall be the lower of the increase in the fair market value of the property after the capital improvements or the amount

expended to make the capital improvements. Non-capital improvements and expenses necessary to carrying and maintaining the property (taxes, legal fees, insurance, yard maintenance, etc.) shall be expenses and not added to the carrying value. Income earned from the property, other than from conversion or sale, shall be credited to income and shall not reduce the carrying value of the property.

- (5) A credit union may make permanent capital improvements to property subject to this rule if the improvements are:
- (a) Reasonably calculated to reduce any shortfall between the property's fair market value and the credit union's investment in the property;
 - (b) Not made for the purpose of speculation; and
 - (c) Consistent with safe and sound banking practices.
- (6) Appraisals or evaluations obtained pursuant to this rule shall be for the purpose of determining the current fair market value of the property. Appraisals found to reflect other than current fair market value or found to have been performed by persons unfamiliar with such class of property or lacking independence ~~(where required)~~ from the owner of such property may be rejected by the Department and new appraisals required. Evaluations found to reflect other than current fair market value or found to have been performed by persons unfamiliar with such class of property or lacking independence (where required) from the owner of such property may be rejected by the Department and new evaluations or appraisals required.

Authority: O.C.G.A. §§ 7-1-61;7-1-650.

80-2-12-.05 Combination of Debt for Legal Lending Limit Purposes

- (a) General Rule. Pursuant to Code Section 7-1-658, loans or extensions of credit to one person will be attributed to another person and each person will be deemed a borrower:
- (1) When proceeds of a loan or extension of credit are to be used for the direct benefit of the other person, to the extent of the proceeds so used;
 - (2) When a common enterprise is deemed to exist between the persons as the persons within the group are directly or indirectly related through common control including where one borrower is directly or indirectly controlled by another borrower;
 - (3) When there is a common use of funds between the persons; or
 - (4) When a person has a financial obligation on a loan or an extension of credit, to the extent of such obligation.
- (b) Definitions. For purposes of this Rule, the below terms shall be defined as follows:

(1) Common control. The direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. Without limiting the foregoing, a person shall be considered to control another person if the first person:

(A) Owns, controls or holds with power to vote 25 percent or more of any class of voting securities of the other person;

(B) Controls in any manner the election of a majority of the directors, trustees, or persons performing similar functions of the other person; or

(C) Exercises a controlling influence over the management or policies over the other person as determined by the department.

(2) Common use of funds. The proceeds of a loan or an extension of credit to a borrower will be deemed to be a common use of funds and will be attributed as one loan when the proceeds, or assets purchased with the proceeds, are comingled or used to acquire property, goods, or services for the purpose of a shared common commercial objective between the borrowers.

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

(4) Obligation. A commitment that creates a liability or contingent liability for payment on a loan or extension of credit irrespective of whether the person is a borrower.

(5) Person. An individual or a corporation, limited liability company, partnership, trust, association, joint venture, sole proprietorship, unincorporated organization, or any other form of entity.

Authority: O.C.G.A. § 7-1-658.

CHAPTER 80-3-1

MONEY TRANSMISSION AND RELATED FINANCIAL SERVICES

80-3-1-.01 Payment Instrument Sellers and Money Transmitters.

80-3-1-.02 Check Cashers.

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

Rule 80-3-1-.01. Payment Instrument Sellers and Money Transmitters

- (1) For purposes of Rules 80-3-1-.01, 80-3-1-.03, 80-3-1-.04, 80-3-1-.06, 80-3-1-.07(4), 80-3-1-.08, 80-3-1-.09, and 80-5-1-.02(1), the terms that are defined in O.C.G.A. § 7-1-680 shall have the identical meaning.
- (2) Dual Purpose. A license for the sale of payment instruments shall also permit the licensee to conduct money transmission, but the licensee must clearly inform the Department in writing that it intends to transmit money. A separate license will be issued for persons who intend to conduct only money transmission.
- (3) Every applicant for a license 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 selling payment instruments or money transmission. Sufficiency of financial resources shall be determined through financial analysis by the Department of pro-forma and historical financial information of the applicant. Each licensee shall be required to complete and attest to official questionnaires and statements of assets and liabilities when requested for examination purposes. Licensees 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.
- (4) Authorized Agents.
 - (a) Licensees may designate authorized agents to engage in the sale of payment instruments or money transmission at non-banking outlets and the place of business of such authorized agents will not be construed as a branch office. The authorized agent must be bonded and the licensee made solely liable for the payment of the issued payment instruments or transmitted money upon proper presentation and demand. The responsibility of both the licensee and its authorized agent shall be carefully defined in a written agreement setting forth the duties of both parties and providing for remuneration of the authorized agent. The licensee's blanket bond coverage shall extend to cover transactions by the authorized agent and the conveyance of the funds to the licensee or the licensee's depository financial institution.
 - (b) Licensees are required to submit authorized agent information, including notices of additional locations or changes in locations operated by an authorized agent, to the Department in such form, timeframe, and manner and with such supporting documentation as required. The initial authorized agent list should include all authorized agents of the licensee as of the date the licensee begins business. Future reports related to authorized agents will be submitted on a quarterly basis. The initial authorized agent list as well as the subsequent quarterly reports shall be deemed to be the licensee's notice of new locations operated by authorized agents as well as the licensee's application for approval of the designated authorized agents. The notice required by this section shall also include the name and business locations of any authorized agent whose agency has been revoked, suspended, cancelled, terminated, or voluntarily closed by the licensee

since the previous report. The reason for such revocation or suspension, and the amount of any outstanding claim by the licensee against the authorized agent relating to the sale of payment instrument or money transmission shall be provided to the Department upon request. Failure to report changes to authorized agents and/or locations in the reporting period in which the authorized agent began or ceased offering the licensee's services can result in fines, revocation, suspension, or other administrative action by the Department.

- (5) Every licensee or authorized agent of a licensee, unless such authorized agent is a financial institution whose deposits are federally insured, shall display prominently in the premises where money is transmitted or where payment instruments are issued or sold a copy of its license.
- (6) Every licensee giving notices of additional locations or changes in locations operated by the licensee shall do so in a form and manner as provided by the Department.
- (7) Licensees are required to prepare and submit various reports of condition.
 - (a) Each~~every~~ licensee shall have an audit of its books and records performed at least annually by independent public accountants in accordance with generally accepted auditing standards. Audits will be provided to the Department within ten (10) days of the Department's request for such information.
 - (b) Each licensee shall submit to the Department, through NMLS, a Money Services Businesses ("MSB") Call Report on a quarterly basis in a form and manner prescribed by the Department, no later than forty-five (45) days after the end of each calendar quarter.
 - (c) In addition, e~~Each licensee is required to furnish the Department, shall file, no later than August 14th of each year, an activity statement on a quarterly basis~~ in a form and manner prescribed by the Department, which, shall include, but not be limited to, the average daily amount of outstanding balances for payment instruments or outstanding orders to transmit not yet paid for transactions originating in Georgia during the second or forty-five (45) days after the end of each calendar quarter. Licensees submitting an activity statement to the Department, are certifying to the material accuracy and validity of the information as submitted.
- (8) Proceeds received from the sale of payment instruments or money transmission net of fees charged and retained by the authorized agent shall be remitted to the licensee in accordance with the terms of the contract between the licensee and the authorized agent.
- (9) Receipt. Each customer that is a payment instrument holder shall be provided with a written receipt or other evidence of acceptance of the issuance of payment instruments or the transmission of money showing the name of the licensee or trade name of the licensee that is registered with the Department, authorized agent identifier information, the date of issuance of the payment instrument or of the transmission of money, the dollar amount of

the issued payment instrument or of the transmitted money, and the fee charged to the customer.

(10) Minimum Books and Records.

(a) Each licensee shall make, keep, and preserve the following books, accounts, and other records:

1. A record of each payment instrument sold;
2. A general ledger which shall be posted at least monthly containing all assets, liabilities, capital, and income and expense accounts;
3. Settlement sheets received from authorized agents;
4. Bank statements and bank reconciliation records;
5. Records of outstanding payment instruments;
6. Records of each payment instrument paid;
7. A list of the names and addresses of all of the licensee's authorized agents;
8. A copy of all currency transaction reports and suspicious activity reports that are required by law to be filed by the licensee and the related work papers;
9. For money transmitters, records of all money transmissions sent or received as well as all outstanding money transmissions; and
10. Supporting documentation for all reports required to be prepared or filed with the Department or the Nationwide Multistate Licensing System and Registry.

(b) Each licensee shall maintain a principal location at which its books and records are maintained and which is accessible to the Department for examination during normal business hours. Records required to be maintained under this rule may be maintained in a photographic, electronic, or other similar format at a central location within or outside the State of Georgia provided specific records can be transmitted to a location designated by the Department within ten (10) days of the Department's request. The Department may examine any person that purports to satisfy the exemption from licensure set forth in O.C.G.A. § 7-1-682 to verify that the person qualifies for the exemption from licensure. A licensee that refuses to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department), that withholds material information, or makes a misrepresentation shall have its license revoked.

(11) A licensee shall make a written request to the Department seeking approval for any proposed change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such proposed change in ownership or change in control of the licensee as required by O.C.G.A. § 7-1-688 at least thirty (30) days prior to the proposed change.

- (12) If a licensee's average daily outstanding balances for payment instruments or outstanding orders to transmit not yet paid for transactions originating in Georgia, as calculated by the licensee for each calendar quarter, exceeds the amount of the licensee's surety bond by more than ten percent (10%), the licensee must promptly provide additional coverage to fully account for the increase in outstandings pursuant to O.C.G.A. § 7-1-683.2(b). However, notwithstanding the above, the amount of the surety bond required by O.C.G.A. § 7-1-683.2(b) shall not exceed \$2,000,000.00.

Authority: O.C.G.A. §§ 7-1-61, 7-1-681, 7-1-690.

Rule 80-3-1-.02. Check Cashers

- (1) For purposes of Rules 80-3-1-.02, 80-3-1-.03, 80-3-1-.04, 80-3-1-.06, 80-3-1-.07(3), 80-3-1-.08, 80-3-1-.09, and 80-5-1-.02(2), the terms that are defined in O.C.G.A. § 7-1-700 shall have the identical meaning.
- (2) Every applicant for a license 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 payment instruments. Sufficiency of financial resources shall be determined through financial analysis by the Department of pro-forma and historical financial information of the applicant. Each licensee shall be required to complete and attest to official questionnaires and statements of assets and liabilities when requested for examination purposes. Licensees 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.
- (3) Every licensee shall maintain an original written authorization or other evidence of verification attesting to the fact that each specific corporation or other business association has authorized its officers and employees or specific officers or employees to present payment instruments, drawn by the corporation or other business association payable to cash or drawn by any party payable to the corporation or other business association, to a licensee for cashing. A check casher shall not cash a payment instrument payable to persons other than natural persons unless the check casher has on file such written authorization or verification indicating that the payee has authorized the presentation of such payment instruments on behalf of the payee.
- (4) Every licensee shall post in prominent view of each teller window or other customer service station a copy of its license. Advertising material related to the cashing of payment instruments and distributed within this state shall ~~bear the legend "LICENSED BY THE GEORGIA DEPARTMENT OF BANKING AND FINANCE" in letters at least one quarter inch high and~~ contain the licensee's name, which shall conform to the name on record with

the Department, and unique identifier, which shall clearly indicate that the number was issued by the Nationwide Multistate Licensing System and Registry.

(5) Minimum Books and Records.

- (a) Books and records required herein shall be maintained by every licensee.
- (b) A record of cashed payment instruments shall be maintained by each licensee as a log of all transactions occurring each day. The log must be maintained in chronological order based on the date of negotiation of the payment instrument.
 - 1. For all cashed payment instruments, such record shall include:
 - (i) The date of negotiation of the payment instrument;
 - (ii) Name, address, and identifying number (social security, driver's license, passport, etc.) of the person negotiating the payment instrument;
 - (iii) Amount of the payment instrument; and
 - (iv) Amount of fee charged for cashing the payment instrument.
 - 2. For all cashed payment instruments in an amount of one thousand dollars (\$1,000) or more, such record shall also include:
 - (i) Date of the payment instrument;
 - (ii) Payment instrument number;
 - (iii) Name and location or routing number of the payor bank or, if a pre-paid card, the branded card name; and
 - (iv) Name of the drawer of the payment instrument.
- (c) A daily cash reconciliation statement 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 statement shall separately reflect cash received from the sale of payment instruments (if licensed as a seller of payment instruments or an authorized agent of such licensee), redemption of returned items, bank cash withdrawals, cash disbursed in cashing of payment instruments, and bank cash deposits.
- (d) 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 cashed payment instruments 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 may be maintained provided books of original entry are separately maintained for each location.

- (e) For all entities cashing payment instruments, each customer cashing a payment instrument shall be offered the option of receiving a receipt showing the name of the licensee or trade name of the licensee, the transaction date, the amount of the payment instrument, and the fee charged.
 - (f) All licensees shall maintain supporting documentation for all reports and logs required to be prepared or filed with the Department or the Nationwide Multistate Licensing System and Registry.
- (6) All payment instruments drawn on a financial institution domiciled in the United States and cashed by a licensee shall be sent for deposit to the licensee's account at a financial institution authorized to do business in the State of Georgia whose deposits are federally insured or sent for collection not later than the close of business on the next business day after the date on which the payment instrument was cashed.
 - (7) Each licensee shall maintain a principal location at which its books and records are maintained and which is accessible to the Department for examination during normal business hours. Records required to be maintained under this rule may be maintained in a photographic, electronic, or other similar format at a central location within or outside the State of Georgia provided specific records can be transmitted to a location designated by the Department within ten (10) days of the Department's request. The Department may examine any person that purports to satisfy the exemption from licensure set forth in O.C.G.A. § 7-1-701.1 to verify that the person qualifies for the exemption from licensure. A licensee that refuses to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department), that withholds material information or makes a misrepresentation shall have its license revoked.
 - (8) The business of the licensee may be conducted through additional outlets, including those operated as mobile facilities, provided that mobile facilities maintain a regular schedule of times and locations at which they cash payment instruments, file the schedule with the Department, and comply with local licensure requirements at each location at which business is conducted. A licensee must provide the Department with written notice at least thirty (30) days prior to it conducting business at any additional outlets.
 - (9) A licensee shall notify the Department in writing within fifteen (15) days of the closing of the portion of its business that cashes payments instruments and shall surrender its original license to the Department at that time.
 - (10) A licensee shall make a written request to the Department seeking approval for any proposed change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control of the licensee as required by O.C.G.A. § 7-1-705.1 at least thirty (30) days prior to the proposed change.

- (11) Every licensee giving notices of changes in locations operated by the licensee over those previously reported shall do so at least thirty (30) days prior to conducting business at the new location and on forms provided by the Department.

Authority: O.C.G.A. §§ 7-1-61, 7-1-701.1, 7-1-702.1, 7-1-706.1.

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

- (1) Except as otherwise indicated, these fines and penalties apply to any person, partnership, association, corporation, or any other group of individuals, however organized, that is required to be licensed under Article 4 or Article 4A of Chapter 1 of Title 7. The Department, at its sole discretion, may waive or modify a fine based upon the financial resources of the person, gravity of the violation, history of previous violations, and such other facts and circumstances deemed appropriate by the department.
- (2) All fines levied by the Department are due within thirty (30) days from the date of assessment and must be paid prior to renewal of the annual license, reapplication for a license, or any other activity requiring Departmental approval.
- (3) Check Cashers. The Department establishes the following fines and penalties for violation of the law and rules governing check cashers.
 - (a) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain its books and records according to the requirements of O.C.G.A. § 7-1-706(a) and Rules 80-3-1-.02(2) or 80-3-1-.02(5), such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each books and records violation listed in Rules 80-3-1-.02(2) or 80-3-1-.02(5).
 - (b) Excessive Fees. If the Department, in the course of an examination or investigation, finds that a licensee has charged fees for cashing payment instruments in excess of the amount set forth in O.C.G.A. § 7-1-707(f), such licensee shall be subject to a fine of five thousand dollars (\$5,000) per occurrence and its license will be subject to revocation or suspension.
 - (c) Posting of Charges. Any licensee who does not display, at all locations, a notice stating the charges/fees for cashing payment instruments in accordance with O.C.G.A. § 7-1-707.1 shall be subject to a fine of five hundred dollars (\$500).
 - (d) Operating Without Proper License. Any person who acts as a check cashier prior to receiving a current license required under Article 4A of Chapter 1 of Title 7, or who acquires a business that cashes payment instruments and operates without its 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 its

license application will be subject to denial or its license will be subject to revocation or suspension.

- (e) Felons. Any licensee that hires or retains a covered employee who is a felon as described in O.C.G.A. § 7-1-703(b), when such covered employee has not complied with the remedies provided for in O.C.G.A. § 7-1-703(b) for each conviction before such employment, shall be subject to a fine of five thousand dollars (\$5,000) for each such covered employee and its license will be subject to revocation or suspension.
- (f) GCIC Background Checks on Employees. Any licensee that does not obtain a Georgia Crime Information Center ("GCIC") criminal background check on each covered employee prior to the initial date of hire or retention shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. Proof of the required GCIC criminal background check must be retained by the licensee until five years 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 covered employee for which the licensee is missing this documentation.
- (g) Deferred Payment. Any licensee that defers payment on a payment instrument pending collection and has not obtained the surety bond as required by O.C.G.A. § 7-1-707(c) shall be subject to a fine of five thousand dollars (\$5,000) per occurrence and its license will be subject to revocation or suspension.
- (h) 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 cashing payment instruments, shall be subject to a fine of five thousand dollars (\$5,000) and its license will be subject to revocation or suspension.
- (i) Corporate Checks. Any licensee that cashes a payment instrument made payable to a corporation or other business association or cashes a payment instrument drawn by the corporation or other business association and made payable to cash without the proper written authorization as required by O.C.G.A. § 7-1-707(d) and Rule 80-3-1-.02(3) shall be subject to a fine of one thousand dollars (\$1,000) per occurrence.
- (j) Advertising - "No Identification Required." A licensee that advertises that it will cash payment instruments with no identification required will be subject to a fine of one thousand dollars (\$1,000).
- (k) Identification Requirements for Cashing Payment Instruments. No licensee shall cash payment instruments without identification of the bearer of such check. Failure to comply with the requirements of O.C.G.A. § 7-1-707(e) shall subject the licensee to a fine of one thousand dollars (\$1,000) per occurrence.

- (l) Failure to Submit to Exam. The penalty for the refusal of a licensee to permit the Department to conduct an investigation or examination of its books, accounts, and records, shall be the revocation of its license and a five thousand dollar (\$5,000) fine.
- (m) 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 the revocation or suspension of its license.
- (n) Failure to Notify or Obtain Approval from the Department of Change in Ownership, Change in Control, or Designation of Executive Officer. Any licensee or other person who fails to obtain the Department's prior approval of a change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control of the licensee in compliance with O.C.G.A. § 7-1-705.1 and Rule 80-3-1-.02 shall be subject to a fine of one thousand dollars (\$1,000) and its license will be subject to revocation or suspension. Any licensee or other person who fails to timely notify the Department of a change in executive officer not resulting from a change in control or ownership in compliance with O.C.G.A. § 7-1-705 and Rule 80-3-1-.02 shall be subject to a fine of one thousand dollars (\$1,000) and its license will be subject to revocation or suspension.
- (o) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or the requirements referred to in Rules 80-3-1-.03, 80-3-1-.04, and 80-3-1-.06, such licensee 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 Failure to Include Required Legend on Advertising. Any licensee that fails to post a copy of its license in prominent view of each teller window or other customer service station, or distributes advertising in this state related to the cashing of payment instruments that fails to ~~display the phrase "LICENSED BY THE GEORGIA DEPARTMENT OF BANKING AND FINANCE"~~comply with the requirements of Rule 80-3-1-.02(4) shall be subject to a fine of five hundred dollars (\$500) for each instance of non-compliance.
- (q) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensed check casher that fails to disclose that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee within ten (10) business days of the date of the event necessitating the disclosure, shall be subject to a fine of one thousand dollars (\$1,000). Any licensed check casher that fails to submit a new lawful presence affidavit from a current owner or executive officer within ten (10) business days of the owner or executive officer that executed the previous lawful presence

affidavit no longer being in that position with the licensee, shall be subject to a fine of one thousand dollars (\$1,000) per day until the new affidavit is provided.

- (r) Failure to Timely Update Information on the Nationwide Multistate Licensing System and Registry. Any licensee that fails to update its information on the Nationwide Multistate Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. In addition, the failure of a control person of a licensee to update the individual's information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions by the control person, within ten (10) business days of the date of the event necessitating the change, shall subject the licensee to a fine of one thousand dollars (\$1,000) per occurrence.
 - (s) Prohibited Acts. Any licensee or other person who violates the provisions of O.C.G.A. § 7-1-708 shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation and its license will be subject to suspension or revocation.
 - (t) Failure to Submit to Examination or Investigation. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department) shall be revocation of the license and a five thousand dollar (\$5,000) fine. Refusal shall require at least two attempts by the Department to schedule an examination or investigation.
- (4) Payment Instrument Sellers and Money Transmitters. The Department establishes the following fines and penalties for violation of the laws and rules governing payment instrument sellers and money transmitters.
- (a) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain its books and records according to the requirements of O.C.G.A. § 7-1-689 and Rules 80-3-1-.01(4), 80-3-1-.01(6), 80-3-1-.01(7), 80-3-1-.01(9), or 80-3-1-.01(10), such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each books and records violation listed in Rule 80-3-1-.01(4), 80-3-1-.01(6), 80-3-1-.01(7), 80-3-1-.01(9), or 80-3-1-.01(10).
 - (b) Operating Without Proper License. Any person who acts as a payment instrument 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 who acquires a payment instrument seller or money transmission business without its 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 its application will be subject to denial or its license will be subject to revocation or suspension.
 - (c) Felons. Any licensee that hires or retains a covered employee who is a felon as described in O.C.G.A. § 7-1-684(b), when such covered employee has not complied

with the remedies provided for in O.C.G.A. § 7-1-684(b) for each conviction before such employment, shall be subject to a fine of five thousand dollars (\$5,000) for each such covered employee and its license will be subject to revocation or suspension.

- (d) **Locations and Authorized 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(d) and Rules 80-3-1-.01(4) and 80-3-1-.01(6), shall be subject to a fine of five hundred dollars (\$500) for each location or agent not reported.
- (e) **GCIC Background Checks on Employees.** Any licensee that does not obtain a Georgia Crime Information Center ("GCIC") criminal background check on each covered employee prior to the initial date of hire or retention shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. Proof of the required GCIC criminal background check must be retained by the licensee until five years 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 covered employee for which the licensee is missing this documentation.
- (f) **Authorized Agents.** Any licensee that does not give notice of an authorized agent whose agency certificate has been revoked, suspended, cancelled, terminated, or voluntarily closed 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 authorized agent revocation, suspension, cancellation, termination, or voluntary closure not reported in writing to the Department.
- (g) **Failure to Provide Receipt.** In the event a licensee or its authorized agent does not provide the customer with a written receipt or other evidence of acceptance as required in Rule 80-3-1-.01(9), it shall be subject to a fine of one thousand dollars (\$1,000) per transaction where the receipt was not provided.
- (h) **Failure to Notify or Obtain Approval from the Department of Change in Ownership, Change in Control, or Designation of Executive Officer.** Any licensee or other person who fails to obtain the Department's prior approval of a change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control of the licensee in compliance with O.C.G.A. § 7-1-688 and Rule 80-3-1-.01 shall be subject to a fine of one thousand dollars (\$1,000) and its license will be subject to revocation or suspension. Any licensee or other person who fails to timely notify the Department of a change in executive officer not resulting from a change in control or ownership in compliance with O.C.G.A. § 7-1-687 and Rule 80-3-1-01 shall be subject to a fine of one thousand dollars (\$1,000) and its license will be subject to revocation of 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 selling of

payment instruments or money transmission, shall be subject to a fine of five thousand dollars (\$5,000) and its 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 and file the reports with the Department or the Nationwide Multistate Licensing System and Registry within the designated time periods shall be subject to a fine of one thousand dollars (\$1,000) for each such occurrence. Repeated failure to provide timely reports as required may result in additional administrative action by the Department, including, but not limited to, license revocation.
- (k) Failure to Submit to Exam. The penalty for the refusal of a licensee to permit the Department to conduct an investigation or examination of its books, accounts, and records, shall be the revocation of its license and a five thousand dollars (\$5,000) fine.
- (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 the revocation or suspension of its license.
- (m) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or the requirements referred to in [Rule](#) ~~ds~~ 80-3-1-.03, 80-3-1-.04, and 80-3-1-.06, such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each instance of non-compliance.
- (n) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensed payment instrument seller or money transmitter that fails to disclose that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee within ten (10) business days of the date of the event necessitating the disclosure, shall be subject to a fine of one thousand dollars (\$1,000). Any licensed payment instrument seller or money transmitter that fails to submit a new lawful presence affidavit from a current owner or executive officer within ten (10) business days of the owner or executive officer that executed the previous lawful presence affidavit no longer being in that position with the licensee, shall be subject to a fine of one thousand dollars (\$1,000) per day until the new affidavit is provided.
- (o) Failure to Timely Update Information on the Nationwide Multistate Licensing System and Registry. Any licensee that fails to update its information on the Nationwide Multistate Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. In addition, the failure of a control person of a licensee

to update the individual's information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions by the control person, within ten (10) business days of the date of the event necessitating the change, shall subject the licensee to a fine of one thousand dollars (\$1,000) per occurrence.

- (p) Failure to Post Required License. Any licensee that fails to post a copy of its license in the premises where money is transmitted or where payment instruments are issued or sold shall be subject to a fine of five hundred dollars (\$500) for each instance of non-compliance.
- (q) Prohibited Acts. Any licensee or other person who violates the provisions of O.C.G.A. § 7-1-692 shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation and its license will be subject to suspension or revocation.
- (r) Failure to Submit to Examination or Investigation. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department) shall be revocation of the license and a five thousand dollar (\$5,000) fine. Refusal shall require at least two attempts by the Department to schedule an examination or investigation.

Authority: O.C.G.A. §§ 7-1-61, 7-1-694, 7-1-708.2.

CHAPTER 80-5-1
SUPERVISION, EXAMINATION, REGISTRATION
AND INVESTIGATION FEES. ADMINISTRATIVE LATE FEES

80-5-1-.01 General

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

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

80-5-1-.06 Fees for Credit Unions.

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

Rule 80-5-1-.01. General

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

Department. An annual fee shall be assessed on financial institutions supervised or regulated by the Department. These fees are remitted to the Office of the State Treasurer.

- (2) ~~That portion of the annual appropriation prorated to each financial institution shall be assessed against such institutions.~~ Annual assessments are for the Department's fiscal year, July 1 through June 30. Assessments for depository institutions are based upon each financial institution's assets reported on ~~either a the December 31 or June 30 Report of Condition for a partial year preceding the assessment date.~~ All financial institutions ~~with a June 30 or December 31 Call Report, including those acquired, converted, and or merged into a federal or national institution or into another state institution~~ will also be assessed, either for a full year or for a partial year, as appropriate. ~~Starting with the Department's fiscal year of July 1, 2015 through June 30, 2016, Subject to an increased assessment due to an acquisition, annual assessments for Georgia chartered financial institutions existing on July 1, will be based on June 30 Call Report Assets, should be delivered on or about August 15 September 10, and are due and payable no later than September 1530.~~ A late payment penalty may be assessed for the full year billing at any time after the due date. ~~Subject to the provisions herein, Assessments for a partial year related to a conversion or charter issuance after July 1 will be prorated for the number of full and partial months as a state Georgia state chartered institution and will be delivered as soon as practical and shall be due and payable upon receipt; however, under no circumstances, shall any portion of an annual assessment paid to the Department be refunded.~~ A late payment penalty may be assessed for the partial year billing fourteen days after bill issuance. Under no circumstances, shall any portion of an annual assessment paid to the Department be refunded.
- (3) Newly chartered ~~banks financial institutions~~ will not be assessed for the first three full months plus any partial month from the begin business date. Thereafter, annual assessments as set forth herein shall apply. The initial assessment period for newly chartered ~~banks financial institutions~~ shall begin on the first day of the month after the first three full calendar months from the begin business date.
- (4) Assessment fees for ~~a state Georgia state chartered institutions merging or converting into that is acquired by a federal or national institutions or institution chartered by another state~~ after July 1, but prior to the date that assessments are due and payable, will be prorated based on the number of full and partial months the institution operated as a Georgia state chartered institution. ~~A Georgia state chartered institution that is acquired by a federal or national institution or an institution chartered by another state after the assessment date, shall pay the full assessment.~~
- (5) Assessment fees for ~~one or more a Georgia state chartered institutions that merge into is acquired by~~ another Georgia state chartered institution after July 1, but prior to the date that assessments are due and payable, will be assessed on the combined total assets and offices of the ~~merged combined~~ institutions as of June 30. ~~A Georgia Sstate chartered institutions that merge is acquired~~ after the assessment date, shall pay the full assessment ~~for each institution.~~
- (6) ~~Assessment fees for a state institution that fails and is acquired by a federal or national institution after July 1, but prior to the date that assessments are due and payable, will be~~

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

- (7) Assessment fees for a national bank, federal credit union, or institution chartered by another state that that fails and is acquired by a Georgia state chartered institution after July 1 will be prorated based on the number of full and partial months the additional assets of the national bank, federal credit union, or the institution chartered by another state and the number of full and partial months the institution operated as a were combined into the Georgia state chartered institution.
- (8) The Department has made available an Applications Manual, which manual includes the fees for each type of application, registration and notification.
- (9) The Department has policies which provide that certain qualifying institutions may expedite applications or submit shortened forms of applications. The fees for these expedited processes have been reduced accordingly. The criteria for banks to qualify for such treatment is set forth in Rule 80-1-1-.10 while the criteria for bank holding companies to qualify is set forth in Rule 80-6-1-.13.

Authority: ~~Ga. L. 1974, pp. 705, 732, 733, 921; Ga. L. 1976, Act 762. O.C.G.A. Sec. §§ 7-1-41; 7-1-61.~~

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

- (1) Payment instrument sellers and money transmitters.
 - (a) The annual license fee is one thousand nine hundred dollars (\$1,900) for payment instrument sellers and nine hundred dollars (\$900) for money transmitters.
 - (b) The annual renewal license fee is one thousand nine hundred dollars (\$1,900) for payment instrument sellers and nine hundred dollars (\$900) for money transmitters and shall be due and must be received by the Department on or before the first day of December of each year. Where the person or corporation engages in both the sale of payment instruments and money transmission, the higher of the two fees shall be due and payable. A licensee whose renewal application and annual license renewal fee is not received by the Department on or before December 1 may be assessed a late fine of three hundred dollars (\$300) and cannot be assured of renewal of its license prior to January 1.

- (c) An additional non-refundable application investigation fee of two hundred fifty dollars (\$250) will be assessed.
 - (d) Applicants for Department approval of a change in ownership, change in control, or change in executive officer as set forth in O.C.G.A. § 7-1-688 shall pay a nonrefundable investigation, application, and processing fee of five hundred dollars (\$500).
- (2) Check Cashers.
- (a) The annual license fee is three hundred dollars (\$300).
 - (b) The annual renewal license fee is three hundred dollars (\$300).
 - (c) An initial investigation and supervision fee shall be five hundred fifty dollars (\$550) 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 thirty dollars (\$30) for the second and each additional location, plus a fee in an amount as directed by the Department to cover the cost of the required number of fingerprints for each individual background check.
 - (e) Annual renewal license fees shall be due and must be received by the Department on or before the first day of December of each year. A licensee whose renewal application and annual renewal license fee is not received by the Department on or before the first day of December of each year may be assessed a late fine of three hundred dollars (\$300) and cannot be assured of renewal of its license prior to January 1.
 - (f) Applicants for Department approval of a change in ownership, change in control, or change in executive officer as set forth in O.C.G.A. § 7-1-705.1 shall pay a nonrefundable investigation, application, and processing fee of five hundred dollars (\$500).
- (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, on or before January 31 of each year.~~ Registrants of international bank representative offices shall pay a registration fee of one thousand dollars (\$1,000).
- (4) Mortgage licensees and registrants.
- (a) Lenders. The initial and renewal application and license fee for mortgage lenders shall be nine hundred dollars (\$900). The initial fee of nine hundred dollars (\$900) covers the main office. Any branch offices included in the initial application shall be assessed a fee of three hundred thirty dollars (\$330) each. A fee of three hundred thirty dollars (\$330) will be assessed for each additional office not initially registered, if such office is located in Georgia, and if mortgage lending activity is conducted at the office. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal

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

- (b) Brokers. The initial and renewal application and license fee for mortgage brokers shall be four hundred dollars (\$400). The initial four hundred dollar (\$400) fee covers the main office. Any branch offices located in Georgia shall be assessed a fee of three hundred thirty (\$330) each. Brokers include loan processors. Processors are defined in Rule 80-11-4-.07. Such a processor may have a separate main office and other branch offices where mortgage loan processing is done. The offices will be treated the same as brokers' offices. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and license fees must be received on or before December 1 of each year or the applicant may be assessed a late fine of three hundred dollars (\$300). A renewal application and license fee that is not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.
- (c) Mortgage Loan Originators. The initial and renewal application and license fee for mortgage loan originators shall be one hundred dollars (\$100). Subsequent renewal application fees must be received by the Department on or before December 1 of each year or the applicant may be assessed a late fine of one hundred dollars (\$100). A renewal application is not deemed received until all required information, including a renewal fee in the appropriate amount and documentation showing that the requisite continuing education hours have been obtained, has been provided by the licensee. A renewal application, containing all of the required information along with the correct fees and proof of required continuing education that is not received by the Department on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct mortgage loan origination activity without a current license.
- (d) Lender Registrants. The initial and renewal application and registration fee for mortgage lenders required to register but not be licensed with the Department shall be nine hundred dollars (\$900), due on or before December 1 of each year. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and registration fees must be received on or before December 1 of each year or the applicant may be assessed a late fine of three hundred dollars (\$300). A renewal application and registration fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.

- (e) Broker Registrants. The initial and renewal application and registration fee for mortgage brokers required to register but not be licensed with the Department shall be four hundred dollars (\$400), due on or before December 1 of each year. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and registration fees must be received on or before December 1 of each year or the applicant may be assessed a late fine of three hundred dollars (\$300). A renewal application and registration fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.
- (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(e).
- (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 an additional office of a licensee shall be accompanied by a nonrefundable fee of three hundred thirty dollar (\$330), as provided in O.C.G.A. § 7-1-1006.

(5) Installment Lenders.

- (a) The annual license fee is five hundred dollars (\$500).
- (b) The annual license renewal fee is five hundred dollars (\$500) and must be received by the Department on or before the first day of December of each year. A licensee whose renewal application and annual license renewal fee is not received by the Department on or before December 1 may be assessed a late fine of three hundred dollars (\$300) and cannot be assured of renewal of its license prior to January 1.
- (c) An additional nonrefundable initial application investigation fee of two hundred fifty dollars (\$250) will be assessed.
- (d) Applicants for Department approval of a change in ownership, change in control, or change in executive officer as set forth in O.C.G.A. § 7-3-32 shall pay a nonrefundable investigation, application, and processing fee of five hundred dollars (\$500).
- (e) An application for an additional location of a licensee shall be accompanied by a nonrefundable fee of ~~five-four~~ hundred dollars (~~\$500400~~). An annual renewal fee of ~~five~~ four hundred dollars (~~\$500400~~) per each approved additional location shall be due and must be received by the Department on or before the first day of December of each year.

- (6) The Department may discount or surcharge all supervision or license fees herein provided to assure funding of annual appropriations by the General Assembly.
- (7) Any fees or charges imposed by the Nationwide Multistate Licensing System and Registry ("NMLSR") shall be independent of any fees charged by the Department. Applicants, licensees, and registrants will be responsible for any and all fees or charges imposed by NMLSR.
- (8) All license, investigation, and supervision fees, late fees, fines, taxes owed to the Department, and assessed civil penalties must be paid prior to renewal, reinstatement, or reapplication for a license or any other approval from the Department.

Authority: O.C.G.A. §§ 7-1-41, 7-1-61, 7-1-683, 7-1-685, 7-1-702, 7-1-704, 7-1-716, 7-1-721, 7-1-1004, 7-1-1005, 7-3-20, and 7-3-32.

Rule 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 under Article 4 (Payment Instrument Sellers and Money Transmitters) and 4A (Check Cashers) of Chapter 1 of Title 7, licensees and registrants under Article 13 of Chapter 1 of Title 7 (Georgia Residential Mortgage Act), licensees under Chapter 3 of Title 7 (Georgia Installment Loan Act), trust departments, and financial service providers 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 examination fee shall be due and payable immediately upon receipt of documentation from the Department setting forth the total amount of the fee. 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.
- (c) Notwithstanding the provisions of subsection (b) above, licensees under Article 13 of Chapter 1 of Title 7 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) 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.

(e) 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~~branches shall pay an investigation fee of \$1,250 for each application that is processed as a regular application. Applicants for new branch offices or relocations of branches are not required to pay an investigation fee for each application that is processed as an expedited application. A sSimple re-designations of an existing bank locations, which does not entail the closure or opening of a location, only requires only prior notification in writing a written application but does not require a fee. 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 associations 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 a financial institution, 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 the case of interstate transactions where a comparable fee has already been paid for an earlier, related transaction among the same entities.

(e) Applicants for a bank holding company to acquire twenty-five (25) percent or more of the outstanding voting stock of a financial institution, 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 the case of interstate

transactions where a comparable fee has already been paid for an earlier, related transaction among the same entities.

- (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.
 - (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.
- (3) General rules for fees; holding companies with subsidiaries in Georgia.
- (a) Each bank holding company supervised by the Department shall pay on or before September 15 an annual supervision fee of \$1,000. Each Georgia bank holding company or a holding company that owns a Georgia bank shall pay each year on or before the date the holding company supervision fee is due an additional \$500 for each Georgia non-bank subsidiary corporation of the bank holding company, excluding subsidiaries assessed pursuant to Rule 80-5-1-.03(1)(a) and subsidiaries paying an annual license or registration fee pursuant to Rule 80-5-1-.02(4), as of June 30 preceding the supervision fee due date.
 - (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: O.C.G.A. §§ 7-1-41; 7-1-61.

Rule 80-5-1-.06. Fees for Credit Unions

- (a) Applicants for approval by the department for the addition of a single geographic common bond group shall pay an investigation fee of \$1,000.
- (b) Applicants for department approval of merger of two credit unions where neither is considered financially or otherwise unsafe or unsound shall pay an investigation fee of \$1,000.
- (c) Applicants for department approval of conversion from a federal or out of state credit union to a state credit union shall pay an investigation fee of \$1,000.
- (d) Applicants for department approval of a credit union subsidiary shall pay a processing fee of \$500.
- (e) Applicants for department approval of conversion of a financial institution, other than a credit union, to a state credit union shall pay an investigation fee of \$1,000.
- (f) Applicants for new branch offices or relocations of branches shall pay an investigation fee of \$1,250 for each application that is processed as a regular application. Applicants for new branch offices or relocations of branches are not required to pay an investigation fee for each application that is processed as an expedited application. A simple re-designation of an existing credit union location, which does not entail the closure or opening of a location, only requires a written application but does not require a fee.
- (g) Applicants for approval of a new credit union shall pay an investigation fee of \$20,000 for each application.
- ~~(h)~~ The department may in its discretion waive or reduce a fee based on the circumstances of the application.

Authority: O.C.G.A. §§ 7-1-41; 7-1-61; 7-1-663.

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

- ~~(a) For purposes of this Article the Nationwide Multistate Licensing System and Registry (NMLSR) is defined as a uniform multi-state administration of an automated licensing system~~

~~for mortgage brokers and mortgage lenders. The department's participation in the NMLSR is authorized by O.C.G.A. § 7-1-1003.5.~~

- ~~(b) All applications for new licenses or registrations must be made through NMLSR. Fees for new applications include an initial Department investigation fee and the appropriate application fee for the application type. Applications for new licenses and registrations which are approved between November 1 and December 31 in any year will not be required to file a renewal application for the next calendar year. All fees are non-refundable.~~
- ~~(c) All licenses and registrations issued pursuant to the Act shall expire on December 31 of each year, and an application for renewal shall be made annually between November 1 and December 31 each year. Subsequent renewal applications and/or license fees must be received on or before December 1 of each year or the applicant will be assessed a late fee as set forth in these rules by license or registration type. A renewal application is not deemed received until all required information, including documentation of any required continuing education coursework, and corresponding fees, has been provided by the licensee. A proper renewal application not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Unless a proper application has been received any license or registration which is not renewed on or before December 31 will require the applicant to file a reinstatement application in order to conduct mortgage business in the State after that date.~~

~~Authority: O.C.G.A. § 7-1-1003.5.~~

CHAPTER 80-5-2

TEMPORARY CHANGES IN OPERATING HOURS; CLOSINGS

- 80-5-2-.01 Temporary Changes in Operating Hours.
- 80-5-2-.02 Temporary Closings.
- 80-5-2-.03 Permanent Closings.
- 80-5-2-.04 ~~Effects of Compliance. Repealed.~~

80-5-2-.01 Temporary Changes in Operating Hours

- (1) Any financial institution (except certain credit unions which operate under special operating hours authorized by Code Section 7-1-110) desiring to change temporarily the days that it normally conducts business may do so by posting a notice ~~to its customers~~ at least thirty (30) days in advance of the change at the impacted locations as well as on the financial institution's website, provided the institution has at least one office open for business ~~on five days~~ during at least five days of each week in which the temporary change is to take place.

(2) In the discretion of its Board of Directors or Chief Executive Officer, and after notice to the Department, any financial institution may close in commemoration of local events generally recognized by the local governments in the communities they serve or in memory of deceased directors, officers, or employees of such financial institutions, provided such financial institutions are open for at least half of their normal business hours on that date and notice is posted with regard to such closing at the locations that will be closed as well as on the financial institution's website at least twenty-four (24) hours in advance.

~~(3) Any financial institution may change its operating hours, in the discretion of its Board of Directors or Chief Executive Officer, without having opened any minimum number of hours for any single office of the institution, provided at least one other office within the same or contiguous county is open for business. Where practical, notice of the location of the office remaining open should be posted at the location of the office closed. For institutions having only one location, a temporary alternative location may be established and so designated. Such authority to deviate from normal operating hours shall not extend beyond one business day unless approved by the Department. In any event the Department shall be notified promptly of any use of this discretionary provision by a financial institution.~~

Authority: Ga. L. 1974, p. 733; 1978, p. 1714; O.C.G.A. §§ 7-1-61; 7-1-110.

80-5-2-.02 Temporary Closings

- (1) Whenever, in the discretion of a financial institution's Board of Directors or Chief Executive Officer, the safety of the customers, employees, or assets of a financial institution would be in jeopardy due to civil disorder, fire, acts of God, disruption or failure of utility, transportation, communication or information systems, or whenever a financial institution is rendered unable to conduct business due to like circumstances, the financial institution shall not be obligated to open for business.
- (2) The financial institution shall make a continuing diligent effort to contact the Department or the Commissioner with regard to the emergency and for further direction as to a temporary closing.
- (3) If unable to reach the Department, the Chief Executive Officer or a majority of the Board of Directors may, by implied order of the Commissioner, close all or part of the institution for such period as is necessary to alleviate the emergency. It is not expected that this period should exceed 24 hours. Upon being contacted by a financial institution, the Department shall either concur in the temporary closing or order the institution to reopen in normal or modified form as appropriate under the circumstances.
- (4) The Commissioner or the Governor may declare that a state of emergency exists and such declaration shall authorize the closing of one or more financial institutions in this State in the impacted area. Whenever such closings are declared, the declaration will be disseminated through the various news media of the State or by specific direction to affected financial institutions. Such declaration shall be effective until modified by executive order of

the Governor or, if the emergency was declared by the Commissioner, until the Commissioner or the Governor declares the emergency has ceased and affected institutions may reopen.

~~(5) Any financial institution may delay opening until as late as noon on any business day when conditions described in paragraph (1) of this rule have been met and an emergency declaration by the Governor or the Commissioner is expected. If after such delay the management of the institution has not been notified either directly or through the news media that an emergency closing has been declared, the financial institution shall either open for business or invoke the provisions of paragraph (1) of this rule if appropriate.~~

Authority: ~~Ga. L. 1974, p. 733; 1978, p. 1714~~ O.C.G.A. §§ 7-1-61; 7-1-111.

80-5-2-.03 Permanent Closings

(1) The management of a financial institution may permanently close a banking location in accordance with O.C.G.A. § 7-1-110.1 by satisfying the following requirements:

(a) Deliver to the Department a copy of the federal notice, or a letter form notification that contains the following information:

(i) The banking location to be closed;

(ii) A statement of the reason for the proposed closing and a summary of any supporting information; and;

(iii) The proposed closing date.

(b) The financial institution shall post a notice of intent to close in a conspicuous place at the banking location ~~being to be closed~~ and on the financial institution's website for at least 30 days ~~in advance of prior to~~ the proposed closing date. Such notice must remain posted for at least 30 consecutive days. ~~By this notice, customers of a banking location shall be considered to have received notice in accordance with Code Section 7-1-110.1~~ Within two days of providing these notices, the financial institution must forward a copy of the notice posted at the banking location as well as the disclosure contained on its website to the Department.

Authority: ~~Ga. L. 1974, p. 733; 1978, p. 1714.~~ O.C.G.A. See §§ 7-1-61; 7-1-110.1.

80-5-2-.04 Effects of Compliance Repealed

~~Any financial institution which deviates from its normal operating hours or fails to open for business on any regularly scheduled business day in accordance with the provisions of this chapter shall be deemed to have complied with the provisions of Sections 7-1-110, 7-1-110.1, and 7-1-111 of the Official Code of Georgia Annotated. Observance of any permitted closings or variations of business hours under the provisions of this chapter shall be permissive in the discretion of the Board of Directors or Chief Executive Officer of the financial institution unless specifically~~

~~directed otherwise by the Department. Accommodations as required by law must be made for items in the payment system.~~

~~Authority: Ga. L. 1974, p. 733; 1978, p. 1714.~~

CHAPTER 80-6-1

HOLDING COMPANIES

80-6-1-.04 Audits.

80-6-1-.04 Audits

(1) Every Georgia bank holding company or a holding company that owns a Georgia bank and its non-banking subsidiaries shall be audited at least annually by independent public accountants in accordance with generally accepted auditing standards with copies of such audit maintained on file in the offices of the holding company ~~and for holding companies that own a Georgia state chartered bank, with the Department.~~

(2) Audit reports in which the auditor expresses an unqualified opinion shall be provided to the Department upon request. Audit reports in which the auditor expresses anything other than an unqualified opinion, including, but not limited to, a qualified opinion, an adverse opinion, or a disclaimer of opinion, shall be provided to the Department within fifteen (15) days following receipt by the holding company. Audit reports submitted to the Department shall be accompanied by the Letter to Management, if applicable, detailing any reportable conditions discovered during the audit engagement. Failure to obtain the required opinion audit, or the auditor's report thereof, shall be reported to the Department within fifteen (15) days of discovery.

Authority: ~~Ga. L. 1976, pp. 168, 175, Act 762 O.C.G.A. §§ 7-1-61; 7-1-607.~~

CHAPTER 80-11-1

DISCLOSURE, ADVERTISING AND OTHER REQUIREMENTS

80-11-1-.02 Advertisement Requirements.

80-11-1-.03 Place of Business Requirements; Definitions.

80-11-1-.02 Advertising Requirements

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

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

- (b) Advertisements for mortgage loans shall not indicate in any manner that the interest rates or charges for loans are in any way recommended, approved, set or established by the state or by any law of the state.
- (c) All solicitations or advertisements, including business cards and websites, for mortgage loans disseminated in this state by persons required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 shall contain the name ~~and, license number, valid-unique Nationwide Multistate Licensing System and Registry (NMLSR) identifier, and an office address~~ of the licensee or registrant advertising the mortgage loan, which name ~~, address, and license number~~ unique identifier shall conform with the name ~~, and license number, valid-unique NMLSR identifier, and office address~~ on record with the Department of Banking and Finance.
- (d) ~~All advertisements disseminated in this state by persons required to be licensed under O.C.G.A. Title 7, Chapter 1, Article 13 in any media, whether print or electronic, shall contain the words "Georgia Residential Mortgage Licensee" or, if an entity is licensed in more than one state, the licensee's advertisement may list Georgia as a state in which the licensee is licensed~~ Reserved.
- (e) All advertisements for mortgage loans shall comply with all applicable federal and state laws.
- (f) For purposes of this Rule, "advertisement" means material used or intended to be used to induce the public to apply for a mortgage loan. Such term shall include any printed or published material, audio or visual material, website, or descriptive literature concerning a mortgage loan subject to regulation under O.C.G.A. Title 7, Chapter 1, Article 13 whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, electronic, billboard or similar display. The term advertisement shall not include promotional materials containing fifteen words or fewer relating to the mortgage business of the entity which material does not contain references to a specific rate or product, such as balloons, hats, pencils or pens, and calendars.
- (g) Every mortgage broker or mortgage lender required to be licensed or registered shall maintain a record of samples of its advertisements (including commercial scripts of all radio and television broadcasts) for examination by the Department of Banking and Finance.
- (h) An advertisement shall not include an individual's loan number, loan amount, or other publicly available information unless it is clearly and conspicuously stated in bold-faced type at the beginning of the advertisement that the person disseminating it is not authorized by, acting on behalf of, or otherwise affiliated with the individual's lender, which shall be identified by name. Such an advertisement shall also state that the loan information contained therein was not provided by the recipient's lender.

Authority: O.C.G.A. §§ 7-1-61; 7-1-1001.1; 7-1-1004.3; 7-1-1012; 7-1-1016.

80-11-1-.03 Place of Business Requirements; Definitions

- (1) Each licensee, ~~if it has or is required to have~~ with a physical place of business in Georgia, shall provide to the department a complete listing of all such offices or locations.
- (2) ~~An applicant for a broker's license must have a physical place of business in this state if the broker's home state requires one~~ Reserved.
- (3) A "physical place of business" in this state shall mean an enclosed room or building where ~~the broker~~ a licensee alone, if it has no employees, otherwise where one or more supervised employees conduct a residential mortgage business.
- (4) A location, including a personal residence, shall be considered a branch for purposes of the Georgia Residential Mortgage Act if any of the following conditions are met:
 - (a) The location address is printed on or contained in letterheads, business cards, announcements, advertisements, solicitations for business, flyers, brochures, or the like;
 - (b) Georgia consumers are received at the location or are directed to deliver any information by any means to the location;
 - (c) Loan files, applications (approved, denied, pending and pre-qualification) and any other books and records required by Georgia Residential Mortgage Act or department rules are located at the location; or
 - ~~(d) The location is used to meet the licensing standards in O.C.G.A. Section 7-1-1003.1 and Department Rule 80-11-1-.03; or~~
 - (ed) The licensee directly or indirectly reimburses for rent, utility bills or other expenses incurred for use of a location as a branch.
- (5) Notwithstanding Paragraph (4) of this rule, a location, including a personal residence, will not be deemed a branch and will be required to have its own license if:
 - (a) It is a franchise arrangement;
 - (b) It is separate entity that may be referred to as a "net branch," and it is an independent business or mortgage operation which is not under the direct control, management, supervision and responsibility of the licensee;
 - (c) The licensee is not the lessee or owner of the branch and the branch is not under the direct and daily ownership, control, management, and supervision of the licensee;
 - (d) All employees exempt from individual licensing, including the branch manager, do not meet the requirements for such exemption in Article 13 and the rules of the department;

- (e) All assets and liabilities of the branch are not assets and liabilities of the licensee and income and expenses of the branch are not income and expenses of the licensee and are not properly accounted for in the financial records and tax returns of the licensee; or
 - (f) All practices, policies, and procedures, including but not limited to those relating to employment and operations, are not originated and established by the licensee and are not applied consistently to the main office and all branches.
- (6) An unstaffed storage facility shall not constitute a branch.
- (7) The "main office" is the location indicated on the application as the principal place of business, where the books and records are kept.
- (8) The mailing address of a licensee or registrant may be different from the main office address but shall be the address where the department is authorized to send all correspondence, official notices and orders. The licensee or registrant is responsible for keeping the department informed of any changes in this mailing address.
- (9) The "contact person for consumer complaints" referred to in ~~Code O.C.G.A. Section §~~ 7-1-1006 shall be a person who is available and has authority to investigate and resolve questions and complaints from consumers which have come to the department for resolution. Each licensee must keep the department informed of the name and telephone number of the current contact person.

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

CHAPTER 80-11-2

BOOKS AND RECORDS REQUIREMENTS; AUDITS

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

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

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

- (1) Any mortgage broker or lender 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 via the Nationwide Multistate Licensing System and Registry 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), (m) and (n) 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: O.C.G.A. ~~Sees-§§~~ 7-1-61; 7-1-1012.

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

- (1) Any mortgage broker or lender required to be licensed or registered under Article 13 of Chapter 1 of Title 7 ("licensee" or "registrant") must maintain the following books, accounts and records:
 - (a) Copies of all disclosure documents required by Rule 80-11-1-.01;
 - (b) Samples of advertisements as required by Rule 80-11-1-.02;

- (c) Copies of all written complaints by customers and written records of disposition;
- (d) Copies of examination reports prepared by any agency, division or corporate instrumentality of the United States, the State of Georgia or any other state, which reports pertain to the mortgage brokerage and/or lending business of the licensee or registrant and are not prohibited from being disclosed to the Department of Banking and Finance by state or federal law;
- (e) Copies of reports required to be prepared and/or submitted by the licensee or registrant to any agency, division, or corporate instrumentality of the United States, the State of Georgia or any other state, which reports pertain to the mortgage brokerage and/or lending business of the licensee or registrant and are not prohibited from being disclosed to the Department of Banking and Finance by state or federal law;
- (f) Copies of all payroll records, including federal and state withholding tax forms, W-2's, and 1099 forms filed with the Internal Revenue Service by the licensee or registrant, or its agent on behalf of individuals employed by the licensee or registrant or on behalf of individuals acting as independent contractors in the mortgage brokerage and/or lending business of the licensee or registrant;
- (g) A general ledger and subsidiary records sufficient to produce, when requested by the department, an accurate monthly statement of assets and liabilities and a cumulative profit and loss statement for the current operating year;
- (h) All checkbooks, bank statements, deposit slips and canceled checks which pertain to the mortgage brokerage and/or lending business of the licensee or registrant;
- (i) Supporting documentation for all expenses and fees paid by the mortgage broker on behalf of the customer, which documentation indicates the amount paid and the date paid;
- (j) Copies of all credit report bills received from all credit reporting agencies for the most recent five year period;
- (k) Documentation to indicate a consumer had a choice of attorney, if attorneys' fees are intended to be excluded from a points and fees calculation under the Georgia Fair Lending Act;
- (l) An indication of whether each loan has points and fees of 5% or more, as calculated under the Georgia Fair Lending Act;
- (m) Documentation to support the source and purpose for each receipt of monies in any form in an amount greater than \$100 and documentation to identify the recipient and purpose of each payment of monies in any form in an amount greater than \$100 by the licensee or registrant in its mortgage brokerage and/or lending business in order that the receipts may be reconciled to bank deposits and to books of the licensee or registrant;

- (n) Employee file for each employee. The employee file must contain all documents related to hiring the employee, including criminal background check, date employment began, and a print out or screenshot confirming that the Department's public records were reviewed on ~~the Department's website and~~ NMLS Consumer Access to verify eligibility for employment with such review ~~of the Department's public records and NMLS consumer access~~ taking place prior to the date of hire; and
 - (o) Copies of all submitted mortgage call reports, including any amended reports, for the previous five (5) years and all related work papers and supporting documentation that support the accuracy of the information contained in the mortgage call reports.
- (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: O.C.G.A. §§ 7-1-61; 7-1-1012.

CHAPTER 80-11-3

ADMINISTRATIVE FINES AND PENALTIES

80-11-3-.01 Administrative Fines.

80-11-3-.01 Administrative Fines.

- (1) 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 Article 13 of Chapter 1 of Title 7 ("licensee" or "registrant"). The Department, at its sole discretion, may waive or modify a fine based upon the financial resources of the person, gravity of the violation, history of previous violations, and such other facts and circumstances deemed appropriate by the department.
- (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) 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.

- (4) Permitting unlicensed persons to engage in mortgage loan originator activities. Any licensee or registrant who employs a person who does not hold a mortgage loan originator's license but engages in licensed mortgage loan originator activities as set forth in O.C.G.A. § 7-1-1000(22) shall be subject to a fine of one thousand dollars (\$1,000) per occurrence and the licensee or registrant shall be subject to suspension or revocation. Licensees are responsible for the actions of their employees.
- (5) Relocation of Office. Any mortgage broker or mortgage lender licensee who relocates their main office or any additional office and does not notify the Department within thirty (30) days of the relocation in accordance with O.C.G.A. § 7-1-1006(e) shall be subject to a fine of five hundred dollars (\$500).
- (6) Unapproved Offices. In addition to the application, fee and approval requirements of O.C.G.A. § 7-1-1006(f), any licensee who operates an unapproved branch office shall be subject to a fine of five hundred dollars (\$500) per unapproved branch office operated and their license will be subject to revocation or suspension.
- (7) Change in Ownership. Any person who acquires ten percent (10%) or more of the capital stock or a ten percent (10%) or more ownership of a mortgage broker or mortgage lender licensee without the prior approval of the Department in violation of O.C.G.A. § 7-1-1008 shall be subject to a fine of one thousand dollars (\$1,000) and their license or registration will be subject to revocation or suspension.
- (8) Doing Business Without a License or in Violation of Administrative Order. Any person who acts as a mortgage broker or mortgage lender prior to receiving a current license or registration required under O.C.G.A. Title 7, Chapter 1, Article 13, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars (\$1,000) per transaction and their mortgage lender or broker application will be subject to denial or their license or registration will be subject to revocation or suspension.
- (9) Hiring a Felon. Any mortgage broker or mortgage lender licensee or registrant who hires or retains an employee who is a felon as described in O.C.G.A. § 7-1-1004(h), which employee has not complied with the remedies provided for in O.C.G.A. § 7-1-1004(h), may be fined five thousand dollars (\$5,000) per employee found to be in violation of such provision and their license or registration will be subject to revocation or suspension.
- (10) Hiring Persons Otherwise Disqualified from Conducting a Mortgage Business. Any mortgage broker or mortgage lender licensee or registrant who employs any person against whom a final cease and desist order has been issued for a violation that occurred within the preceding five (5) years, if such order was based on a violation of O.C.G.A. § 7-1-1013 or based on the conducting of a mortgage business without a required license or exemption, or whose license was revoked within five (5) years of the date such person was hired pursuant

to O.C.G.A. § 7-1-1004(o) shall be subject to a fine of five thousand dollars (\$5,000) per such employee and its license or registration will be subject to revocation or suspension.

- (11) Books and Records Violations. If the Department, in the course of an examination or investigation, finds that a licensee or registrant has failed to maintain their books and records according to the requirements of O.C.G.A. § 7-1-1009 and Rule Chapter 80-11-2, such licensee or registrant may be subject to a fine of one thousand dollars (\$1,000) for each violation of a books and records requirement listed in Rule Chapter 80-11-2.
- (12) (a) Maintenance of Loan Files. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or 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.
- (b) Maintenance of Service Files. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage lender who fails to maintain a servicer file for each mortgage loans it services, as required by Rule 80-11-6-.04(1)(b), or who fails to have all required documents in such file shall be subject to a fine of one thousand dollars (\$1,000) per file not maintained or not accessible, or per file not containing required documentation.
- (13) Payment of \$10.00 fees and filing of fee statement. Pursuant to Rule 80-5-1-.04 and O.C.G.A. § 7-1-1011, any person who is the collecting agent at a closing of a mortgage loan transaction, is liable for payment of the \$10.00 fee to the Department. The remittance of any \$10.00 fees required to be collected after the date on which they are due shall subject the collecting agent to a late payment fee of one hundred dollars (\$100) for each due date missed. If the Department finds that the collecting agent has not, through negligence or otherwise, submitted \$10.00 fees within six months of the due date, the collecting agent will be subject to an additional fine of twenty (20) percent of the total amount of \$10.00 fees required to be collected for the applicable period. Repeated failures to submit \$10.00 fees may be grounds for revocation of license.
- (14) Repealed. Reserved.
- (15) Failure to Timely Report Certain Events. Any person required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage lender or broker, who fails to report any of the events enumerated in O.C.G.A. § 7-1-1007(d), shall be subject to a fine of one thousand dollars (\$1,000) per act not reported in writing to the Department within 10 days of knowledge of such act.
- (16) Prohibited Acts. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or mortgage lender who violates the provisions of O.C.G.A. § 7-1-1013 shall be subject to a fine of one thousand dollars (\$1,000)

per violation or transaction that is in violation and his or her license shall be subject to suspension or revocation. Misrepresentations also subject the person making them to a fine. Misrepresentations include but are not limited to the following:

- (a) inaccurate or false identification of applicant's employer;
- (b) significant discrepancy between applicant's stated income and actual income;
- (c) omission of a loan to applicant, listed on loan application, which was closed through same lender or broker;
- (d) false or materially overstated information regarding depository accounts;
- (e) false or altered credit report; and
- (f) 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) Repealed. Reserved.
- (19) Failure to Fund. O.C.G.A. § 7-1-1013(3) prohibits failure "to disburse funds in accordance with a written commitment or agreement to make a mortgage loan." If the Department finds, either through a consumer complaint or otherwise, that a lender or a broker acting as a lender has failed to disburse funds in accordance with closing documents, which include legally binding executed agreements indicating a promise to pay and a creation of a security interest, a fine of five thousand dollars (\$5,000) per transaction may be imposed and its license or registration may be subject to revocation or suspension.
- (20) Advertising. Any person who is required to be licensed or registered as a mortgage broker or mortgage lender who violates the regulations relative to advertising contained in O.C.G.A. § 7-1-1004.3 and § 7-1-1016 or the advertising requirements of department Rule 80-11-1-.02 shall be subject to a fine of five hundred dollars (\$500) for each violation of law or rule.
- (21) Failure to Submit to Examination or Investigation. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department) shall be revocation of the license or registration and a five thousand dollar (\$5,000) fine. Refusal shall require at least two attempts by the Department to schedule an examination or investigation.

- (22) Failure to Review Public Records Prior to Hiring. Any licensee who fails to examine the Department's public records on ~~the Department's website and~~ NMLS Consumer Access to determine if a job applicant is subject to an order set forth in O.C.G.A. § 7-1-1004(o) prior to hiring such individual shall be subject to a fine of one thousand dollars (\$1,000) for each employee on whom the public records were not timely examined.
- (23) Background Checks. Any licensee who fails to perform proper background checks on covered employees in accordance with the provisions of O.C.G.A. § 7-1-1004(h), (i), and (k) shall be subject to a fine of one thousand dollars (\$1,000) for each employee on whom the required background check was not conducted.
- (24) Change in Executive Officers. Any licensee who fails to notify the Department of a change in executive officers of the company in violation of O.C.G.A. § 7-1-1006(e) shall be subject to a fine of five hundred dollars (\$500).
- (25) Georgia Fair Lending Act. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or mortgage lender who violates any provision of Chapter 6A of Article 13, the Georgia Fair Lending Act, shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation and their license will be subject to revocation or suspension.
- (26) Consumer Complaints. Any licensee or registrant who fails to respond to a consumer complaint or fails to respond to the Department within the time periods specified in the Department's correspondence to such person shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence. Repeated failure to properly respond to consumer complaints may result in revocation of license.
- (27) Failure to Perform Timely Background Checks. If the ten (10) day requirement for submission of background information to the proper law enforcement authorities is not met, the employer shall be subject to a one thousand dollar (\$1,000) fine for each employee for whom the background information was not timely submitted.
- (28) Failure to File Timely or Accurate Call Reports. Any licensee or registrant who fails to file a timely Call Report as required through the Nationwide Multi-State Licensing System and Registry or fails to file an accurate Call Report shall be subject to a fine of one hundred dollars (\$100) per occurrence. Repeated failure to file timely or accurate Call Reports may subject the license or registration to revocation or suspension.
- (29) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensed mortgage lender, mortgage broker, or registrant that fails to disclose that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee or registrant within ten (10) business days of the date of the event necessitating the disclosure, shall be subject to a fine of one thousand dollars (\$1,000). Any licensed mortgage broker, mortgage lender, or registrant that fails to submit a new lawful presence affidavit from a

current owner or executive officer within ten (10) business days of the owner or executive officer that executed the previous lawful presence affidavit no longer being in that position with the licensee or registrant, shall be subject to a fine of one thousand dollars (\$1,000) per day until the new affidavit is provided.

- (30) Failure to Timely Update Information on the Nationwide Multi-State Licensing System and Registry. Any licensed mortgage broker, mortgage lender, or registrant that fails to update its information on the Nationwide Multi-State Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions on an application or a licensee's or registrant's NMSLR MU-1, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. In addition, the failure of a control person of a licensed mortgage broker, mortgage lender, or registrant to update the individual's information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions on the control person's NMSLR MU-2, within ten (10) business days of the date of the event necessitating the change, shall subject the licensed mortgage broker, mortgage lender, or registrant to a fine of one thousand dollars (\$1,000) per occurrence.
- (31) Bank Secrecy Act. If the Department in the course of an examination or investigation, finds that a licensee that satisfies the definition of loan or finance company has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or the requirements referred to in Rule 80-11-1-.06, such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each instance of non-compliance.

Authority: O.C.G.A. §§ 7-1-61; 7-1-1001.1; 7-1-1004.1; 7-1-1012.

CHAPTER 80-11-4

LICENSING

80-11-4-.03 Licensing Requirements; Registrants; Exemptions; Term for Bond.

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

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

[80-11-4-.12 License Renewal Period and Requirements for Mortgage Brokers, Mortgage Lenders, and Mortgage Loan Originators.](#)

Rule 80-11-4-.03 Licensing Requirements; Registrants; Exemptions; Term for Bond

- (1) The Department will take appropriate action against all persons found to be improperly engaging in mortgage brokerage or lending activities without a license or valid exemption. In accordance with O.C.G.A. § 7-1-1018(a), if proper evidence is provided to the Department

within thirty (30) days of the date the Order is issued that shows the person had the proper license or was acting pursuant to a valid exemption at the time noted in the Order, the Order shall be rescinded by the Department.

- (2) The exemption from licensing provided pursuant to O.C.G.A. § 7-1-1001(14) to an employee of a licensee or exemptee applies only to natural persons who meet all of the following criteria:
 - (a) An employee must be employed by just one licensee or exemptee and work exclusively for that person;
 - (b) An employee may not solicit, process, or place loans for anyone else while claiming the exemption;
 - (c) An employee's procedures and activities must be supervised by the licensee or exemptee on a daily basis, and the licensee or exemptee is responsible for the actions of such employees. This requirement is intended to make it clear that employers control and are accountable for the actions of their employees; and
 - (d) An employee may not be paid or compensated for performance of mortgage activity as an independent contractor or on a 1099 basis, except as specifically provided for in paragraph (3) of this rule.
- (3) The exemption from licensing provided pursuant to O.C.G.A. § 7-1-1001(17) only applies to a natural person acting in the capacity as an independent contractor working under an exclusive written contract for a licensee that is a wholly owned subsidiary of a financial holding company or bank holding company, savings bank holding company, or thrift holding company, under conditions and limitations as set forth in O.C.G.A. § 7-1-1001(17) and applies only if all of the following criteria are met:
 - (a) The independent contractor may only work in the capacity of a mortgage broker and may only broker loans to the licensed subsidiary or its affiliates;
 - (b) The licensee must provide annually, or more often if required by the Department, a list of each of the independent contractors brokering loans for the licensee under this exemption. This list must be submitted electronically in a form prescribed by the Department. The licensee must certify at the time of submission that each independent contractor brokering loans for them under this exemption are working under a current Undertaking of Accountability, in a form prescribed by the Department;
 - (c) The surety bond required pursuant to O.C.G.A. § 7-1-1001(17) must be in full force and effect at all times, unless or until such time as the licensee is no longer licensed. In the event that the licensee is no longer licensed, all independent contractors brokering loans for the licensee as independent contractors under this exemption must cease all mortgage brokerage activity immediately upon termination of said license. In the event that the required surety bond coverage falls below the amounts required by O.C.G.A. § 7-1-1001(17), the licensee must immediately provide coverage sufficient to meet the requirements as set forth therein, or the license will be subject to revocation or suspension.

Adequacy of bond coverage will be determined annually by the Department based on the list of independent contractors as provided by the licensee in Rule 80-11-4-.03 (3)(b).

- (4) Registrants shall complete all information as indicated on the Department's application. Registrants must submit financial information as provided in O.C.G.A. §§7-1-1003.2 and 7-1-1010, are subject to books and records requirements as provided in O.C.G.A. § 7-1-1009, and must submit an annual fee to the Department. Registrants must provide updated consumer contact information to the Department, and are responsible for resolving consumer complaints satisfactorily and in conformity with the Department's guidelines and timeframes. Fines will apply for failure to comply with any Georgia mortgage laws or rules.
- ~~(5) In addition to the requirements contained in O.C.G.A. §7-1-1003.2 for a bond, the bond requirement for a lender or broker license shall have a stated term of one year or more, and shall expire a minimum of twelve (12) months from the date of issuance, or such longer period as needed to reflect the term of the bond. The bond requirement is continuous in nature. A corporate surety or licensee that does not intend to renew a bond for a subsequent term shall notify the Department of such cancellation pursuant to O.C.G.A. § 7-1-1007(c) no later than thirty (30) days prior to the expiration or cancellation date of the bond. Surety bonds provided to the Department are deemed to be records of the Department and will not be returned to licensees or to the entities by which they were issued.~~

Authority: O.C.G.A. ~~Sees. §§~~ 7-1-61; 7-1-1003.2; 7-1-1012.

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

- (1) It is prohibited for any person to knowingly purchase, sell or transfer a mortgage loan or loan application to or from an unlicensed mortgage loan originator, mortgage lender or broker, unless that entity is exempt from ~~licensing~~licensure or qualified to operate under the temporary authority provisions of 12 U.S.C § 5117. It is expected that all persons who purchase loans use reasonable diligence to determine whether the entities they do business with are licensed or exempt from licensure. To that end, the department makes available through NMLS Consumer Access information as to ~~has provided various means to determine~~ whether an entity is licensed.
 - ~~(a) A list of current licensees is provided by the Department. It is updated nightly with the exception of weekends and holidays.~~
 - ~~(b) The Department also provides information pertaining to all denied, revoked and sanctioned licenses. It is updated weekly.~~
 - ~~(c) The Department responds to telephone inquiries from 8:00 a.m. to 4:30 p.m. each weekday (except holidays) and provides current information to callers.~~

- (2) Obtaining a copy of an entity's annual license shall not be sufficient evidence of a current license since revocation proceedings occur throughout the year.
- (3) Failure by a licensee to exercise reasonable diligence to determine whether an entity is licensed or exempt from licensure may result in a fine or other administrative action, including, but not limited to, license revocation.
- (4) The mere act of sponsoring an employee seeking licensure from the Department as a mortgage loan originator through the Nationwide Multistate Licensing System and Registry shall not be regarded in and of itself as engaging in the mortgage business with an unlicensed person as long as the applicant is not performing for the sponsoring licensee or registrant those regulated activities set forth in O.C.G.A. § 7-1-1000(22) unless qualified to operate under the temporary authority provisions of 12 U.S.C. § 5117.

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

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

- (1) No person who has been an officer, director, partner or ultimate equitable owner of a licensee that has had its license revoked, denied or suspended, may perform any of those roles at another licensee or registrant for five years from the date of the final order.
- (2) Felony convictions; restrictions on the employee and the licensee:
 - (a) O.C.G.A. § 7-1-1004 provides that no person employed by or directing the affairs of any licensee may be a convicted felon. Licensees are obligated by that statute to do their own background checks on covered employees. Licensees, however, are responsible to see that no convicted felons are employed or direct the affairs of their business. The department administers fingerprint checks on officers and directors and others where needed.
 - (b) O.C.G.A. § 7-1-1004 provides for remedies to ~~Acure”cure@-“~~ a felony conviction. These remedies must be completed and in place prior to employment. Hiring or continuing to employ a person with an unremedied felony conviction subjects a licensee to revocation of its license.
 - (c) If a licensee discovers that an employee or director/officer is a felon who has not satisfactorily ~~Acured”cured@-“~~ the conviction, the violation of O.C.G.A. § 7-1-1004 must be immediately corrected or the license will be subject to revocation. Such individuals with felony convictions are ineligible for an employee exemption and are in violation of O.C.G.A. § 7-1-1019, also a felony, and O.C.G.A. §§ 7-1-1004 and 7-1-1002. The licensee employer is in violation of O.C.G.A. §§ 7-1-1004 and 7-1-1002.

- (d) A cease and desist order to a person for failure to meet the employee exemption due to a violation of the felony provisions of O.C.G.A. § 7-1-1004 shall become final in 30 days without a hearing. Such a person must show within those 30 days, by certified court documents that the record is erroneous, or, that the ~~Acure~~ "cure@" provisions in O.C.G.A. § 7-1-1004 were completed prior to employment, in order to stop the order from becoming final. In the event such proof is provided, the order will be rescinded.
- (3) Cease and desist orders may be issued against persons required to be licensees or registrants or against employees of those parties. All of the provisions of O.C.G.A. § 7-1-1018, including injunction, apply to actions against all such persons.
- (4) The Department may regularly publish information identifying persons and natural persons to whom final administrative actions have been issued.

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

80-11-4-.12 License Renewal Periods and Requirements for Mortgage Brokers, Mortgage Lenders, and Mortgage Originators

- (a) For purposes of this rule the Nationwide Multistate Licensing System and Registry (NMLSR) is defined as a uniform multi-state administration of an automated licensing system for mortgage brokers, mortgage lenders, and mortgage loan originators. The department's participation in NMLSR is authorized by O.C.G.A. § 7-1-1003.5.
- (b) All applications for new licenses or registrations must be made through NMLSR. Fees for new applications include an initial Department investigation fee and the appropriate application fee for the application type. Applications for new licenses and registrations which are approved between November 1 and December 31 in any year will not be required to file a renewal application for the next calendar year. All fees are non-refundable.
- (c) All licenses and registrations issued pursuant to the Georgia Residential Mortgage Act shall expire on December 31 of each year, and an application for renewal shall be made annually between November 1 and December 31 each year. Subsequent renewal applications and/or license fees must be received on or before December 1 of each year or the applicant will be assessed a late fee as set forth in these rules by license or registration type. A renewal application is not deemed received until all required information, including documentation of any required continuing education coursework, and corresponding fees, has been provided by the licensee. A proper renewal application not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Unless a proper application has been received any license or registration which is not renewed on or before December 31 will require the applicant to file a reinstatement application in order to conduct mortgage business in the State after that date.

CHAPTER 80-11-5
MORTGAGE LOAN ORIGINATOR LICENSURE AND OTHER
REQUIREMENTS

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

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

- (1) A mortgage loan originator may not engage in the business of mortgage loan origination for a licensed residential mortgage broker or lender without first obtaining and maintaining a current Georgia mortgage loan originator's license issued by the Department through the Nationwide Multistate Licensing System and Registry ("NMLSR") or unless qualified to operate under the temporary authority provisions of 12 U.S.C. § 5117.
- (2) An applicant for mortgage loan originator's license must have a sponsor at and during the time his or her application is being considered for approval or renewal by the Department. Failure to have a sponsor at the time application for licensure is made on the NMLSR or while it is pending shall result in the application being administratively withdrawn by the Department, except that an applicant qualified to operate under the temporary authority provisions of 12 U.S.C. § 5117 shall be subject to administrative action to deny the license application. In the event the applicant wishes to submit a new application after the application has been administratively withdrawn or denied, then the applicant shall be required to submit a new application as well as pay all associated fees. For purposes of this Rule Chapter, "sponsorship" means the authorization for a properly licensed mortgage loan originator to conduct business as an employee under and on behalf of a specific mortgage broker or mortgage lender's license or registration. Sponsorship must be initiated and maintained by the licensed or registered mortgage broker or mortgage lender employing a mortgage loan originator.
- (3) (a) As a continuing requirement of licensure, a mortgage loan originator must at all times have proper sponsorship on record with the NMLSR by a licensed or registered Georgia mortgage broker or mortgage lender.

(b) Sponsorship must be applied for and accepted by the Department. Once established, sponsorship can be removed by the employing licensee or registrant. It shall be the responsibility of every mortgage loan originator applicant and licensee to ensure that his or her sponsorship is correctly reflected at all times on the NMLSR.
- (4) A mortgage loan originator shall have coverage under the surety bond of his or her licensed or registered mortgage broker or mortgage lender employer.

- (5) An applicant for a mortgage loan originator's license will not be approved for licensure if he or she has pleaded guilty to, been found guilty of, or entered a first offender or nolo plea for a felony. A mortgage loan originator license applicant will not be approved for licensure or reinstatement of licensure if he or she has been convicted of a felony in an instance in which a restoration of rights subsequently was issued by a state or federal pardoning authority empowered to dispense this relief.
- (6) A mortgage loan originator must immediately surrender his or her license to the Department through the NMLSR once he or she leaves the employ of a licensed broker or lender and begins working as a loan officer for an exempt entity identified in O.C.G.A. § 7-1-1001.
- (7) An application for a mortgage loan originator license, which is missing material information, shall be held in an incomplete status for a period of five (5) business days after the issuance of written notice by the Department or NMLSR specifying the identified deficiency. If any such deficiency remains outstanding for more than five (5) business days, the license application will be considered abandoned by the applicant and will be administratively withdrawn by the Department. Notwithstanding the foregoing, an applicant qualified to operate under the temporary authority provisions of 12 U.S.C. § 5117, or who purports to be so qualified, shall be subject to administrative action to deny the license application at any time. In the event the applicant wishes to submit a new application after it has been administratively withdrawn or denied, then the applicant shall be required to submit a new application as well as pay all associated fees.

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

CHAPTER 80-13-1

TRUST COMPANIES

80-13-1-.13 Dividends.

80-13-1-.13 Dividends

- (1) The Board of Directors of any trust company may declare and the trust company may pay dividends on its outstanding capital stock without any requirement to notify the Department or request the approval of the Department if the aggregate amount of dividends declared or anticipated to be declared in the calendar year does not:
 - (a) ~~exceed fifty (50) percent of the net profits, after taxes but before dividends, income, in accordance with Generally Accepted Accounting Principles, that is attributable solely to a trust company that is a Subchapter C-Corporation~~ for the previous calendar year; or

(b) ~~_ exceed seventy-five (75) percent of the net income, in accordance with Generally Accepted Accounting Principles, that is attributable solely to a trust company that is a Subchapter S-Corporation for the previous calendar year; provided, however, a trust company that files federal income taxes as a Subchapter S-Corporation may pay an additional amount of dividends without Department approval equivalent to fifty (50) percent of the income taxes which the trust company would have had to pay in the prior year as a Subchapter C-Corporation.~~

(2) Any proposed dividend to be declared by the Board of Directors of a trust company in excess of the amount authorized by section (1) of this Rules must be approved, in writing, by the Department prior to the payment thereof pursuant to the provisions of Section 7-1-460(a)(3) of the Official Code of Georgia. Requests for approval of dividends shall be on forms prescribed by the Department.

Authority: O.C.G.A. § 7-1-61.

CHAPTER 80-14-2

BOOKS AND RECORDS

80-14-2-.04 Installment Loan Files.

Rule 80-14-2-.04. Installment Loan Files

- (1) Each installment lender shall maintain a loan file for each installment loan borrower. If there are multiple borrowers on one loan, the loan documents shall be maintained in the loan file for the primary borrower. The files shall be maintained in an alphabetical or numerical sequence in the principal place of business or in each approved branch office where installment loans are made.
- (2) Each loan file shall contain the following:
 - (a) Copy of the loan application;
 - (b) Copy of credit report if the credit report is pulled or ordered by the licensee;
 - (c) Copy of the signed loan agreement;
 - (d) Copy of all notes, bills of sale, or other evidence of indebtedness or security;
 - (e) Copy of the signed acknowledgement of written disclosure statement as required by Rule 80-14-5-.01(6); and
 - (f) A separate account record for each installment loan transaction or renewal thereof, which shall include the following information:

- (i) Name and address of the licensee;
- (ii) Loan number;
- (iii) Date of the loan;
- (iv) Name and address of each borrower and co-maker or endorser, if any;
- (v) Brief description of security, if any;
- (vi) Actual amounts of individual charges shall be shown separately for interest and fees.;
- (vii) Amount of loan;
- (viii) If a renewal, the loan number of the previous loan;
- (ix) Terms of repayment;
- (x) Payments received showing:
 - A. Date of payment.
 - B. Amount paid on account.
 - C. Remaining balance.
 - D. Date to which account is paid.
 - E. Any late charge collected, and date of collection;
- (xi) Date of final payment on loan or expiration; and
- (xii) Record of the amount, date, and reason for any refunds.

Authority: O.C.G.A. §§ 7-3-30, 7-3-51.

CHAPTER 80-14-4

LICENSING

80-14-4-.01 Licensing Requirements and Exemptions.

80-14-4-.01 Licensing Requirements and Exemptions.

(1) The exemption from licensing provided pursuant to O.C.G.A. § 7-3-4(5) to an employee of a licensee, affiliate of a licensee, or exemptee applies only to natural persons who meet all of the following criteria:

(a) (i) An employee must be employed by only one licensee or exemptee and work exclusively for that person; or

(ii) An employee of an affiliate of a licensee if prior written approval is obtained from the Department as provided in paragraph (2);

(b) An employee may not advertise, solicit, offer, or make installment loans for anyone else while claiming the exemption;

(c) An employee's procedures and activities must be supervised by the licensee or exemptee on a daily basis and the licensee or exemptee is responsible for the actions of such employees. This requirement is intended to make it clear that employers'—licensees, affiliates of licensees, and exemptees control and are accountable for the actions of their employees; and

(d) An employee may not be paid or compensated for the performance of installment lending activity as an independent contractor or on a 1099 basis.

(2) If a licensee wishes to utilize any employees of an affiliate to perform installment lending activities on behalf of the licensee, either presently or in the future, the licensee shall submit a written request for approval to the Department. The request shall identify the name of the affiliate that is supplying the employees and provide sufficient ownership information to establish that the entities are affiliated. In evaluating the request, the Department will take into consideration, the licensee's compliance with laws and rules, consumer complaints, and the interconnectedness of the entities. In the event the Department approves the licensee's request both the licensee and the affiliate will be responsible for the actions of the affiliate's employees while the employees are performing work on behalf of the licensee.

(3) For purposes of this rule, an "affiliate" is a person, other than an individual, where the person, or an individual owner of the person, owns, controls, or holds with the power to vote 20 percent or more of any class of voting securities or other ownership interest of the other person and is licensed by the Department as an installment lender.

(24) A natural person shall not be required to obtain a license under the Georgia Installment Loan Act if such natural person is not in the business of making installment loans or employed by a licensee or exemptee, makes five (5) or fewer installment loans in any one calendar year, and uses his or her own funds to make such loans for his or her own investment. Any unlicensed natural person who makes installment loans without meeting all of the foregoing requirements is in violation of O.C.G.A. § 7-3-4 and may be subject to an order to cease and desist.

Statutory Authority: O.C.G.A. §§ 7-3-4 and 7-3-45.

CHAPTER 80-14-5

DISCLOSURE, CHARGES, AND MISCELLANEOUS

80-14-5-.01 Loan Contract, Disclosures, and Limitations.

80-14-5-.01 Loan Contract, Disclosures, and Limitations.

(1) Loan Contract; Contents.

- (a) Every consumer loan transaction shall be pursuant to a written loan contract which may include a loan voucher, itemized statement of loan and charges, and disclosure statement. The loan contract shall be signed by the consumer and delivered to the consumer at the time it is executed by him or her. The loan contract shall be contained in a single document which may contain more than one page. Printed terms shall be printed in at least six-point standard type.
- (b) In connection with every consumer loan transaction, the consumer shall be furnished a written itemized statement in clear terms and easily understood language which shall show the following: the transaction date, a description of the subject matter and amount of the transaction, a description of the collateral, if any, securing the consumer's obligations; the identity and address of the consumer and the identity and address of the creditor; a schedule of the payments; the amount of the actual cash advanced to or on behalf of the consumer; the amount of each class of insurance carried and the premium paid thereon, stated separately for each class of insurance; and an itemization of the exact amount of the interest, fees, and other charges, if any, showing each element thereof.
- (c) The loan contract shall include immediately above the place for the signature for the parties the following notice:

NOTICE TO CONSUMER

1. Do not sign this agreement if it contains any blank spaces.
2. You are entitled to an exact copy of all papers you signed.
3. You have the right at any time to pay in advance the full amount due under this agreement and under certain conditions to obtain a partial refund of the interest charges.
4. If credit life insurance is required, you have the right to purchase either level term life insurance or reducing term life insurance coverage.
5. You are not required to purchase noncredit insurance as a condition of obtaining this loan.

- (d) The creditor shall furnish the consumer with an exact copy of the loan contract including any loan voucher, itemized statement of loan charges, and disclosure statement after the agreement has been signed.
 - (e) With respect to every installment loan transaction, the creditor shall, at the time of the transaction, furnish to the consumer a written statement of the maximum number of payments required, the amount of such payments, and the exact due dates upon which each payment is due. The maximum number of payments and the amount and date of such payments need not be separately listed if the payments are stated in terms of a series of scheduled amounts.
- (2) The following practices are prohibited in the making of an installment loan pursuant to the Georgia Installment Loan Act:
- (a) Blank Agreements. Every contract evidencing an installment loan transaction shall be completed as to all essential provisions prior to the signing thereof by the parties. No licensee shall induce, encourage, or otherwise permit the consumer to sign a contract containing blank spaces. Blank spaces inapplicable to a transaction must be completed in a manner which reveals their inapplicability.
 - (b) Negotiable Instruments. No licensee shall take or otherwise arrange for the consumer to sign an instrument payable "to order" or "to bearer", other than a check, as evidence of the credit obligation of the consumer in an installment loan transaction.
 - (c) ~~Balloon~~ and Irregular Payments. Except for single payment loans, No licensee shall enter into a contract which contains or anticipates a schedule of payments under which the final payment exceeds the amount of any other payment by more than \$1.00. A single payment loan shall be repayable on terms not to exceed ninety (90) days. All other installment payments shall be scheduled at regular intervals in equal amounts. Notwithstanding the requirement that payments be made at regular intervals for all loans except for single payment loans, the initial payment on an installment loan shall be due within a period not to exceed forty-five (45) days from the date on which the loan is made but no sooner than the regular interval for all other installment loan payments.
 - (d) Multiple Agreements to the following extent:
 - (i) No licensee shall engage in any activity in connection with an installment loan by use of multiple agreements or otherwise as a result of which the licensee charges, contracts for, or receives any other or further amount in connection with an installment loan than that authorized by law for a single loan of a comparable amount.
 - (ii) No licensee shall split a consumer loan into separate agreements by spouses if as a result thereof the licensee charges, contracts for, or receives any other or further amount in connection therewith than as authorized by law for a single loan of a comparable amount; provided, however, that the licensee may make an installment loan to spouses jointly and severally if such loans do not arise out of substantially the same transaction.

- (e) Non-Judicial Enforcement. Notwithstanding any other provision of law, no term of an agreement shall constitute authorization for a licensee to take possession of collateral by other than legal process unless such authorization is clearly, prominently and conspicuously disclosed to the consumer immediately above the place for his signature on the loan agreement or as an addition to the "NOTICE TO CONSUMER" specified in subsection (1)(c) of this Rule.
- (3) Insurance Permitted.
- (a) With respect to any installment loan transaction, the licensee shall not require any insurance other than insurance covering the loss of or damage to any property in which the creditor is given a security interest. Credit life and credit accident and sickness insurance if required by the licensee, may be provided by the licensee through an insurer authorized to issue such insurance in this State.
 - (b) If a licensee requires any insurance permitted under subsection (1) above in any consumer loan transaction, the consumer shall be given written notice of the option of providing such insurance through an existing policy or a policy independently obtained and paid for by the consumer. If the licensee requires credit life insurance, the licensee shall give the consumer written notice of the consumer's right to choose either level term life insurance or reducing term life insurance coverage. The licensee may for reasonable cause before credit is extended decline the insurance provided by the consumer.
 - (c) Any insurance offered by an installment lender licensee shall comply with any and all applicable insurance laws and regulations.
- (4) Discharge of Security Interests. When the consumer is indebted to a particular licensee for two or more consumer loans, any security interest held by such licensee for any particular loan shall be discharged when the loan for which the security interest is held is paid irrespective of indebtedness to the licensee by the consumer on other outstanding installment loans. As a general rule, security interests in terms of property shall terminate as the debt originally incurred with respect to each item is paid and in the case of the consolidation of two or more installment loans or any circumstances in which the general rule is not followed, the licensee may be required by the Department to show that his conduct with respect to such loan transactions was just, fair and reasonable. For the purposes of this Rule, the renewal of a consumer loan shall not be deemed to be payment thereof.
- (5) Electronic Transactions Permitted. The provisions of the Uniform Electronic Transactions Act, O.C.G.A. § 10-12-1 *et seq.*, applies to loans made pursuant to the Georgia Installment Loan Act. Nothing in the Act or the Department's rules shall be construed as prohibiting installment loans from being originated or closed remotely by a licensee.
- (6) Other Purchases. If any loan within the Act is made in conjunction with the provision of any item, service, or commodity incidental to the advancement of funds, or if any other element is introduced into the transaction at the expense of the consumer, then the licensee shall provide

to the consumer a separate written disclosure statement. The disclosure statement shall disclose, in no smaller than twelve-point type, the following:

- (a) That the consumer does not have to purchase any such item, service, or commodity, or pay for such element, in order to obtain the loan.
 - (b) The cost to the consumer of any such purchase or element.
 - (c) The disclosure statement shall contain the consumer's signed acknowledgement of the consumer's understanding that such purchase or element is not required and of the specific cost to the borrower for each such item, service, commodity, or element.
 - (d) A copy of the signed document shall be provided to the borrower, and the licensee shall retain the original in the loan file.
- (7) Receipt. Each consumer shall be provided with a written receipt for each cash payment made showing the licensee's name on record with the Department, the applicable loan number, the date of the payment, and the dollar amount of the payment.

Statutory Authority: O.C.G.A. §§ 7-3-11, 7-3-12, 7-3-15, and 7-3-51.