

# STATE OF GEORGIA DEPARTMENT OF BANKING AND FINANCE



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*BRIAN P. KEMP  
GOVERNOR*

*KEVIN HAGLER  
COMMISSIONER*

*SPECIAL EDITION  
IMPORTANT NOTICE  
PROPOSED RULEMAKING*

**July 17, 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, 7-3-51, 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 **Monday, August 17, 2020**. 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](mailto: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 11:00 a.m. on Wednesday, August 19, 2020**, 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 **Wednesday, August 19, 2020**.

## **2020 Rules and Regulations**

### **Proposed Changes: Synopsis, Purpose and Background**

On June 30, 2020, Governor Kemp signed Senate Bill 462, the Georgia Installment Loan Act (“Act”), into law. The Act went into effect on July 1, 2020, and it transfers the regulation of consumer installment loans of \$3,000 or less (“installment loans”) from the Office of the Insurance Commissioner to the Department of Banking and Finance (“Department”).

The primary motivation in transferring the regulation of installment loans to the Department was to obtain efficiencies in the regulation of the industry. As a result, the Act makes numerous statutory changes to the regulatory and administrative processes that apply to the industry. In order to achieve these efficiencies and have rules and regulations that are consistent with the statutory revisions found in the Act, the Department has created a new regulatory framework for the industry. It is the understanding of the Department that contemporaneously with the issuance of these proposed rules, the Office of the Insurance Commissioner will be issuing proposed rules that eliminate most, if not all, of the rules and regulations specifically related to installment lenders. Below is a synopsis of the Department’s proposed rules.

#### **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 sets forth the amount of certain application, renewal, and investigation fees for installment lenders. The proposed amendment also moves existing language indicating that outstanding obligations to the Department must be satisfied prior to the Department issuing any approvals to clarify that the language applies to all non-depository licensees.

#### **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 sets forth the examination fees that will be charged to installment lender licensees.

#### **80-5-1-.08 Levy, Collection, and Remittance of Tax on Interest Paid to Installment Lenders.**

The proposed rule sets forth the time, manner, and method of the payment of the tax on the interest charged on loans as well as sets forth the interest and penalties for the late or fraudulent remittance of the tax.

#### **80-14-1-.01 Place of Business Requirements; Convenience and Advantage of Community.**

The proposed rule provides that a licensee can conduct business from a physical location in this state only if such location has been approved by the Department. In addition, the proposed rule sets forth information that must be submitted and the factors the Department will take into

consideration in evaluating whether a location serves the convenience and advantage of the community. The proposed rule also details when a location will be considered a branch of a licensee and when the operation of a location will not be considered a branch but, instead, will require an independent installment loan license. Finally, the proposed rule provides that licensees must provide the Department with a current mailing address as well as the contact person to resolve consumer complaints.

#### **80-14-1-.02 Location Managers.**

The proposed rule provides that the Department must approve each location manager and sets forth the standards that a location manager must satisfy.

#### **80-14-1-.03 Employee Background Checks; Covered Employees.**

The proposed rule provides that licensees must conduct criminal background checks on employees that are engaged in the installment lending business and sets forth the job duties that indicate an employee falls within that category.

#### **80-14-1-.04 Advertising Requirements.**

The proposed rule provides that certain information must be contained in advertisements and precludes advertisements from being false, misleading, or deceptive. The proposed rule also provides that licensees must maintain samples of all advertisements. Finally, the proposed rule precludes the use of simulated checks.

#### **80-14-2-.01 Location Requirement; Examinations.**

The proposed rule sets forth where licensees may maintain books and records and the method of providing access to such records to the Department. The proposed rule also provides that the Department has the ability to examine any person that purports to satisfy an exemption from licensure.

#### **80-14-2-.02 Minimum Requirements for Books and Records.**

The proposed rule details the minimum books, accounts, and records each licensee is required to maintain.

#### **80-14-2-.03 Installment Loan Transaction Journal.**

The proposed rule provides that each licensee must maintain a current installment loan transaction journal at its principal place of business and details the information that must be contained in the loan transaction journal.

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

The proposed rule provides that licensees must maintain a loan file for each borrower and sets forth the manner and method in which the loan file must be maintained. In addition, the proposed rule details the minimum information that must be contained in each loan file.

#### **80-14-3-.01 Administrative Fines.**

The proposed rule establishes certain fines for violations of the Act and the Department's rules but provides that the Department can waive or reduce a fine based on certain facts and circumstances. The proposed rule also provides that fines are due within 30 days and must be paid prior to the Department issuing any approval. Finally, the proposed rule provides that the Department has the ability to take additional administrative action in addition to the imposition of fines.

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

The proposed rule sets forth the criteria that must be satisfied for a natural person to meet the employee exemption from the licensure requirement. The proposed rule also provides that a natural person that makes five or fewer installment loans in a calendar year and satisfies certain other requirements is not required to obtain a license under the Act.

#### **80-14-4-.02 Restrictions on Employment and Licensing.**

The proposed rule sets forth limitations on employing individuals that have been subject to administrative actions, been convicted of a felony, or been an owner, director, or executive officer of a licensee that had its license revoked or suspended. The proposed rule also defines the term "agent" for purposes of O.C.G.A. §§ 7-3-31 and 7-3-42 and the term "misrepresentation" for purposes of O.C.G.A. §§ 7-3-31 and 7-3-43(b)(1).

#### **80-14-4-.03 Verification of Lawful Presence Affidavit.**

The proposed rule provides that the verification of lawful presence affidavit must be provided by an owner or executive officer of a licensee and that a replacement affidavit must be provided if the individual that executed the original affidavit is no longer in the same position at the licensee.

#### **80-14-4-.04 Nationwide Multistate Licensing System and Registry.**

The proposed rule provides that all original license applications and all renewal applications must be submitted through NMLS. The proposed rule also sets forth the timing of the submission of renewal applications. In addition, the proposed rule provides that licensees and the control persons of licensees must keep the information in NMLS current by updating the required information within ten (10) days of the underlying change. The proposed rule also creates a process for a licensee to challenge any information entered by the Department in

NMLS. Finally, the proposed rule provides that licensees must submit quarterly loan reports via NMLS.

#### **80-14-4-.05 Transition to Department.**

The proposed rule provides that licensees will be afforded a transition period through October 15, 2020, to comply with certain aspects of the felony prohibition provision, the approval of location managers requirement, the surety bond requirement, and the participation in and submission of documents through NMLS. In addition, the proposed rule provides that licensees will be afforded a transition period through December 31, 2020, to comply with certain aspects of the background check requirement and the advertising requirement.

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

The proposed rule provides that every installment loan must be pursuant to a written loan contract, the loan contract shall contain certain required disclosures, consumers shall be provided written itemized statements that contain certain identified information, and consumers shall be provided documentation about the maximum amount of payments to be made under the contract. The proposed rule also sets forth certain practices that are prohibited in the making of an installment loan. In addition, the proposed rule provides that only credit life and credit accident and sickness insurance can be required by a licensee but that any and all insurance sold by a licensee is subject to applicable insurance laws and regulations. The proposed rule also permits the remote originating and closing of installment loans by a licensee. In addition, the proposed rule provides that if a loan is made in conjunction with any item, service, or commodity the installment lender is required to make certain disclosures indicating that the purchase of such item, service, or commodity is not required in order to obtain such loan. Finally, the proposed rule provides that consumers shall be provided a written receipt for each payment made on the loan.

#### **80-14-5-.02 Maintenance Charges.**

The proposed rule provides that a licensee may charge a monthly maintenance charge and sets forth the mechanism for calculating the maintenance charge as well as calculating the maintenance charge refund in the event of refinancing, prepayment, or any other event that causes the loan to be satisfied prior to its scheduled maturity date. The proposed rule also sets forth the disclosures that must be provided in the loan contract and on the account record related to maintenance charges.

#### **80-14-5-.03 Closing, Convenience, and Other Fees.**

The proposed rule provides the conditions under which a licensee can charge a closing fee authorized by O.C.G.A. § 13-1-14, a convenience fee authorized by O.C.G.A. § 13-1-15, and late charges under O.C.G.A. § 7-3-14(4). The proposed rule also provides that fees charged by an

unaffiliated third-party to negotiate a payment instrument are not prohibited by the Act. Finally, the proposed rule provides the mechanism to calculate the refund or credit to a consumer when an installment loan is refinanced.

**80-14-5-.04 Unsolicited Live Checks.**

The proposed rule permits licensees to issue unsolicited “live checks” to potential consumers so long as the unsolicited check contains certain identified disclosures and is not offered in conjunction with insurance or other ancillary products. The proposed rule also provides that licensees must have in place a system that will only permit credit worthy individuals to receive live checks and a system to protect the intended recipient in the event of fraudulent conversion of the live check. Finally, the proposed rule places geographic limitations on the issuance of unsolicited live checks.

**80-14-5-.05 Debt Collection.**

The proposed rule provides that licensees, employees, and agents of licensees must comply with O.C.G.A. § 7-3-33. The proposed rule also provides that non-employee debt collectors retained by a licensee must comply with the Fair Debt Collection Practices Act.

## CHAPTER 80-5-1

### SUPERVISION, EXAMINATION, REGISTRATION, AND INVESTIGATION FEES; ADMINISTRATIVE LATE FEES

80-5-1-.02	License and Supervision Fees for Check Cashers, Payment Instrument Sellers, Money Transmitters, Representative Offices, <del>and</del> Mortgage Lenders, <del>and</del> Mortgage Brokers, <del>and</del> Installment Lenders; 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-.08	Levy, Collection, and Remittance of Tax on Interest Paid to Installment Lenders

#### **80-5-1-.02 License and Supervision Fees for Check Cashers, Payment Instrument Sellers, Money Transmitters, Representative Offices, ~~and~~ Mortgage Lenders, ~~and~~ 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 license, investigation, registration, and supervision fees, late fees and assessed civil penalties must be paid prior to renewal of the annual license or registration, reinstatement of a license or registration, reapplication for a license or registration or any other approval from the Department.~~

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

~~(h)~~ Applicants for approval to acquire directly or indirectly ten percent (10%) or more of the voting shares of a corporation or ten percent (10%) or more of the ownership of any other

entity licensed to conduct business as a mortgage lender and/or a mortgage broker under O.C.G.A. Article 13 (otherwise called change of control) shall pay a nonrefundable investigation, application and processing fee of five hundred dollars (\$500).

(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 hundred dollars (\$500). An annual renewal fee of five hundred dollars (\$500) 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.

(67) 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.

Statutory 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, ~~7-1-1001~~, 7-1-1004, 7-1-1005, 7-3-20, and 7-3-32.

**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		0	0.001800	* 0
	1,700,000			
1,700,000		3,060	0.000230	1,700,000
	15,000,000			
15,000,000		6,119	0.000190	15,000,000
	85,000,000			
85,000,000		19,419	0.000100	85,000,000
	185,000,000			
185,000,000		29,419	0.000095	185,000,000
	915,000,000			
915,000,000		98,769	0.000085	915,000,000
	1,825,000,000			
1,825,000,000		176,119	0.000072	1,825,000,000
	5,470,000,000			
5,470,000,000		438,559	0.000056	5,470,000,000
	18,240,000,000			
18,240,000,000		1,153,679	0.000050	18,240,000,000
	36,485,000,000			
36,485,000,000		2,065,929	0.000040	36,485,000,000
	45,000,000,000			
45,000,000,000		2,406,529	0.000035	45,000,000,000
	57,000,000,000			
57,000,000,000		2,826,529	0.000030	57,000,000,000
	92,000,000,000			
92,000,000,000		3,876,529	0.000025	92,000,000,000
	130,000,000,000			
130,000,000,000		4,826,529	0.000023	130,000,000,000
	180,000,000,000			
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 shall pay an investigation fee of \$1,250 for each application. Simple re-designations of existing bank locations require only prior notification in writing. Branch Offices established under the notice procedure shall pay a fee of \$500.
- (b) Applicants for approval of new bank, trust company, state savings or mutual savings bank, or savings and loan 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.

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

**80-5-1-.08 Levy, Collection, and Remittance of Tax on Interest Paid to Installment Lenders.**

(1) A tax shall be paid on a semiannual basis on all interest charged on loans made under Chapter 3 of Title 7 (Georgia Installment Loan Act). A licensee may report such tax on interest either on a "cash basis" or on an "accrual basis" as those terms are defined in subsection (b). However, once a licensee has made such an initial election, such basis shall not be changed without the prior written approval of the Commissioner, with any such approved change becoming effective at the commencement of the next semiannual reporting period.

(2) A licensee shall report this tax by use of one of the following methods:

(a) "Cash Method" is based on actual interest charged during the month as reported in the daily cash report. The charges of interest shall be increased by recoveries of interest on accounts previously written off and the interest may be reduced by interest on accounts to be presently written off and interest being refunded on accounts prepaid by cash, renewal, and refinancing. The net interest is subject to the tax.

(b) "Accrual method" is based principally on collections during the month of accounts under the Act. An accurate percentage comparison of interest charged to the gross loan is obtained by dividing the outstanding loans at the beginning of the month into unearned interest at the beginning of the month. The percent obtained is then multiplied by the collections for the month. The total obtained is subject to be taxed.

(3) The taxes payable under the provisions of subsection (a) shall be payable to the Department by the licensee on a semiannual basis. More specifically, such taxes for the period January 1 through June 30 of each year shall be remitted to the Department no later than the first business day of September of each year and such taxes for the period July 1 through December 31 of each year shall be remitted to the Department no later than the first business day of March of each year. A return indicating the amount of the tax, the method of calculation, and such other information as may be required by the Department shall accompany the taxes remitted. The taxes and the corresponding return shall be remitted to the Department through its online reporting and payment system. In the event that any licensee fails to timely remit taxes along with the corresponding return via the online reporting and payment system, the unpaid tax shall bear interest at the rate of one percent (1%) per month from the date the tax is due until the date the tax is paid, and there shall be added to the tax a penalty equivalent to twenty-five percent (25%) of the tax, or not less than five dollars (\$5). In the event that any licensee fraudulently remits the incorrect tax, there shall be added to the tax a penalty equivalent to fifty percent (50%) of the tax, or not less than five dollars (\$5).

Statutory Authority: O.C.G.A. §§ 7-3-16, 7-3-17, and 7-3-18.



## CHAPTER 80-14-1

### PLACE OF BUSINESS, ADVERTISING, AND OTHER REQUIREMENTS

<u>80-14-1-.01</u>	<u>Place of Business Requirements; Convenience and Advantage of Community.</u>
<u>80-14-1-.02</u>	<u>Location Managers.</u>
<u>80-14-1-.03</u>	<u>Employee Background Checks; Covered Employees.</u>
<u>80-14-1-.04</u>	<u>Advertising Requirements.</u>

#### 80-14-1-.01 Place of Business Requirements; Convenience and Advantage of Community.

- (1) A licensee shall not engage in the business of installment lending at a location in this state unless the licensee has first received written approval from the Department.
- (2) The "main office" is the physical location indicated on the license application or amendments thereto as the principal place of business, where the books and records are kept.
- (3) A "branch" shall be any physical location, other than the principal place of business, where a licensee engages in the business of installment lending.
- (4) For the main office and each proposed branch office, an applicant or licensee shall provide information establishing that approval of the proposed location will serve the convenience and advantage of the community. Such information shall include but is not limited to the following:
  - (a) An explanation as to whether the community will benefit from the applicant or licensee operating in the location;
  - (b) An explanation as to whether the community is presently offered this service and an estimate of the number of people not presently served;
  - (c) Statistics related to the growth of the community in relation to each of the following: population, retail stores, industry, industry payroll, retail sales, and income per capita;
  - (d) A projection of the growth of the proposed location for the first three years of operation, including the number of accounts, outstanding amounts, and source of customers;
  - (e) A diagram of the immediate community indicating the location of any currently operating installment loan licensees, sales finance companies, banks, credit unions, savings and loan institutions, and the proposed office; and,
  - (f) Other information relevant to the Department's consideration of the proposed location.
- (5) Factors to be considered by the Department in making a determination as to whether a proposed location will serve the convenience and advantage of the community include but are not limited to the following:
  - (a) Whether the service offered will be responsive to the needs and convenience of borrowers and conducive to economic progress;

- (b) The current economic condition or growth potential of the market of the proposed location, such that there does or will exist a volume of business for which the installment lender can realistically compete, what portion of that business the installment lender could acquire, and whether that portion is sufficient to generate a profit;
- (c) The lending opportunity for the proposed location as indicated by population, employment, residential and commercial construction, sales, company payrolls, businesses established, geographic and environmental restrictions to further development, and other relevant indicators; and
- (d) Whether the proposed location will result in a better matching of source and needs of funds, thereby providing the basis for improved customer service.
- (6) Notwithstanding Paragraph 4 of this rule, the Department may waive the requirement for information regarding the convenience and advantage of the community if a licensee proposes to relocate an existing approved main office or branch office within the same community; however, the proposed relocation remains subject to prior written approval by the Department.
- (7) A location, including a personal residence, shall be considered a branch of a licensee requiring approval for purposes of the Georgia Installment Loan Act (“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 or any other books and records required by the Act or Department rules are located at the location; or
  - (d) The licensee directly or indirectly reimburses for rent, utility bills or other expenses incurred for use of a location as a branch.
- (8) 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 a separate entity that may be referred to as a "net branch," and it is an independent business or installment loan 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, including the branch manager, do not meet the requirements for exemption from licensure in O.C.G.A. § 7-3-4(b)(5) 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.

(9) An unstaffed storage facility shall not constitute a branch.

(10) The mailing address of a licensee 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 is responsible for keeping the Department informed of any changes in this mailing address.

(11) Each licensee must keep the Department informed of the name, telephone number, and email address of the current contact person for consumer complaints, who is available and has authority to investigate and resolve questions and complaints from consumers which have come to the Department for resolution.

Statutory Authority: O.C.G.A. §§ 7-3-22, 7-3-32

### **80-14-1-.02 Location Managers.**

(1) A "location manager" shall mean an individual who supervises daily activities in Georgia of a licensee, whether at a main office or branch as defined in Rule 80-14-1-1.01, and regardless of job title.

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

(3) The Department shall conduct a background check, obtain a credit report, and require such other pertinent information to satisfy itself that the location manager will operate the location responsibly and in compliance with the laws and rules of this state.

Statutory Authority: O.C.G.A. § 7-3-32.

### **80-14-1-.03 Employee Background Checks; Covered Employees.**

- (1) As required by O.C.G.A. § 7-3-42(d), applicants and licensees must complete background checks on all covered employees, as defined in O.C.G.A. § 7-3-3(2). Employees of an applicant or licensee who are not engaged in the installment loan business are not covered employees. Background checks on all covered employees must be completed and found satisfactory by the applicant or licensee prior to the initial date of hire.
- (2) For purposes of O.C.G.A. § 7-3-42, an employee of a licensee is engaged in the installment loan business if he or she performs any of the following duties **for a Georgia consumer**:

  - (a) taking a loan application or offering or negotiating terms of an installment loan;
  - (b) entering, deleting, or verifying any information on an installment loan related document;  
or,
  - (c) communicating with a consumer regarding a **specific** installment loan, excluding communication by a third party for purposes of debt collection.
- (3) Applicants' and licensees' requests for background checks are handled by the Georgia Crime Information Center (GCIC) following their rules and regulations as well as O.C.G.A. § 35-3-34. Background checks must be full GCIC checks following that agency's rules and regulations and must not have any time period limitations or restrictions in the search criteria. Any fees charged by GCIC for processing background checks must be paid by the applicant or licensee. The background checks may be arranged for through a local law enforcement office, so long as the background check is done by GCIC.

Statutory Authority: O.C.G.A. §§ 7-3-3 and 7-3-42.

### **80-14-1-.04 Advertising Requirements.**

Any advertisement of an installment loan that is subject to regulation under the Georgia Installment Loan Act ("Act") and that is made, published, disseminated or circulated in this state shall comply with the requirements set forth below.

- (a) Advertisements for installment loans shall not be false, misleading, or deceptive.
- (b) All solicitations or advertisements, including business cards and websites, for installment loans disseminated in this state by persons required to be licensed under the Act shall contain the licensee's name, which shall conform to a 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.
- (c) For purposes of this Rule, "advertisement" means material used or intended to be used to induce the public to apply for an installment loan. Such term shall include any printed or

published material, audio or visual material, website, or descriptive literature concerning an installment loan subject to regulation under the Act, 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 installment loan 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.

(d) Every installment lender required to be licensed shall maintain a record of samples of all of its advertisements, including commercial scripts of all radio and television broadcasts, for examination by the Department.

(e) No licensee shall use any advertising in the form of a simulated check or other negotiable instrument. "Simulated check or other negotiable instrument" means any document that resembles but is not a check or other negotiable instrument and is used for the purpose of soliciting a customer for an installment loan.

Statutory Authority: O.C.G.A. §§ 7-3-10, 7-3-30(a)(3).

## CHAPTER 80-14-2

### BOOKS AND RECORDS

<u>80-14-2-.01</u>	<u>Location Requirement; Examinations.</u>
<u>80-14-2-.02</u>	<u>Minimum Requirements for Books and Records.</u>
<u>80-14-2-.03</u>	<u>Installment Loan Transaction Journal.</u>
<u>80-14-2-.04</u>	<u>Installment Loan Files.</u>

#### 80-14-2-.01 Location Requirement; Examinations.

Each installment lender required to be licensed under the Georgia Installment Loan Act shall maintain a principal place of business on record with the Department 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. § 7-3-4 to verify that the person qualifies for the exemption from licensure.

Statutory Authority: O.C.G.A. §§ 7-3-30 and 7-3-40.

#### 80-14-2-.02 Minimum Requirements for Books and Records.

Each licensee shall maintain the following books, accounts, and records:

- (a) Copies of all disclosure documents required by Rule Chapter 80-14-5;
- (b) Samples of advertisements as required by Rule 80-14-1-.04;
- (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 installment lending business of the licensee or registrant and are not prohibited from being disclosed to the Department by state or federal law;
- (e) Copies of reports required to be prepared and/or submitted by the licensee to any agency, division, or corporate instrumentality of the United States, the State of Georgia or any other state, which reports pertain to the installment lending business of the licensee and are not prohibited from being disclosed to the Department 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 its agent on behalf of individuals employed by the licensee in the installment lending business of the licensee;

- (g) A cash book or daily report for each approved location in which all receipts and disbursements of any amount shall be entered. Separate spaces shall be provided for amounts received or charged as interest, fees, insurance premiums, recording fees and any other receipts or disbursements made by the licensee. All such entries shall be made on the exact date on which they occur. This cash book shall be balanced daily. This paragraph shall not prevent licensees from closing their books in the late afternoon, commonly known as providing for "late drawer" payments, so long as entries of loans and collections are made on their exact date.
- (h) A general ledger which shall be posted at least monthly containing all assets, liabilities, capital, and income and expense accounts. If the licensee has a general ledger reserve account for bad debts, all recoveries or collections on accounts previously charged off shall be credited to this account.
- (i) All bank statements and bank reconciliations records which pertain to the installment lending business of the licensee;
- (j) An audit of its books and records performed at least annually by independent public accountants in accordance with generally accepted auditing standards or, alternatively, a review of its books and records performed at least annually by independent public accountants in accordance with generally accepted accounting principles.
- (k) Copies of all credit report bills received from all credit reporting agencies;
- (l) 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 NMLS Consumer Access to verify eligibility for employment with such review of the Department's public records taking place prior to the date of hire; and
- (m) Copies of all reports required to be filed with the Department or the Nationwide Multistate Licensing System and Registry, 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 such reports; and
- (n) Copies of any required notifications required to be made to the Department pursuant to O.C.G.A. § 7-3-31(a) and (b) and supporting documentation.

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

### **80-14-2-.03 Installment Loan Transaction Journal.**

- (1) Each licensee shall maintain a journal of installment loan transactions which shall include, at a minimum, the following information:

(a) Full name of **the** borrower and any co-borrowers;

(b) Loan Number;

(c) Date of **the** loan;

(d) Amount of **the** loan; and

(e) Due date of **the** loan.

(2) A complete installment loan transaction journal shall be maintained in the principal place of business. The journal shall be kept current. Entries shall be organized by chronological order by date of **the** loan. Records may be kept at an approved branch office but the principal place of business must have a current journal updated no less frequently than every seven (7) days. The failure to initiate an entry to the journal within seven (7) business days from the date of the occurrence of the event required to be recorded in the journal shall be deemed a failure to keep the journal current.

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

#### **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)

(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.

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

## CHAPTER 80-14-3

### ADMINISTRATIVE FINES AND PENALTIES

80-14-3-.01 Administrative Fines.

#### 80-14-3-.01 Administrative Fines.

- (1) The Department establishes the following fines for violation of the Georgia Installment Loan Act ("Act") or its rules. Except as otherwise indicated, these fines apply to any person who is acting as an installment lender and any licensee under the Act. The Department, at its sole discretion, may waive or reduce 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) In addition to any fines levied by the Department, the recipient of the fine may be subject to additional administrative actions for the same underlying activity.
- (4) Operating Without Proper License. Any person who acts as an installment lender prior to receiving a current license required under the Act, or who acquires an unlicensed installment loan business, 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.
- (5) Failure to Obtain Approval from the Department of Change in Ownership or Change in Control. Any licensee or other person who fails to obtain the Department's prior written approval of a change in 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. § 7-3-32 shall be subject to a fine of one thousand dollars (\$1,000).
- (6) Failure to Notify of Change in Executive Officers. 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. § 7-3-32 and shall be subject to a fine of one thousand dollars (\$1,000).
- (7) Unapproved Locations. In addition to the application, fee, and approval requirements of O.C.G.A. § 7-3-32(a), any licensee who operates an unapproved branch office shall be subject to a fine of five hundred dollars (\$500) per unapproved branch office operated.
- (8) Location Manager Approval. Any licensee shall be subject to a fine of five hundred dollars (\$500) for operation of a location with an unapproved location manager. No such fine shall be levied while Department approval is pending if timely application for approval is made pursuant to Rule 80-14-1-.02.

- (9) Felons. Any licensee that hires or retains a covered employee who is a felon as described in O.C.G.A. § 7-3-42(a), when such covered employee has not complied with the remedies provided for in O.C.G.A. § 7-3-42(a) for each conviction before such employment, shall be subject to a fine of five thousand dollars (\$5,000) for each such covered employee.
- (10) 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.
- (11) Disqualified Persons. Any licensee who employs any person subject to a final cease and desist order or license revocation within five (5) years of the date such person was hired pursuant to O.C.G.A. § 7-3-43(d) and (e) shall be subject to a fine of five thousand dollars (\$5,000) per such employee.
- (12) Failure to Review Public Records Prior to Hiring. Any licensee who fails to examine the Department's public records on NMLS Consumer Access to determine if a job applicant is subject to an order set forth in O.C.G.A. § 7-3-43(d) or (e) 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.
- (13) Prohibited Acts. Any licensee who violates the provisions of O.C.G.A. § 7-3-43 shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation of O.C.G.A. § 7-3-43.
- (14) Failure to Timely Report Certain Events. Any licensee who fails to report any of the events enumerated in O.C.G.A. § 7-3-31(a), 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.
- (15) 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 as specified by the Department within the designated time periods shall be subject to a fine of one hundred dollars (\$100) for each such occurrence.
- (16) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensee 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 licensee 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.

- (17) 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.
- (18) Failure to Submit to Examination or Investigation. Any licensee that refuses to permit an investigation or examination of books, accounts, and records after a reasonable request by the Department shall be subject to a fine of five thousand dollars (\$5,000). Refusal shall require at least two attempts by the Department to schedule an examination or investigation.
- (19) 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. § 7-3-30 and Rule Chapter 80-14-2, such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each violation of a books and records requirement listed in Rule Chapter 80-14-2.
- (20) Maintenance of Loan Files. Any licensee who fails to maintain a loan file for each installment loan borrower as required by Rule 80-14-2-.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.
- (21) Failure to Provide Loan Contract. In the event a licensee does not provide a consumer with a copy of the loan contract or written itemized statement as required by O.C.G.A. 7-3-15 and Rule 80-14-5-.01, the licensee shall be subject to a fine of one thousand dollars (\$1,000) per transaction where the loan contract or itemized statement was not provided.
- (22) Failure to Provide Receipt. In the event a licensee does not provide a consumer with a written receipt as required in Rule 80-14-5-.01(7), the licensee shall be subject to a fine of one hundred dollars (\$100) per payment for which the receipt was not provided.
- (23) Failure to Post Required License. Any licensee that fails to post a copy of its license in each location where an installment loan business is conducted shall be subject to a fine of five hundred dollars (\$500) for each instance of non-compliance.

(24) Advertising. Any licensee who violates the advertising requirements in O.C.G.A. § 7-3-10 or Rule 80-14-1-.04 shall be subject to a fine of five hundred dollars (\$500) for each violation of law or rule.

(25) Unsolicited Live Checks. Any licensee who offers an unsolicited live check in a manner that violates any of the conditions of Rule 80-14-5-.04 shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence, **which in no event shall exceed fifty thousand dollars (\$50,000).**

(26) Debt Collection Practices. In the event any licensee, or employee or agent thereof, willfully uses any unreasonable collection tactics in violation of O.C.G.A. § 7-3-33 or Rule 80-14-5-.05(2), such licensee shall be subject to a fine of five hundred dollars (\$500) per occurrence.

(27) 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.

Statutory Authority: O.C.G.A. §§ 7-3-45 and 7-3-46.

## CHAPTER 80-14-4

### LICENSING

<u>80-14-4-.01</u>	<u>Licensing Requirements and Exemptions.</u>
<u>80-14-4-.02</u>	<u>Restrictions on Employment and Licensing.</u>
<u>80-14-4-.03</u>	<u>Verification of Lawful Presence Affidavit.</u>
<u>80-14-4-.04</u>	<u>Nationwide Multistate Licensing System and Registry.</u>
<u>80-14-4-.05</u>	<u>Transition to Department.</u>

#### **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 or exemptee applies only to natural persons who meet all of the following criteria:
  - (a) An employee must be employed by only one licensee or exemptee and work exclusively for that person;
  - (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' 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) 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.

#### **80-14-4-.02 Restrictions on Employment and Licensing.**

- (1) No person who has been an owner, director, trustee, or executive officer of a licensee that has had its license revoked, denied, or suspended, may perform any of those roles at another licensee for five years from the date of the final order.
- (2) Felony convictions; restrictions on the employee and the licensee:

- (a) Licensees are responsible for ensuring that no convicted felons are covered employees or direct the affairs of their business.
  - (b) O.C.G.A. § 7-3-42 provides for remedies to cure a felony conviction. These remedies must be completed and in place prior to employment. Hiring or continuing to employ a covered employee with an unremedied felony conviction subjects a licensee to revocation of its license.
  - (c) For purposes of O.C.G.A. §§ 7-3-31 and 7-3-42, “agent” means any person who appears to the public or to a regulatory agency as acting for or on behalf of a licensee to the extent the licensee is engaged in the business of making installment loans.
  - (d) If a licensee discovers that a covered employee or director/officer is a felon at the time of hire or subsequently becomes a felon and has not satisfactorily cured the conviction, the violation of O.C.G.A. § 7-3-42 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. §§ 7-3-4 and 7-3-50. The licensee employer is also in violation of O.C.G.A. § 7-3-4 in such circumstance.
  - (e) 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. § 7-3-42 shall become final in 30 days without a hearing pursuant to O.C.G.A. § 7-3-45. Such a person must show within those 30 days, by certified court documents that the record is erroneous, or, that the cure provisions in O.C.G.A. § 7-3-42 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 licensed or against employees of those parties. All of the provisions of O.C.G.A. §§ 7-3-45 and 7-3-46, including injunction, apply to actions against all such persons.
- (4) For purposes of O.C.G.A. §§ 7-3-31 and 7-3-43(b)(1), “misrepresentation” means making a false statement of a substantive fact or intentionally engaging in any conduct which leads to a false belief which is material to the transaction.

Statutory Authority: O.C.G.A. §§ 7-3-4, 7-3-42, 7-3-43, 7-3-45, 7-3-46, and 7-3-47.

#### **80-14-4-.03 Verification of Lawful Presence Affidavit.**

- (1) Pursuant to O.C.G.A. § 50-36-1, the Department is required to obtain an affidavit verifying the lawful presence of every natural person that submits an application for a license as an installment lender on behalf of an individual, business, corporation, partnership, limited liability company, or any other business entity. For businesses, corporations, partnerships, limited liability companies, and other business entities (collectively "company applicant"), only an owner or executive officer that is authorized to act on behalf of the company applicant is authorized to submit the required signed and sworn affidavit.

(2) In the event the individual that executed the lawful presence affidavit on behalf of the company applicant is no longer an owner or executive officer of the licensee, the licensee must notify the Department within ten (10) business days following the date of the occurrence and provide the Department with an affidavit from a current owner or executive officer verifying his or her lawful presence on behalf of the licensee. The failure to disclose within ten (10) business days that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee or to timely submit a new affidavit from a current owner or executive officer may subject the license to revocation, suspension, and other administrative action.

Statutory Authority: O.C.G.A. § 50-36-1.

#### **80-14-4-.04 Nationwide Multistate Licensing System and Registry.**

(1) License issuance and renewals.

(a) All applications for new or renewal licenses must be made through the Nationwide Multistate Licensing System and Registry ("NMLSR"). Fees for new applications include an initial Department investigation fee and the appropriate application fee. Applications for new licenses 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 nonrefundable.

(b) All licenses issued 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 license fees must be received on or before December 1 of each year or the renewal applicant will be assessed a late fee as set forth in Rule 80-5-1-.02. A renewal application is not deemed received until all required information and corresponding fees have 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 will expire. Unless a proper renewal application has been received, any license which is not renewed on or before December 31 will require the renewal applicant to file a new license application in order to conduct business as an installment lender in the State after that date.

(2) The responsibility of applicants and licensees to update information in NMLSR.

(a) It shall be the sole responsibility of each applicant for a license and each licensee to keep current at all times its information on the NMLSR. Amendments to any information on file with the NMLSR must be made by the applicant or licensee within ten (10) business days of the date of the event necessitating the change. The Department shall have no responsibility for any communication not received by an applicant or licensee due to its failure to maintain current contact information on the NMLSR as required.



(b) Amendments to any responses to disclosure questions by an applicant for a license or a licensee must be made within ten (10) business days following the date of the event necessitating the change. Failure by an applicant for a license to timely update the applicant's responses to disclosure questions may be considered a violation of O.C.G.A. § 7-3-43(6).

(i) It shall be the responsibility of each applicant for a license and each licensee to ensure that its control persons keep current at all times their information on the NMLSR. Amendments to any information on file with the NMLSR must be made by the control person within ten (10) business days of the date of the event necessitating the change. For purposes of this Rule, control person means any individual that has the power, either directly or indirectly, to direct or cause the direction of management and policies of an applicant or licensee, whether through the ownership of voting or nonvoting securities, by contract, or otherwise.

(ii) Amendments to any responses to disclosure questions by a control person must be made within ten (10) business days following the date of the event necessitating the change. Failure by a control person of an applicant for a license to timely update the control person's responses to disclosure questions may result in the denial of the application. In the case of a licensee, failure by a control person to timely update any disclosure information may result in the revocation of its license.

(3) A licensee may challenge information entered by the Department into the NMLSR. All challenges must be sent to the Department in writing addressed to the attention of the Deputy Commissioner of Non-Depository Financial Institutions. Once received, the Department shall consider the merits of the challenge raised and provide the licensee with a written reply that shall be the Department's final decision regarding the challenge.

(4) Each licensee shall submit to the Department on a quarterly basis, via the NMLSR or other means specified by the Department, an installment loan report in a form and manner prescribed by the Department which shall include, but not be limited to, information regarding installment loan activity. The loan report shall be submitted to the Department forty-five (45) days after the end of each calendar quarter. Licensees submitting quarterly loan reports to the Department are certifying to the material accuracy and validity of the information as submitted.

Statutory Authority: O.C.G.A. §§ 7-3-20, 7-3-22, and 7-3-30.

#### **80-14-4-.05 Transition to Department.**

(1) Installment Lenders licensed as of July 1, 2020, shall be afforded a transition period through [October 15, 2020](#), to demonstrate compliance with the following requirements:

(a) Restrictions on employment of individuals with unremedied felony convictions pursuant to O.C.G.A. § 7-3-42 and Rule 80-14-4-.02. The required cure for any disqualifying felony

convictions must be completed prior to the date of initial hire for any director, trustee, agent, owner, executive officer, or covered employee hired or rehired after July 1, 2020.

(b) Department approval of location managers as required by O.C.G.A. § 7-3-32 and Rule 80-14-1.02.

(c) Corporate surety bond as required by O.C.G.A. § 7-3-21.

(d) Participation in and submission of required filings through the Nationwide Multistate Licensing System and Registry as required by the Act and the Rules of the Department.

(2) Installment Lenders licensed as of July 1, 2020, shall be afforded a transition period through December 31, 2020, to demonstrate compliance with the following requirements:

(a) Background checks as required by O.C.G.A. § 7-3-42(d) and Rule 80-14-1-.03 for covered employees already employed by the licensee as of July 1, 2020. The required background checks shall be completed prior to the date of initial hire for covered employees hired or rehired after July 1, 2020.

(b) The content of business cards as required by Rule 80-14-1-.04(b).

Statutory Authority: O.C.G.A. §§ 7-3-2 and 7-3-51.

## CHAPTER 80-14-5

### DISCLOSURE, CHARGES, AND MISCELLANEOUS

<u>80-14-5-.01</u>	<u>Loan Contract, Disclosures, and Limitations.</u>
<u>80-14-5-.02</u>	<u>Maintenance Charges.</u>
<u>80-14-5-.03</u>	<u>Closing, Convenience, and Other Fees.</u>
<u>80-14-5-.04</u>	<u>Unsolicited Live Checks.</u>
<u>80-14-5-.05</u>	<u>Debt Collection.</u>

#### 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 Payments. 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. All other installment payments shall be scheduled at regular intervals in equal amounts.

(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.

### **80-14-5-.02 Maintenance Charges.**

#### Maintenance Charges

- (1) The following terms shall have the following meaning as used in this Rule unless a different meaning or construction is clearly required by the context:
- (a) "Earned maintenance charges" shall mean those maintenance charges which are applicable to those months in the term of the loan contract in which the loan has been maintained by the licensee for a period of time of one (1) or more complete months. Such earned maintenance charges shall be determined by multiplying the total number of months in the term of the loan contract in which the loan has been maintained by the licensee by the amount of the maintenance charge authorized under O.C.G.A. § 7-3-11.
  - (b) "Maintenance charges" shall mean charges by a licensee for maintaining a loan for a period of one or more months in accordance with the provisions of O.C.G.A. § 7-3-11 and this Rule.
  - (c) "Month" shall mean a complete calendar month for all loans whose contract begins as of the first day of the calendar month. For all other loans, the term month shall mean a period of thirty (30) consecutive calendar days and for the purpose of calculation of refunds under the provisions of Paragraph 5 of this Rule, the term "month" shall mean thirty (30) consecutive calendar days.
  - (d) "Unearned maintenance charges" shall mean those maintenance charges applicable to the partial month in the term of the loan contract in which the loan was maintained by the licensee for one (1) or more days but in which the loan contract was terminated prior to its scheduled maturity date on a day other than the ending day of a month as defined in this Rule.

- (2) A licensee may collect from an installment loan borrower a monthly maintenance charge as specified in O.C.G.A. § 7-3-11 for each month that such loan is maintained by the licensee and such maintenance charges shall be calculated and collected as follows:
- (a) The "total maintenance charges collectible" over the entire term of the consumer loan shall not exceed the amount obtained by multiplying the total number of months in the term of the loan contract by the monthly maintenance charge specified in the GILA except as provided in subsection (c) of this Rule.
  - (b) The "total maintenance charges collectible per installment" shall not exceed the amount obtained by dividing the "total maintenance charges collectible" as calculated in (a) above by the total number of installments contemplated in the loan contract except as provided in subsection (c) of this Rule.
  - (c) A borrower shall not be required by a licensee to pay an amount of maintenance charges at any one time which exceeds the "total amount of maintenance charges collectible per installment" as calculated in (b) above; provided that nothing contained herein shall be deemed to prohibit a licensee from collecting any earned but uncollected portion of such maintenance charges due and owed by the borrower to the licensee on previous installments of the same loan contract or from collecting any unearned maintenance charges which are otherwise due and owed by the borrower to the licensee by virtue of the application of the refund method prescribed in Paragraph 4 of this Rule.
- (3) In no event shall a licensee charge a maintenance charge to a borrower for any month in the term of the loan contract in which the loan was not maintained by the licensee and in no event shall a licensee charge a maintenance charge for maintaining a loan contract past the scheduled maturity date of the loan, regardless of the number of days such loan is maintained past the scheduled maturity date.
- (4) In the event that a discharge, refinancing, prepayment, acceleration, or any other event occurs which causes a consumer loan to terminate prior to its scheduled maturity date, the licensee shall make a refund of the amount of any unearned maintenance charges applicable to the loan contract.
- (5) Maintenance charges shall be considered as an additional charge and:
- (a) Shall not be considered in the calculation of any interest, fees, or other charges otherwise authorized by law or regulations including charges for any premiums for insurance written in connection with a consumer loan; provided, that such maintenance charges will be subject to the provisions of O.C.G.A. § 7-3-11.
  - (b) A borrower's failure to pay any maintenance charges applicable to the loan when due shall not be considered by a licensee as the occurrence of an event which causes the outstanding unpaid balance of the loan contract to become immediately due and payable by virtue of any acceleration clause or other similar clause or provision contained in the loan contract.

(6) If maintenance charges are to be charged and collected by a licensee on an installment loan contract the licensee shall be required to:

(a) Clearly, prominently, conspicuously and separately itemize in the loan contract:

i. The face amount of the contract.

ii. The total amount of maintenance charges collectible under the loan.

iii. The total amount of each payment including maintenance charges.

iv. The total of payments including maintenance charges.

(b) Provide space for and record the actual amounts of individual charges on the account record with respect to:

i. The face amount of the contract.

ii. The total amount of maintenance charges collectible under the loan.

iii. The total amount of each payment including maintenance charges.

iv. The total of payments including maintenance charges.

Statutory Authority: O.C.G.A. §§ 7-3-11, 7-3-14, and 7-3-51.

### **80-14-5-.03 Closing, Convenience, and Other Fees.**

(1) Closing Fees. In addition to any other charges authorized by the Georgia Installment Loan Act (“Act”), a licensee may collect a closing fee at the time of making a loan to the extent authorized by O.C.G.A. § 13-1-14.

(a) No licensee may collect a closing fee unless, prior to the advance of money or the extension of credit, such licensee conducted an investigation or verification of the borrower's credit history, residences, references, employment, or sources of income. Each licensee shall retain on file the procedures that the licensee uses to conduct such investigations and verifications.

(b) The amount of the closing fee shall be listed in the loan agreement after the loan fees authorized by O.C.G.A. § 7-3-11 but before the maintenance charge fee.

(2) Convenience Fees. In addition to any other charges authorized by the Act, a licensee may collect convenience fees to offset the cost of receiving payment by electronic means, to the extent authorized by O.C.G.A. § 13-1-15. If a licensee elects to calculate convenience fees based on average cost for that specific type of payment over the preceding calendar year rather



than the actual cost, the licensee shall maintain documentation supporting the calculation of the average cost.

- (3) Unaffiliated Third-Party Fees. Fees charged to a consumer by a third party unaffiliated with a licensee to negotiate a payment instrument, including but not limited to check cashing fees or automated teller machine fees, are not prohibited by the Act.
- (4) Late Charges. O.C.G.A. § 7-3-14(4) specifically provides that a licensee may charge and collect from the borrower a late or delinquent charge of \$10.00 or an amount equal to 5¢ for each \$1.00 of any installment which is not paid within five days from the date such payment is due, whichever is greater, provided that this late or delinquent charge shall not be collected more than once for the same default. Therefore, a licensee is not authorized to charge and collect a late or delinquent charge from a borrower until such time as that borrower has actually failed to pay an installment within five days after the date such payment was due. Under no circumstances is a licensee authorized to charge or collect and hold any unearned late or delinquent charge in advance, to be refunded if said installment is paid on or within five days from the date such payment is due.
- (5) Charges for Refinancing. When any debt is renewed or refinanced by any creditor, the consumer shall be entitled to a refund or credit of that unearned portion of the interest charge computed as of the date of such refinancing or renewal and pursuant to the methodology set forth in O.C.G.A. § 7-3-14.

Statutory Authority: O.C.G.A. §§ 7-3-14, 7-3-51, 13-1-14, and 13-1-15.

#### **80-14-5-.04 Unsolicited Live Checks.**

- (1) "Live check" means a negotiable check or other negotiable instrument that may be used by a consumer to activate a loan regulated by the Georgia Installment Loan Act ("Act").
- (2) The licensee must maintain in its office a system for:
  - (a) preventing the offering of an unsolicited live check to an individual who is not credit-worthy; and
  - (b) protecting the intended recipient of an unsolicited live check and the licensee in the event of the fraudulent conversion of the unsolicited live check.
- (3) Any use of an unsolicited live check must contain:
  - (a) the ZIP+4 code and the name of the county of the recipient in the address line of the live check;
  - (b) a check number or other tracking number for the loan offered on the live check;

- (c) the following statement, printed in 14 point size font boldface type on the face of the live check: "**This is a loan.**";
  - (d) the following statements printed on the face of the live check: "Cashing this check requires repayment of the loan plus potential charges. Read all terms.";
  - (e) the following statement printed **clearly and conspicuously** in the solicitation or accompanying disclosure statement: "You have the right to file a written complaint with the licensee via [mailing address or email address] and with the Department of Banking and Finance via email at [dbfgila@dbf.state.ga.us](mailto:dbfgila@dbf.state.ga.us)." and,
  - (f) the name on record with the Department, unique identifier, and telephone number of the licensee.
- (4) The terms of the loan resulting from an unsolicited live check must comply with the Act and the rules and regulations of the Department.
  - (5) The licensee may not offer or provide insurance or other ancillary products in conjunction with a loan obtained through an unsolicited live check.
  - (6) The licensee may not send an unsolicited live check to an individual who resides beyond the boundaries of a county in which the licensee has an approved location or beyond the boundaries of any contiguous county in which the licensee has an approved location. In the event a live check is negotiated by a consumer that resides outside the county in which the licensee has an approved location or resides [more than twenty-five \(25\) miles from an approved location, the licensee must provide a means for the consumer to submit payments electronically without imposing a convenience fee pursuant to O.C.G.A. § 13-1-15.](#)
  - (7) The licensee must report to the Department within ten (10) business days of the licensee having any knowledge of any suspected or confirmed fraud related to an unsolicited live check.

Statutory Authority: O.C.G.A. §§ 7-3-10 and 7-3-51.

#### **80-14-5-.05 Debt Collection.**

- (1) In addition to the requirements of O.C.G.A. § 7-3-33, each **non-employee debt collector utilized by a licensee** must comply with the requirements of the Fair Debt Collection Practices Act ("FDCPA"), 18 U.S.C. 1692 *et seq.*
- (2) Every licensee shall be presumed to know that any **employee or agent of the licensee, which includes non-employee debt collectors utilized by the licensee**, will be acting for and on behalf of the licensee in connection with the collection of any debt allegedly owed the licensee. Every

licensee shall be responsible for compliance with O.C.G.A. § 7-3-33 by the **employee or agent** in collecting or attempting to collect any debt allegedly owed to the licensee.

Statutory Authority: O.C.G.A. §§ 7-3-33 and 7-3-51.