STATE OF GEORGIA
DEPARTMENT OF
BANKING AND FINANCE

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

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SPECIAL EDITION
IMPORTANT NOTICE
PROPOSED RULEMAKING

June 1, 2022

NOTICE OF PROPOSED RULEMAKING
AND
OPPORTUNITY TO COMMENT

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

To all interested persons:

Pursuant to the provisions of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., and by the authority of O.C.G.A. §§ 7-1-61, 7-1-690, 7-1-1012, 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 **Friday, July 1, 2022**. Please send all comments to:

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

The Department shall review all comments, may contact commenters to discuss their suggestions, and, after the comment period has closed, intends on promulgating final rules. The Department will consider the proposed new rules for adoption at a meeting **at 10:00 a.m. on Thursday, July 7, 2022**, 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 **Thursday, July 7, 2022**.

2022 Rules and Regulations
Proposed Changes: Synopsis, Purpose and Background

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

The proposed amendment expressly references other rule chapters that have been enacted by the Department and revises the existing references to include all of a rule chapter as opposed to just one subject in a rule chapter. The proposed amendment also contains stylistic changes.

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

The proposed amendment revises the cross-references to Rule 80-1-1-.10 to reflect the proposed change to that rule. The proposed amendment also contains stylistic changes.

80-1-1-.08 Procedures for Other Transactions, Applications and Notices

The proposed amendment clarifies that the application process for subsidiaries applies to the creation or acquisition of a subsidiary and expressly provides for an expedited process for such qualifying applications. In addition, the proposed amendment revises the cross-references to Rule 80-1-1-.10 to reflect the proposed change to that rule. The proposed amendment also contains stylistic changes.

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

The proposed amendment provides that this rule, which deals with the general requirements for expedited processing, applies to all financial institution instead of just banks.

80-1-2-.09 Debt Cancellation Contracts and Debt Suspension Agreements

The proposed amendment provides that this rule, which currently applies to all financial institutions, will only apply to banks. This proposed rule issuance also proposes to amend Rule 80-2-7-.04 to create a companion rule on debt cancellation contracts and debt suspension agreements solely for credit unions. The proposed amendment also contains stylistic changes.

80-1-3-.04 Notification of Computer Security Incident

The proposed rule provides that if a bank or bank holding company is required to notify its federal regulator of a computer security incident, then a duplicate of such notice shall be simultaneously provided to the Department.

80-1-4-.01 Permissible Investments and Limitations

The proposed amendment increases the amount of certain asset-backed securities that can be held by a bank from fifteen to twenty-five percent of a bank's statutory capital base and modifies

the requirements around such investments. The proposed amendment also contains stylistic changes.

80-1-5-.03 Commodity Loans

The proposed amendment modifies the definition of "market value" for purposes of determining the maximum permissible commodity loan. The proposed amendment also increases the amount of the loan from 80% to 85% of market value. In addition, the proposed amendment increases the permissible duration of the loan from ten months to twelve months in order to align with the growing season.

80-1-5-.10 Real Estate Leasing

The proposed amendment provides that the aggregate limit related to real estate leasing applies equally to all banks. The proposed amendment also contains stylistic changes.

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

The proposed amendment corrects an incorrect cross-reference.

80-1-11-.01 Public Access to Records

The proposed amendment provides that the non-confidential portions of applications related to holding company acquisition and changes in control of financial institutions will be made available for public inspection. The proposed amendment also provides that the bonds filed with the Department by installment lenders are subject to public inspection.

80-1-12-.01 Dividends

The proposed amendment replaces "allowance of for loan losses" with "allowance for credit losses" to align with CECL (Current Expected Credit Losses) terminology.

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

The proposed amendment strikes certain language related to representative offices as this rule issuance seeks to move the language to proposed Rule 80-1-15-.06.

80-1-15-.06 Representative Offices

The proposed rule provides for the opening and closing of representative offices as well as set forth certain requirements for the operations of representative offices.

80-2-3-.05 Third-Party Payment Services; Other Consumer Services

The proposed amendment strikes the rule in its entirety as House Bill 891 ("HB891") eliminated the requirement that the Department approve the offering of third-party payment services by a credit union.

80-2-4-.03 Investment of Credit Union Funds in Subsidiaries

The proposed amendment strikes the reference to O.C.G.A. § 7-1-670 as HB891 struck that Code section.

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

The proposed amendment strikes "notice" from the title of the rule as a branch cannot be opened by simply providing the Department with notice.

80-2-7-.04 Debt Cancellation Contracts and Debt Suspension Agreements

The proposed amendment spells out the requirements for debt cancellation contracts and debt suspension agreements for credit unions instead of simply cross-referencing the similar rule for banks in Rule 80-1-2-.09.

80-2-8-.01 Definitions

The proposed amendment moves language from Rule 80-2-8-.02 to this rule.

80-2-8-.02 Expedited Applications for Non-Geographic Group Common Bonds

The proposed amendment sets forth the application process for a non-geographic common bond. The proposed amendment also strikes the current elements of the rule as most of these provisions have been moved to other proposed rules. However, the provision dealing with organizations having a contractual relationship with a non-geographic common bond being eligible for membership was deleted as a credit union can simply seek to have such organization added to its common bond.

80-2-8-.03 Requirements for Adding Additional Common Bond Groups to a Credit Union's Field of Membership

The proposed amendment moves language from Rule 80-2-8-.02 to this rule. The proposed amendment also clarifies that a credit union cannot amend its bylaws to add a common bond until after the Department has approved the credit union's common bond application. In addition, the proposed amendment provides that 2/3 of the Board of Directors must approve the addition of the common bond group to align with the approval requirement in O.C.G.A. § 7-1-634. The proposed amendment also eliminates the requirement that a credit union demonstrate that the proposed common bond is financially and economically viable as part of its application. Finally, the proposed amendment also contains stylistic changes.

80-2-9-.01 Investment Securities

The proposed amendment sets forth the requirements for a credit union to purchase subordinated debt. The proposed amendment is similar to the authorization for banks set forth in Rule 80-1-4-.01(8).

80-2-12-.02 Real Estate Loans

The proposed amendment permits a credit union to obtain a written estimate in conformance with federal law as part of its loan underwriting. The rule currently provides that a credit union must obtain an appraisal for all such loans. In addition, the proposed amendment contains stylistic changes.

80-2-12-.03 Participation Loans and Whole Loans

The proposed amendment clarifies that credit unions can purchase participation and whole loans from lenders, not just financial institutions, as expressly authorized by O.C.G.A. § 7-1-650(4)(D). In addition, the proposed amendment contains stylistic changes.

80-2-13-.01 Procedures for Other Transactions, Applications

The proposed rule identifies processes for certain specific credit union applications.

80-3-1-.04 Notice of Unauthorized Access to Personal Information

The proposed rule provides that in the event a licensee is required to disclose a data breach related to personal information under federal or state law, the licensee shall simultaneously provide a duplicate copy of such notice to the Department.

80-3-1-.05 Information Security Safeguards for Consumer Financial Information

The proposed rule provides that to the extent the provisions of 16 C.F.R. Part 314 (the "FTC Safeguards Rule") are applicable to a licensee, the Department shall review the licensee's efforts to comply with the provisions of the FTC Safeguards Rule.

80-3-2-.02 Net Worth

In order to demonstrate adequate financial resources, the proposed amendment provides that the Department shall review audited financial statements for established entities with the discretion to review unaudited financial statements for recently formed entities.

80-3-2-.04 Change in Control

HB891 modified O.C.G.A. § 7-1-688 to permit a currently existing licensee to acquire another licensee without filing a change in control application subject to certain identified limitations, including providing advance written notice of the transaction. The proposed amendment

requires that the required advance notice be provided at least thirty (30) days prior to the proposed acquisition. The proposed amendment also clarifies that other change in control requests shall be submitted to the Department via application.

80-3-2-.05 Notice of Change in Executive Officer

Currently, under O.C.G.A. § 7-1-687, a licensee can have a change in executive officer in the normal course of its business so long as it provides notice of such change to the Department. HB891 modified O.C.G.A. § 7-1-687 to authorize the Department to disapprove of such notice and reject the executive officer after the fact. The proposed rule sets forth the elements that must be contained in the notice and provides that Department has ninety (90) days from receipt of such notice to disapprove the change in executive officer.

80-3-2-.06 Passive Investor

HB891 provided that passive investors are not required to submit a change in control application in the event they acquire an interest of 10% or more but less than 25% of a licensee. The proposed rule sets forth the documentation that is required to qualify as a passive investor. In addition, the proposed rule provides that if adequate documentation of qualifying for a passive investor is not provided or the individual fails to continuously satisfy the passive investor requirements, then a change in control application must be submitted.

80-3-3-.01 Minimum Books and Records

The proposed amendment provides that licensees must maintain the documents required by 16 C.F.R. Part 314 (the "FTC Safeguards Rule") and proposed Rule 80-3-1-.05.

80-3-4-.01 Administrative Fines

The proposed amendment consolidates two separate fine provisions for the failure to submit to an examination. In addition, the proposed amendment creates a fine for the failure to provide the duplicate notice required by proposed Rule 80-3-1-.04. Finally, the proposed amendment contains stylistic changes.

80-3-5-.02 Nationwide Multistate Licensing System and Registry

HB891 eliminated the requirement that certain notices under O.C.G.A. §§ 7-1-687(a) and (d) be sent to the Department via certified mail or registered mail and instead provided that the notice must be provided in writing. The proposed amendment provides that these notices as well as the required notice under proposed Rule 80-3-1-.04 must be provided to the Department via the NMLSR and provides directions on the filing of such notices on NMLSR.

80-3-5-.03 International Investigative Background Report

HB891 authorizes the Department to accept international investigative background reports in certain circumstances. The proposed amendment sets forth the standards that must be satisfied by the third party that generates the report and the specific items that must be addressed in the report.

80-4-1-.01 Books and Records; Other Requirements

The proposed amendment provides that licensees must maintain the documents required by 16 C.F.R. Part 314 (the "FTC Safeguards Rule") and proposed Rule 80-4-1-.09.

80-4-1-.05 Administrative Fines and Penalties

The proposed amendment consolidates two separate fine provisions for the failure to submit to an examination. In addition, the proposed amendment creates a fine for the failure to provide the duplicate notice required by proposed Rule 80-4-1-.08. Finally, the proposed amendment contains stylistic changes.

80-4-1-.07 Nationwide Multistate Licensing System and Registry

HB891 eliminated the requirement that certain notices under O.C.G.A. §§ 7-1-705(a) and (b) be sent to the Department via certified mail or registered mail and instead provided that the notice must be provided in writing. The proposed amendment provides that these notices as well as the required notice under proposed Rule 80-4-1-.08 must be provided to the Department via the NMLSR and provides directions on the filing of such notices on NMLSR.

80-4-1-.08 Notice of Unauthorized Access to Personal Information

The proposed rule provides that in the event a licensee is required to disclose a data breach related to personal information under federal or state law, the licensee shall simultaneously provide a duplicate copy of such notice to the Department.

80-4-1-.09 Information Security Safeguards for Consumer Financial Information

The proposed rule provides that to the extent the provisions of 16 C.F.R. Part 314 (the "FTC Safeguards Rule") are applicable to a licensee, the Department shall review the licensee's efforts to comply with the provisions of the FTC Safeguards Rule.

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

The proposed amendment increases the initial license fee and annual renewal fee for money transmitters to $1,900 to align with the fee structure for payment instrument sellers. In addition, the proposed amendment increases the initial license fee and annual renewal fee for mortgage

loan originators to $200. Finally, the proposed amendment decreases the application fee and renewal fee for each location operated by an installment lender license to $300 per location.

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

The proposed amendment provides that the application fee for a credit union to acquire the majority of the assets of a bank is $5,000. In addition, the proposed amendment sets forth varying fees for credit union applications to utilize various trust powers which aligns with the fee structure for banks. The proposed amendment also provides that no fee will be charged for processing an expedited subsidiary application which aligns with the treatment for banks. Finally, the proposed amendment contains stylistic changes.

80-5-1-.07 Collection and Remittance of Per Loan Fee on Loans Made by Installment Lenders

Effective July 1, 2022, HB 891 eliminates the requirement that installment lenders pay a tax on the interest that they collect and replaces it with a per loan fee on the gross loan amount. The proposed rule sets forth the mechanism and timing for filing and paying the per loan fee, sets for the interest and penalties for the late or fraudulent remittance of the per loan fee, and defines the term gross loan amount.

80-5-1-.08 Collection and Remittance of Per Loan Fee on Loans Made by Installment Lenders Through June 30, 2022

Effective July 1, 2022, HB 891 eliminates the requirement that installment lenders pay a tax on the interest that they collect and replaces it with a per loan fee on the gross loan amount. The proposed amendment provides that the provisions in the rule applicable to the remittance of the tax apply to interest charged on all installment loans through June 30, 2022.

80-5-3-.02 Notification of Intent to Sell Annuities

The proposed amendment clarifies that the notification of intent to sell annuities must be provided to the Office of the Commissioner of Insurance pursuant to Rule 120-2-71-.03.

80-5-4-.02 Notification of Intent to Sell Insurance

The proposed amendment clarifies that the notification of intent to sell insurance must be provided to the Office of the Commissioner of Insurance pursuant to Rule 120-2-76-.03.

80-6-1-.01 Holding Companies, Generally

The proposed amendment eliminates language that could be construed as limiting the scope of Georgia law as it relates to interstate transactions involving holding companies. In addition, the proposed amendment strikes language that is addressed elsewhere in the Department's rules. Finally, the proposed amendment contains stylistic changes.

80-6-1-.02 Regular Applications

The proposed amendment strikes language in a number of paragraphs as the concepts have been moved or are addressed in proposed Rule 80-6-1-.03, 80-6-1-.04, or 80-6-1-.06. The proposed amendment also clarifies that the rule applies to applications where an existing holding company acquires 5% or more of the shares of another holding company. In addition, the proposed amendment eliminates the reference to a financial holding company as that is a structure recognized in federal law. The proposed amendment also provides that a copy of the application filed with the Federal Reserve can be provided to the Department instead of submitting the application required by this rule. Finally, the proposed amendment contains stylistic changes.

80-6-1-.03 Qualifying Criteria for Expedited Processing; Acquisitions and One-bank Holding Company Formation

The proposed amendment removes a bank that has been acquired by a bank holding company within the previous twelve months from being eligible for expedited treatment. In evaluating the competitive criteria of an acquisition, the proposed amendment reduces the relevant deposit concentration to 30% and creates a carve out from the application of the Herfindahl-Hirshman index to banking markets with a population of 10,000 or less to align with the approach of the Office of the Comptroller of the Currency. The proposed amendment also strikes the reference to convenience and needs to reflect the revision in HB891. In addition, the proposed amendment modifies language to clarify that the provisions apply to banks that have adopted the Community Bank Leverage Ratio. The proposed amendment also provides that an expedited application will be processed in thirty (30) days and that public notice is not required for an expedited application related to the formation of a one-bank holding company. Finally, the proposed amendment contains stylistic changes.

80-6-1-.04 Qualifying Criteria for Expedited Processing: Establishment of a De Novo Wholly Owned Bank Subsidiary By a Holding Company Lawfully Operating in Georgia

The proposed amendment provides that the Department will notify the applicant if expedited processing of the application is not available. In addition, the proposed amendment provides that an expedited application will be processed within 30 days of receiving a complete application. The proposed amendment also strikes the acquisition resulting in assets exceeding the fixed asset limitation as a grounds for removing from expedited processing. Finally, the proposed amendment contains stylistic changes.

80-6-1-.06 Public Information

The proposed amendment eliminates annual reports from the documents that are considered public under Rule 80-1-11-.01.

80-6-1-.09 Non-Banking Acquisitions

The proposed amendment provides that the Department shall be notified of certain acquisitions contemporaneously with the Federal Reserve System or, if notification to the Federal Reserve System is not required, within ten (10) days of approval by the holding company's board of directors. The proposed amendment also provides that if an application is submitted to the Federal Reserve System, then a copy of the application can be submitted to the Department in lieu of independently submitting information to the Department.

80-7-1-.06 Lockbox Operations Involving Banks Domiciled Outside of Georgia

The proposed amendment strikes the requirements surrounding the operations of a lockbox service by banks that are not regulated by the Department. Pursuant to O.C.G.A. § 7-1-592, the Department does not have regulatory authority over these institutions.

80-9 Suspicious Activities

The proposed amendment removes "banks" from the title as this rule chapter applies to all financial institutions.

80-9-1 Currency Transaction Reports and Suspicious Activities

The proposed amendment removes "banks" from the title as this rule chapter applies to all financial institutions.

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

HB891 amended O.C.G.A. § 7-1-1001(a)(17) to provide for an exemption from certain individuals having to obtain a mortgage broker's license. The proposed amendment provides that the location such exempt individual works from shall be considered a branch under certain circumstances. The proposed amendment also contains stylistic changes.

80-11-1-.04 Branch Managers

HB891 amended O.C.G.A. § 7-1-1001(a)(17) to provide for an exemption from certain individuals having to obtain a mortgage broker's license. The proposed amendment provides that such individual satisfies the definition of a branch manager if the individual works from a location that is considered a branch under certain circumstances. The proposed amendment also contains stylistic changes.

80-11-1-.05 Employee Background Checks; Covered Employees

SB470 defined "covered employees" for purposes of the Georgia Residential Mortgage Act. The proposed amendment strikes the definition of "covered employees" in the rule as it is inconsistent with the definition in SB470. The proposed amendment also clarifies that the definition of "covered employee" in O.C.G.A. § 7-1-1000(5.1) controls over any conflicting terminology in O.C.G.A. § 7-1-1004(i).

80-11-1-.07 Notice of Unauthorized Access to Personal Information

The proposed rule provides that in the event a licensee is required to disclose a data breach related to personal information under federal or state law, the licensee shall simultaneously provide a duplicate copy of such notice to the Department.

80-11-1-.08 Information Security Safeguards for Consumer Financial Information

The proposed rule provides that to the extent the provisions of 16 C.F.R. Part 314 (the "FTC Safeguards Rule") are applicable to a licensee, the Department shall review the licensee's efforts to comply with the provisions of the FTC Safeguards Rule.

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

HB891 creates an exemption for licensure for certain persons that participate in securitizations. The proposed amendment requires a licensee to maintain documentation showing the unlicensed person is exempt in the event loans are transferred to such person. In addition, the proposed amendment provides that licensees must maintain the documents required by 16 C.F.R. Part 314 (the "FTC Safeguards Rule") and proposed Rule 80-11-1-.08. The proposed amendment also contains stylistic changes.

80-11-3-.01 Administrative Fines

SB470 modified the law to provide that the employee felony prohibition only applied to covered employees. The proposed amendment revises the rule to make clear that the employment prohibition applies to covered employees as defined in O.C.G.A. § 7-1-1000(5.1) instead of all employees. In addition, the proposed amendment creates a fine for the failure to provide the duplicate notice required by proposed Rule 80-11-1-.07. The proposed amendment also creates a fine for failure to maintain documentation that the terms of the securitization transfer exemption have been satisfied if the licensee is relying on such exemption. In addition, the proposed amendment provides that the background check requirement applies to covered employees as defined in O.C.G.A. § 7-1-1000(5.1). Finally, the proposed amendment contains stylistic changes.

80-11-4-.03 Licensing requirements; registrants; exemptions

HB891 amended O.C.G.A. § 7-1-1001(a)(17) to provide for an exemption from certain individuals having to obtain a mortgage broker's license. The proposed amendment strikes certain conditions and restrictions on this exemption as the conditions and restrictions on the revised exemption are expressly set forth in HB891. The proposed amendment also corrects an incorrect cross-reference.

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

The proposed amendment reflects the prohibition in the Georgia Residential Mortgage Act that a licensee cannot sell or transfer mortgage loans to unlicensed or exempt entities. The proposed amendment also contains stylistic changes.

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

SB470 defined "covered employees" for purposes of the Georgia Residential Mortgage Act. The proposed amendment reflects that the employment prohibition applies to covered employees instead of all employees.

80-11-4-.11 Information on the Nationwide Multistate Licensing System and Registry

HB891 eliminated the requirement that certain notices under O.C.G.A. §§ 7-1-1007(a) and (d) be sent to the Department via certified mail or registered mail and instead provided that the notice must be provided in writing. The proposed amendment provides that these notices as well as the required notice under proposed Rule 80-11-1-.07 must be provided to the Department via the NMLSR and provides directions on the filing of such notices on NMLSR. The proposed amendment also contains stylistic changes.

80-14-1-.04 Advertising Requirements

The proposed amendment provides that an advertisement can be in the form of a simulated check so long as the document indicates in a clear and concise manner that it is not a check or negotiable instrument.

80-14-1-.05 Notice of Unauthorized Access to Personal Information

The proposed rule provides that in the event a licensee is required to disclose a data breach related to personal information under federal or state law, the licensee shall simultaneously provide a duplicate copy of such notice to the Department.

80-14-1-.06 Information Security Safeguards for Consumer Financial Information

The proposed rule provides that to the extent the provisions of 16 C.F.R. Part 314 (the "FTC Safeguards Rule") are applicable to a licensee, the Department shall review the licensee's efforts to comply with the provisions of the FTC Safeguards Rule.

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

The proposed amendment requires licensees to maintain a deferred loan monthly journal in the event the licensee defers installment loans. In addition, the proposed amendment provides that licensees must maintain the documents required by 16 C.F.R. Part 314 (the "FTC Safeguards Rule") and proposed Rule 80-14-1-.06. The proposed amendment also eliminates the requirement that recoveries and collections be credited to a general ledger reserve account for bad debts in the event a licensee has such an account.

80-14-3-.01 Administrative Fines

The proposed amendment provides that a licensee is subject to a fine if it does not provide the customer with a contract that satisfies the requirements of O.C.G.A. § 7-3-15 and Rule 80-14-5-.01. In addition, the proposed amendment creates a fine for the failure to provide the duplicate notice required by proposed Rule 80-14-1-.05.

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

HB891 eliminated the requirement that certain notices under O.C.G.A. §§ 7-3-31(a) and b) be sent to the Department via certified mail or registered mail and instead provided that the notice must be provided in writing. The proposed amendment provides that these notices as well as the required notice under proposed Rule 80-14-1-.05 must be provided to the Department via the NMLSR and provides directions on the filing of such notices on NMLSR.

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

HB891 provided that each authorized location of a licensee could make a loan of up to $3,000 under the Georgia Installment Loan Act. The proposed amendment provides that limitations related to multiple agreements apply to loans made at authorized locations.

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

The proposed amendment corrects an incorrect cross-reference.

CHAPTER 80-1

BANKS

SUBJECT 80-1-1

APPLICATIONS, REGISTRATIONS AND NOTIFICATIONS

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

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

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

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

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

(1) Proposed activities in Georgia by financial institutions may require a form application, a letter application, a form registration, or merely a letter notification to the Department. Certain qualifying institutions may be eligible to shorten the form of application, and may benefit from an expedited processing time including shortened or consolidated notice periods. Such criteria for banks are provided at Department of Banking and Finance Rule 80-1-1-.10, and Rule 80-6-1-.03. Criteria for bank holding companies may be found at Rule 80-6-1-.04. Requirements for all banking institutions to conduct certain other activities have been streamlined to coordinate with federal requirements.

(2) Where forms are required, they may be obtained from the Department.

(3) Other Applications. Within these Rules: Chapter 80-2~~-1~~ covers ~~Credit~~ credit ~~Union~~ union activities; Chapter 80-3~~-1~~ covers ~~Money~~ money ~~Transmitters~~transmitters~~, Payment Instrument Sellers, and~~; Chapter 80-4 covers ~~Check~~ check ~~Cashers~~cashers; Chapter 80-6~~-1~~ covers ~~Holding~~ holding ~~Companies~~companies; ~~and~~ Chapter 80-11~~-1~~ covers ~~Mortgage~~ mortgage ~~Lenders~~ lenders, ~~and B~~brokers, and loan originators; Chapter 80-13 covers trust companies; and Chapter 80-14 covers installment lenders.

(4) The Department has made available an Applications Manual and a Statement of Policy with details of the procedures required for most activities of regulated institutions in Georgia. Interested persons should consult the Applications Manual, Department's Statement of Policy, Rules, and applicable law which form the basis for Department decisions. These materials are available electronically. The regulations provide an overview; the Applications Manual and Statement of Policy provide detailed instructions.

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

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

Authority: O.C.G.A. § 7-1-61.

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

(1) Definitions of terms used in this regulation are provided in O.C.G.A. §~~Code Section~~ 7-1-600.

(2) Establishment of a branch office:

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

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

(3) In lieu of a regular application, a bank which satisfies the qualifying criteria for expedited processing in paragraph~~s~~ (1) ~~through (4)~~ of Rule 80-1-1-.10 may submit an expedited application to establish a new branch office. The authority, manner and criteria for establishment of a branch office under this procedure are provided for in O.C.G.A. §~~Code Section~~ 7-1-602 and this Rule.

(a) The expedited application must include the following:

(i) The physical address of the branch office;

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

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

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

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

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

(d) The Department may remove the notice from this expedited procedure for any of the reasons set forth in paragraph (~~5~~2) of Rule 80-1-1-.10.

Authority: O.C.G.A. §§ 7-1-7; 7-1-61; 7-1-602; 7-1-603.

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

(1) Conversion to state-chartered bank. A meeting with the ~~department~~ Department should precede filing a letter form application, which application should include all of the information requested in the Applications Manual.

(2) Reserved.

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

(4) Change in Control:

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

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

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

(6) Creation and Operation of a Subsidiary of a Bank. ~~Code Sections~~O.C.G.A. §§ 7-1-261, 7-1-262, and 7-1-288 provide for the ability of a bank to exercise powers incidental to banking and to create a separate subsidiary to effect such powers as may be financial in nature, incidental or complementary to the provision of financial services, subject in most cases to certain investment limitations. ~~Most require a~~A letter form application to create or acquire a subsidiary shall ~~describing~~ describe the activity, how it relates to the business of banking and finance, and what protections will be in place to deal with any associated risks. An application to create and operate a subsidiary of a bank can be expedited if the requirements of Rule 80-1-1-.10 are satisfied.

(7) Relocation and Simultaneous Redesignation of two or more banking locations.

(a) Definitions:

(i) Relocation. The location of an existing banking location is to be moved to a new or additional location which is to be constructed, purchased or leased within the same immediate vicinity of the existing branch.

(ii) Redesignation. Where two existing bank locations exchange their designations, a redesignation occurs. Under a redesignation, a branch office becomes the main office and the main office, if it is not closed, becomes a branch office.

(b) Procedure for a Relocation. A bank meeting the qualifying criteria for expedited processing in ~~section~~paragraphs ~~(~~1) ~~through (4)~~ of Rule 80-1-1-.10 may submit a letter form notification to relocate an existing banking location. The approval to relocate an existing banking location under the notice procedure will be effective at the earlier of: an approval letter from the ~~department~~Department, or 10 business days from the date of acknowledged receipt. In the event the bank does not qualify for expedited processing, a form application should be submitted to the Department, which will normally be processed within 30 days from receipt of a completed application. All relocations should include a notice to customers posted in a conspicuous place of the affected banking location as well as on the bank's website at least 30 days before relocating. In addition, if any relocation proposal involves relocation of the bank's main office, additional procedures such as amendment of the bank's Articles of Incorporation may apply.

(c) Procedure for a Redesignation. Upon receipt of a letter form request setting forth the details of the proposed redesignation, the Department will review and process such request within seven (7) days. In the event the bank intends on closing the former main office as part of a redesignation, then the closing procedures for a bank location must be followed.

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

(9) Letter form applications are required for the following other activities of banks. ~~Related Code Sections are referenced.~~

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

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

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

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

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

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

(12) Opening and closing of a representative office. Prior to opening a representative office, a Georgia state-chartered bank, bank holding company, or subsidiary of a bank or bank holding company must register the location with the Department by filing a letter form registration with the Department. Prior to closing a representative office, a bank, bank holding company, or subsidiary of a bank or bank holding company must post notice of the closing at such location at least 30 days in advance of the intended closure. The bank, bank holding company, or subsidiary of a bank or bank holding company must also disclose the fact of the closure on its website at least 30 days in advance of the intended closure and such notice shall be posted for at least 30 consecutive days. Within two days of providing the notice, the bank, bank holding company, or subsidiary of bank or bank holding company must forward to the Department a copy of the notice posted at the representative office as well as the disclosure contained on its website to the Department.

Authority: O.C.G.A. § 7-1-61.

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

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

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

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

(~~3~~c) The depository institution must have a satisfactory or better Community Reinvestment Act rating from its primary federal regulator at its most recent examination, if the financial institution is subject to the Community Reinvestment Act; and

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

(~~5~~2) ~~In addition, t~~The Department may deny or remove from expedited processing any institution's application where it finds that:

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

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

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

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

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

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

Authority: O.C.G.A. §§ 7-1-61; 7-1-79.

SUBJECT 80-1-2

AGENCY RELATIONSHIPS OF FINANCIAL INSTITUTIONS; BANK SERVICE CONTRACTS

80-1-2-.09 Debt Cancellation Contracts and Debt Suspension Agreements.

Rule 80-1-2-.09. Debt Cancellation Contracts and Debt Suspension Agreements

(1) State chartered ~~financial institutions~~banks may offer Debt Cancellation Contracts and Debt Suspension Agreements to customers, subject to this rule and policies and procedures of the

~~department~~Department. Policies of the ~~department~~ Department include requirements for disclosures and certain prohibited practices. ~~Financial institutions~~Banks are expected to comply with all these requirements. Such products will not be considered insurance products in this state when offered by ~~financial institutions~~banks.

(2) Definitions and Explanation:

(a) A "Debt Cancellation Contract" (DCC) is a contractual agreement modifying loan terms that is linked to a ~~financial institution~~bank's extension of credit, under which the ~~financial institution~~bank agrees to cancel all or part of a customer's obligation to repay an extension of credit from that ~~financial institution~~bank upon the occurrence of a specified event.

(b) A "Debt Suspension Agreement" (DSA) is a contractual agreement that modifies loan terms and that is linked to an extension of credit, wherein the ~~financial institution~~bank agrees to suspend all or part of a customer's obligation to repay an extension of credit upon the occurrence of some specified event.

(c) Typically these products are tied to the life, injury or disability of the borrower, although some products are based on the occurrence of some other specified event, such as termination of employment.

(d) Fees are assessed to the borrower for the ability to cancel or suspend loan payments on the loan, in accordance with the terms of the agreement.

(e) To "underwrite" in the context of this rule means to directly provide for any losses resulting from the operation of the product.

(3) State chartered ~~financial institutions~~banks desiring to offer DCC or DSA products where the ~~financial institution~~bank is not underwriting the product shall provide a letter form notification to the ~~department~~Department. The ~~financial institution~~bank must keep on file the following information, which must be obtained before execution of a contract:

(a) A listing of the types of contracts offered and the underwriting standards for each product;

(b) A copy of the written policies and procedures developed regarding administration of debt cancellation or debt suspension products and their compliance with ~~department~~ Department policies;

(c) Identification of any vendor or third party service provider used in conjunction with the product offerings, including a list of the products and services being provided (see also Rule 80-1-2-.06 ~~for banks and Rule 80-2-7-.01 for credit unions~~ for contracting with third parties);

(d) A copy of the ~~financial institution~~bank's plan demonstrating the ability to administer claims;

(e) An analysis of the ~~financial institution~~bank's risk evaluation and mitigation procedures, including any plans to obtain insurance coverage to fully or partially indemnify itself for losses resulting from the operation of the DCC or DSA product; and

(f) An analysis of the expected impact on ~~financial institution~~bank staffing.

(4) If a ~~financial institution~~bank intends to underwrite any part of the DCC or DSA, the following information must also be submitted to the ~~department~~ Department in the form of a letter application. No underwriting will be permitted until such approval is granted.

(a) Analysis of management expertise, based on education and experience, in the areas of product design, underwriting, actuarial analysis, claims processing and risk reserving and accounting practices to support the ability to provide these functions in-house.

(b) An explanation of the risk management techniques the ~~financial institution~~bank will undertake, including product design criteria, underwriting procedures, limitations and conditions on DCC or DSA products, and other risk mitigation procedures in order to limit risk exposure to the ~~financial institution~~bank.

(c) A well-documented analysis of risk of the products being proposed, including the risks posed by catastrophic events that could result in unusually high claims upon the ~~financial institution~~bank.

(d) An outline of the proposed practices for properly reserving for risks related to these products based on industry practices and Generally Accepted Accounting Principles.

(e) An analysis of the ~~financial institution~~bank to support that the ~~financial institution~~bank has the proper financial position, cash flow performance and capital position to sustain continued operations in the event of an unusually high claims event.

(5) State chartered ~~financial institutions~~banks desiring to offer DCC or DSA products where third party service providers will underwrite the products or will administer any part of the program shall provide the letter form notification described in this rule. In addition to any requirements of Rule Chapter 80-1-2 ~~and Rule Chapter 80-2-7~~ governing service providers, the following information shall also be obtained by the ~~financial institution~~bank before any contract is executed, and such information will be kept on file at the ~~financial institution~~bank:

(a) A description of the experience of the third party service provider in offering such DCC or DSA products;

(b) An analysis of the financial stability of the third party service provider, including but not limited to: operating or cash flow statements, analysis of capital and reserves and

the use of external company ratings performed by a nationally recognized rating service;

(c) In lieu of (a) and (b) of this paragraph, the ~~financial institution~~bank may provide proof of the third party's appropriate licensure with the state of Georgia Department of Insurance.

(d) A copy of the standard form contract to be utilized. The contract must contain the third party service provider's assurance that:

1. It will make its books and records available for examination by the ~~department~~Department; and

2. The ~~department~~ Department shall have the authority to periodically review the internal routine and controls of the service provider to ascertain that the operations are being conducted in a sound manner in keeping with industry practices and Generally Accepted Accounting Principles.

(e) A schedule of fees to be charged for each product or service performed; and

(f) A listing of reports, printouts, schedules or program that will be provided by the third party service provider to the ~~financial institution~~bank to permit management, auditors, examiners and other interested parties to monitor the services provided.

Authority: O.C.G.A. § 7-1-61.

SUBJECT 80-1-3

BOOKS AND RECORDS

80-1-3-.04 ~~Repealed~~Notification of Computer Security Incident.

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Rule 80-1-3-.04. ~~Repealed~~Notification of Computer Security Incident

Pursuant to 12 C.F.R. Part 304 and 12 CFR Part 225 banks and bank holding companies are required to notify the appropriate federal regulator no later than 36 hours after the financial institution determinates that a computer security incident, which rises to the level of a notification incident, has occurred. A computer security incident is an occurrence that results in actual harm to the confidentiality, integrity, or availability of an information system or the information that the system processes, stores, or transmits. If notification of a computer security incident is required to be provided under federal law, then a duplicate of such notification will simultaneously be submitted to the Department.

Authority: O.C.G.A. § 7-1-61.

SUBJECT 80-1-4

INVESTMENT SECURITIES

80-1-4-.01 Permissible Investments and Limitations.

Rule 80-1-4-.01. Permissible Investments and Limitations

Subject to such further restrictions and approvals as its board of directors may set forth in its investment policy, a bank may purchase, sell, and hold securities, as set forth in the following:

(1) Debt Obligations.

(a) Obligations of the United States Government or Agencies of the United States Government.

The following may be held without limitation:

1. Securities issued by the United States government or an agency of the United States government;

2. Securities guaranteed as to principal and interest by the United States government or an agency of the United States government;

3. Securities issued under the U.S. Treasury's Separate Trading of Registered Interest and Principal (STRIP's) program, which are offered in book entry form and which are direct obligations of the U.S. Government, as authorized by Subtitle III, Chapter 31 of Title 31 U.S.C.; and

4. Securities which are pre-refunded, with the redemption proceeds invested in securities issued by the United States Government or an Agency of the United States Government.

(b) Obligations of a State or Territorial Government of the United States or Agencies of State or Territorial Governments.

The following may be held without limitation:

1. General obligations of any state or territorial government of the United States or any agency of such governments;

2. Securities guaranteed as to principal and interest by such state or territorial governments or any agency thereof; and

3. Securities which are pre-refunded, with the redemption proceeds invested in securities issued by state or territorial governments or agencies thereof.

(c) Obligations of other Political Subdivisions.

1. The general obligations of a single obligor domiciled within the United States which is authorized to levy taxes may be held in an amount up to twenty-five (25) percent of a bank's statutory capital base. This percentage limitation shall not apply where the statutory capital base is at least $10,000,000.

2. Securities which are secured by a pledge or assignment of tax receipts sufficient to pay the principal and interest of such securities as they become due may be held in an amount up to twenty-five (25) percent of the bank's statutory capital base. This percentage limitation shall not apply where the statutory capital base is at least $10,000,000.

3. Revenue obligations of a political subdivision authorized to establish utility fees, public transportation usage fees or public use fees where such levies or fees are pledged to and are sufficient to pay the principal and interest of the securities as they become due may be held in an amount up to twenty-five (25) percent of a bank's statutory capital base. This percentage limitation shall not apply where the statutory capital base is at least $10,000,000.

4. In those instances where the repayment of revenue obligations is dependent upon rentals or other fees payable to a political subdivision by a non-governmental unit, such as in the case of industrial revenue bonds, the obligor shall be deemed to be the non-governmental unit responsible for the payment of such rentals or other fees and any guarantor of such payments. Investment in such securities is limited to fifteen (15) percent of the bank's statutory capital base.

5. Securities issued by political subdivisions rated in the four highest rating categories by a nationally recognized rating service may be held in an amount up to fifteen (15) percent of a bank's statutory capital base.

(d) Corporate Debt Securities.

Corporate debt securities may be purchased which are:

1. Rated in the four highest rating categories by a nationally recognized rating service;

2. Readily salable in an established market with reasonable promptness at a price which corresponds to its fair value;

3. Denominated in U.S. dollars; and

4. With respect to banks having a statutory capital of less than $20,000,000, such securities must mature within 15 years.

A bank's investment in corporate debt securities is limited to fifteen (15) percent of the bank's statutory capital base per obligor. A bank's aggregate investment in corporate debt securities shall not exceed one hundred (100) percent of the bank's statutory capital base.

(e) Debt Securities Taken in Conformity with Lending Policies.

Debt obligations shall not be considered investments within the meaning of this regulation where they:

1. Are taken in conformity with the bank's lending policies;
2. Are included in determining the outstanding credit for purposes of ascertaining compliance with the bank's secured and unsecured loan limitations in O.C.G.A. §~~Code Section~~ 7-1-285; and

3. With respect only to banks having a statutory capital base of less than $20,000,000, mature within 15 years, and are treated by the bank in all other respects as loans.

The debt obligations that qualify for this exception must be combined with other investment securities or other obligations to the same entity. This aggregation must not exceed the twenty-five (25) percent limitation on obligations to any one person in O.C.G.A. §~~Code Section~~ 7-1-285.

(2) Equity Securities.

Except as allowed by O.C.G.A. §~~Code Section~~ 7-1-288 or in this regulation, a bank may not engage in any transaction with respect to shares of stock or other capital securities of any corporation.

(3) Investment Funds.

A state chartered bank may invest up to fifteen (15) percent of its statutory capital base in securities of, or other interests in, any open-end or closed-end management type investment fund or investment trust which is registered under the Investment Company Act of 1940, subject to the following additional conditions.

(a) The investment portfolio of such investment fund or investment trust shall be limited to those securities in which banks or trust companies are permitted to invest directly under this rule and Title 7 of the Official Code of Georgia; and

(b) The investment fund or trust shall not:

1. Except to the extent authorized in subparagraph (1)(a)3. of this rule, acquire or hold investments in the form of stripped or detached interest obligations;

2. Engage in the purchase or sale of interest rate futures contracts;

3. Purchase securities on margin, make short sales of securities or maintain a short position; or

4. Otherwise engage in futures, forwards or options transactions, except that forward commitments may be entered into for the express purpose of acquiring securities on a when-issued basis.

(c) On an aggregate basis, investments in such funds or trusts shall not exceed:

1. Thirty (30) percent of the bank's statutory capital base per fund/trust family or sponsor; and

2. Sixty (60) percent of the bank's statutory capital base for all funds combined.

(d) An aggregate limitation of one hundred twenty (120) percent of the bank's statutory capital base shall be allowed for all funds combined if the funds or trusts:

1. Are managed so as to maintain the fund or trust shares at a constant net asset value;

2. Are no-load; and

3. Are rated in the highest rating category by a nationally recognized rating service.

(4) Asset-Backed Securities.

A bank may purchase asset-backed securities repayable in both interest and principal which are issued under any of the following:

(a) Governmentally sponsored programs which are fully collateralized by obligations fully guaranteed as to principal and interest by a governmental entity to the same extent as direct obligations of the governmental entity which is the guarantor;

(b) Private programs which are fully collateralized by obligations fully guaranteed as to principal and interest by a governmental entity to the same extent as direct obligations of the governmental entity which is the guarantor; or

(c) Other private programs in amounts which do not exceed ~~fifteen~~ twenty-five (~~15~~25) percent of the bank's statutory capital base for each issuer, provided the issue:

1. Is in registered form;

2. Is collateralized by assets which could be owned directly by the bank and the investing bank has analyzed and understands the underlying collateral characteristics of the investment; and

3. Is investment quality or the credit equivalent of investment quality. Investment quality means that a rating in one of the four highest categories has been assigned to the securities by a nationally recognized rating service and, as such, are not predominantly speculative in nature. If the securities are not rated by a nationally recognized rating service, then credit equivalency shall be determined by the methods in subsection (e) of this rule.~~Is rated in the top three rating bands by a recognized national rating service.~~

(d) Aggregate investment in private program issues by all issuers shall not exceed fifty (50) percent of the bank's statutory capital base unless approved by the ~~department~~Department.

(e) Before the purchase of any asset-backed securities, the investing bank shall perform a due diligence suitability analysis to determine whether the asset-backed securities are suitable for purchase relative to the bank's asset liability position, sensitivity to market risk, and its liquidity exposure. Further, before the purchase of any asset-backed securities under subsection (c), the investing bank shall include in the due diligence suitability analysis an evaluation of whether the asset-backed securities are suitable for purchase relative to the bank's tolerance for credit risk. A periodic update of the suitability analysis shall be performed by the bank at least as frequently as annually during the term of the investment. The initial and subsequent documentation of the suitability analysis shall be in written form and maintained in the bank's files.

(5) Interest-Only ("IO") Securities.

(a) Nothing contained herein shall permit the purchase of investments in the form of stripped or detached IO obligations. An exception to this rule is that securities issued under the U.S. Treasury's Separate Trading of Registered Interest and Principal (STRIP's) program, which are offered in book entry form and which are direct obligations of the U.S. Government, as authorized by Subtitle III, Chapter 31 of Title 31 USC, may be purchased without limitation.

(b) Purchasing or trading any other type of IO securities may receive prior written approval from the ~~department~~ Department for institutions demonstrating technical expertise and policies sufficient to promote safe and sound use of such investments as part of prudent investment strategies.

(6) Futures, Forwards, Option Contracts and Interest Rate Swaps.

Futures, forwards, option contracts, interest rate swaps, and direct and indirect investments associated with any security which otherwise constitutes a permissible investment under provisions of this rule may be approved in writing by the ~~department~~ Department for banks demonstrating technical expertise and policies sufficient to promote safe and sound use of such investments as part of prudent investment strategies.

(7) Trust Preferred Securities.

Trust preferred securities, generally, may be defined as issues of cumulative preferred securities, containing characteristics of both debt and equity securities, where the issuer is normally a business trust formed by a corporate issuer. The corporate issuer issues debt to the trust in the form of deeply subordinated debentures. The securities represent undivided beneficial interests in the assets of the issuer trust, and distributions by the issuer trust are guaranteed by the corporate issuer to the extent of available funds of the issuer trust. The trust preferred securities may or may not be rated, but in any event must be scrutinized under the suitability analysis in this rule as if they were a loan being underwritten by the purchasing bank. Trust preferred securities are authorized investments for a state bank subject to the terms and conditions contained in this paragraph 7. A bank's investment in a closed or open-end investment fund, consisting of trust preferred securities, shall be subject to the terms and conditions contained in Rule 80-1-4-.01, paragraph 3. entitled "Investment Funds". A security backed by trust preferred securities shall be deemed an asset-backed security and shall be subject to the terms and conditions contained in Rule 80-1-4-.01, paragraph 4. entitled "Asset-Backed Securities".

(a) The bank's investment in each corporate issuer of trust preferred securities, that is, in each entity that controls an issuer trust (other than in a fiduciary capacity), shall not exceed fifteen (15) percent of the bank's statutory capital base.

(b) The bank's aggregate investment in trust preferred securities shall not exceed the bank's policy limits or one hundred (100) percent of the bank's statutory capital base, whichever is less.

(c) The issuance of the trust preferred securities shall be registered under the Securities Act of 1933, as amended, shall be eligible for resale pursuant to Securities and Exchange Commission Rule 144A, or the securities shall be capable of being sold with reasonable promptness at a price which corresponds to their fair value. As to this requirement, if an issuance is not registered, eligible for resale, or readily marketable, it must meet a suitability analysis test as provided in (e) of this rule;

(d) The securities shall be of investment quality or the credit equivalent of investment quality. Credit equivalency shall be determined by the methods in subparagraph (e) of this rule. Investment quality means that a rating in one of the four highest categories has been assigned to the securities by a nationally recognized rating service and, as such, are not predominantly speculative in nature;

(e) Before the purchase of any trust preferred securities, the investing bank shall perform a due diligence suitability analysis to determine whether the trust preferred securities are suitable for purchase relative to the bank's tolerance for credit risk, asset liability position, sensitivity to market risk, and its liquidity exposure. Such analysis shall include, at a minimum, the following:

1. A complete credit analysis, including cash flow projections, sufficient to determine that the issuer is creditworthy and thus has the ability to meet the debt repayment schedule;

2. A credit underwriting analysis sufficient to determine that the securities meet the credit underwriting criteria set forth by the bank's lending policies;

3. A marketability analysis, sufficient to determine whether or not the securities may be sold with reasonable promptness at a price corresponding to their fair value;

4. The documentation of the suitability analysis shall be in written form and maintained in the bank's files;

5. A periodic update of the suitability analysis shall be performed by the bank at least as frequently as annually during the term of the investment; and

(f) The bank shall obtain and monitor the securities' market values on an ongoing basis.

(g) The bank's written policies and procedures shall adequately address the various risks inherent in these securities including credit risk, price or market risk, interest rate risk, and liquidity risk.

(h) The bank shall notify the ~~department~~ Department in writing of any investment in trust preferred securities where the issuer is not a bank or bank holding company as defined in O.C.G.A. §~~Code Section~~ 7-1-605.

(8) Tier 2 Subordinated Debt Securities.

Tier 2 subordinated debt securities are subordinated notes issued by banks or bank holding companies, as defined in O.C.G.A. § 7-1-605, intended to qualify as Tier 2 capital under federal regulatory capital guidelines. The subordinated debt securities may or may not be rated, but in any event must be scrutinized under the suitability analysis in this rule as if they were a loan being underwritten by the purchasing bank. Tier 2 subordinated debt securities are authorized investments for a state bank subject to the terms and conditions contained in this paragraph. The permissibility of such investment may be determined pursuant to this paragraph or pursuant to any other paragraph or paragraphs of this rule to the extent the terms of such investment conform to such other paragraph or paragraphs.

(a) The bank's investment in each corporate issuer of Tier 2 subordinated debt securities shall not exceed fifteen (15) percent of the bank's statutory capital base. For purposes

of determining compliance with this requirement, investments in Tier 2 subordinated debt securities issued by a bank shall be aggregated with securities issued by such bank's holding company.

(b) The bank's aggregate investment in Tier 2 subordinated debt securities shall not exceed the bank's policy limits or one hundred (100) percent of the bank's statutory capital base, whichever is less. For purposes of determining compliance, this aggregation requirement applies to all subordinated debt investments, whether purchased pursuant to this paragraph or any other paragraph of this rule.

(c) The issuance of the Tier 2 subordinated debt securities shall be registered under the Securities Act of 1933, as amended, shall be eligible for resale pursuant to Securities and Exchange Commission Rule 144A, or the securities shall be capable of being sold with reasonable promptness at a price which corresponds to their fair value as determined by the bank following due diligence. In the alternative, the issuance can satisfy the suitability analysis test as provided in subsection (e) of this rule.

(d) The securities shall be of investment quality or the credit equivalent of investment quality. Investment quality means that a rating in one of the four highest categories has been assigned to the securities by a nationally recognized rating service and, as such, are not predominantly speculative in nature. If the securities are not rated by a nationally recognized rating service, then credit equivalency shall be determined by the methods in subsection (e) of this rule.

(e) Before the purchase of any Tier 2 subordinated debt securities, the investing bank shall perform a due diligence suitability analysis to determine whether the Tier 2 subordinated debt securities are suitable for purchase relative to the bank's tolerance for credit risk, asset liability position, sensitivity to market risk, and its liquidity exposure. Such analysis shall include, at a minimum, the following:

1. A complete credit analysis, including pro forma cash flow analysis, sufficient to determine that the issuer is creditworthy and thus has the ability to meet the debt repayment schedule;

2. A marketability analysis, sufficient to determine whether or not the securities may be sold with reasonable promptness at a price corresponding to their fair value, which analysis may be supported by input from the placement agent for such securities;

3. The documentation of the suitability analysis shall be in written form and maintained in the bank's files; and

4. A periodic update of the suitability analysis shall be performed by the bank at least as frequently as annually during the term of the investment.

(f) The bank shall obtain and monitor the securities' market values on an ongoing basis.

(g) The bank's written policies and procedures shall adequately address the various risks inherent in these securities including credit risk, price or market risk, interest rate risk, and liquidity risk.

(h) Subordinated notes issued by banks or bank holding companies, as defined in O.C.G.A. §~~Code Section~~ 7-1-605, shall not be deemed to be impermissible investments solely by virtue of the fact that the issuer has not obtained regulatory confirmation that proceeds from the issuance of the securities will qualify as Tier 2 capital

(9) All Other Securities.

A bank may invest in such other securities or funds as the ~~department~~ Department may approve, upon a finding that the securities are marketable under ordinary circumstances, with reasonable promptness at a price which corresponds to their fair value, approval shall be in writing and subject to such limitations as the ~~department~~ Department may specify. This requirement for departmental approval shall not apply where the statutory capital base of the purchasing bank exceeds $ 20,000,000. However, in such instances, such securities may be purchased only in an amount which does not exceed fifteen (15) percent of the bank's statutory capital base.

(10) In the event a bank's investment in securities no longer conforms to this rule but conformed when the investment was originally made, the bank shall provide written notification to the Department regarding the nonconforming investment within 30 days of discovering the nonconforming investment or 120 days of the investment becoming nonconforming, whichever event occurs first. In the event a bank wishes to hold the nonconforming investment, the bank must submit a letter form application to the Department describing the efforts the bank will undertake to bring the nonconforming investment into conformity and the anticipated time it will take to bring the investment into conformity. Upon review of the application, the Department may request additional information if it determines such additional information is necessary in order to fully and completely evaluate the application. After completion of its review, the Department shall either approve, conditionally or otherwise, or deny such application in writing.

(11) A bank may sell a nonconforming investment without Department authorization but only if it provides the Department with written notice no later than five (5) business days after the sale.

Authority: O.C.G.A. § 7-1-61.

SUBJECT 80-1-5

LOANS AND DISCOUNTS

80-1-5-.03 Commodity Loans.
80-1-5-.10 Real Estate Leasing.

Rule 80-1-5-.03. Commodity Loans

(1) In order that commodity loans and advances may be exempt from the twenty-five (25) percent legal loan limitation of the lending bank, strict compliance with the following requirements must be met.

(a) The commodity must have a market value with ready sale in the open market.

(b) First lien security title to the commodity must be indicated on record in the name of the bank. Where commodities are stored in a warehouse, such lien must be evidenced by the bank's physical possession of warehouse receipts covering the commodities or, if electronic warehouse receipts are utilized, by recordation of bank's lien position on the electronic warehouse receipt or the electronic records of the state approved electronic receipt provider, which must be accessible to the bank. Bank must also have appropriately executed security agreements and financing statements.

(c) The commodity must be covered by insurance against fire and other appropriate hazards with loss payee designated as the lending bank.

(d) The initial advance or loan shall not exceed eighty-five (~~80~~85) percent of the market value of the commodity on the date of the loan, the margin of ~~twenty~~ fifteen (~~20~~15) percent between the market value and outstanding loan is maintained at all times, and to that end, the bank shall have the right to call for additional collateral if the margin falls below fifteen~~twenty~~ (~~20~~15) percent, and, if the additional collateral is not provided, the bank shall have the right to sell the commodity on the open market. For purposes of this paragraph, "market value" shall mean the local cash price bid for the commodity in question~~; provided,"market value" shall mean~~ or the nearby future price applicable to future contracts to sell existing commodities but in no event shall the market value ~~where the total commodity debt owed by the owner of the commodity to the originating bank with respect to the hedged commodity does not~~ exceed fifty (50) percent of the originating bank's statutory capital base.

(e) Where the borrower is not independent of the warehouseman or other person holding the commodity, the commodity must be subjected to inspection by the lender or his agent at least monthly and a written record of such inspections must be maintained.

(f) The obligation matures in not more than ~~ten~~ twelve (~~10~~12) months if secured by nonperishable staples; or the obligation matures in not more than six (6) months if secured by refrigerated or frozen staples.

(g) There must be a written agreement, signed by both the bank and the borrower, which clearly outlines the requirements of the bank and the duties and responsibilities of the borrower.

(2) Manufactured or agricultural products in the processing stages shall not be considered as commodities within the meaning of this regulation, but are inventory or goods-in-process to be treated as additional collateral only.

(3) In order for livestock to qualify as commodities subject to treatment under Section (1) of this Rule, the borrower must be engaged in livestock production and the collateral must be marked for identification and confined to feed lots ready for sale in the open market. Livestock held as fixed assets such as for reproduction or dairy purposes do not qualify for the treatment accorded under Section (1) of this Rule.

(4) Manufactured products commonly financed under floor-plan arrangements shall be subject to treatment as commodities under Section (1) of this Rule if they meet the requirements of that section and the conveyance of title identifies each individual unit and does not convey merchandise in bulk. Liens on merchandise in bulk are considered as inventory loans and not commodity loans.

Authority: ~~Ga. L. 1974, pp. 733, 793-797; Ga. L. 1983, Act No. 255~~ O.C.G.A. §§ 7-1-61; 7-1-285.

Rule 80-1-5-.10. Real Estate Leasing

(1) A bank may become the owner and lessor of real property under certain circumstances described in O.C.G.A. §~~Code Section~~ 7-1-282.

(2) A bank that desires to lease real property under the conditions in O.C.G.A. §~~Code Section~~ 7-1-282 must make a letter application to the ~~department~~ Department to conduct the activity. Such letter application shall include:

(a) A business plan that addresses the accounting, tax and legal implications of this type of leasing and the projected volume and scope of the activity;

(b) Documentation of the experience and expertise of management that indicates ability to handle credit risk and administer the leasing program in conformity with accounting, legal and tax requirements;

(c) Detailed risk analysis to include the potential impact of the activity on the financial and operating condition of the bank;

(d) A copy of any required federal application and approval; and

(e) Any other items requested by the ~~department~~Department.

(3) The aggregate limit for such leasing for banks ~~with a statutory capital base under $20,000,000~~ shall be 100 percent of the bank's statutory capital base. Any higher amount desired must be approved in advance by the ~~department~~Department.

(4) The ~~department~~ Department may at any time restrict the volume of business in this type of leasing if in its judgment there are concerns for safety and soundness of the operation.

Authority: O.C.G.A. §§~~Secs.~~ 7-1-61, 7-1-282.

SUBJECT 80-1-10

FIXED ASSETS AND ASSETS ACQUIRED D.P.C

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

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

(1) Pursuant to O.C.G.A. § 7-1-~~261~~262(a)(1), a bank may acquire and hold real estate the bank occupies or intends to occupy primarily for the transaction of its business or the business of any subsidiary or affiliate. Subject to compliance with the provisions of this rule as well as the Department's prior written approval, a bank may lease excess real estate.

(2) For purposes of this rule, the phrase "occupy primarily" means occupation and use, on a full-time basis, of at least sixty-seven (67) percent of the square footage of each individual premise by the bank or an affiliate or subsidiary of the bank.

(3) The underlying real estate must have been acquired in good faith and for permissible purposes. Nothing herein shall be deemed to authorize a bank to acquire real estate for speculative purposes.

(4) The bank may not lease real estate to a third-party if it raises safety and soundness concerns.

(5) The application for approval to lease real estate to a third-party shall contain, at a minimum, the following information:

(a) A detailed description of the lease that is contemplated, including but not limited to, the terms of the lease, a description of the proposed lessee's operations, the relationship, if any, between the bank and the proposed lessee, the real estate that is proposed to be leased, and the percentage of the real estate that will be occupied by lessee;

(b) The total amount of the bank's fixed assets that will be leased in the event the lease is approved;

(c) An affirmative statement that there is no involvement by any director, committee member, officer or employee of the bank or any related interest of such individuals with the individual or entity that is the proposed lessee. In the event there is any such involvement, then it should be detailed in the application; and

(d) A copy of the resolution adopted by the Board of Directors authorizing the lease of the specific premises to the proposed lessee.

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

SUBJECT 80-1-11

PUBLIC DISCLOSURE OF INFORMATION

80-1-11-.01 Public Access to Records.

80-1-11-.01. Public Access to Records

The following records of the Department of Banking and Finance shall be subject to inspection by members of the public:

(a) Sections of accepted Applications for Charter, received applications for Branch Office, Relocation, Merger, Acquisition of ~~Voting~~ Control of ~~Large~~ Financial Institutions, ~~and~~ Holding Company formation, and Holding Company acquisition deemed to be non-confidential by the ~~department~~Department; provided, however, such non-confidential information will come within Section 80-1-11-.02 ninety (90) days after disposition has been made of the application; and

(b) The terms of or a copy of any bond filed with the Department by (1) mortgage licensees or registrants; ~~and~~ (2) money services businesses; and (3) installment lenders.

Authority: O.C.G.A. §~~Sec.~~ 7-1-61.

SUBJECT 80-1-12

DIVIDENDS, MANAGEMENT FEES, ETC

80-1-12-.01 Dividends.

Rule 80-1-12-.01. Dividends

(1) The Board of Directors of any state-chartered bank in this State may declare and the bank may pay dividends on its outstanding capital stock without any requirement to notify the Department or request the approval of the Department under the following conditions:

(a) Total adversely classified assets at the most recent examination of the bank, the conclusions of which may have been presented to the Board of Directors, do not exceed eighty (80) percent of Tier 1 Capital plus the ~~Allowance~~ allowance for ~~Loan~~ credit ~~Losses~~ losses as reflected at such examination; and

(b) The aggregate amount of dividends declared or anticipated to be declared in the calendar year:

(i) does not exceed fifty (50) percent of the net income that is attributable to the bank that is a Subchapter C-Corporation for the previous calendar year as reported on the Consolidated Reports of Income, Schedule RI-Income Statement; or

(ii) does not exceed seventy-five (75) percent of the net income that is attributable to the bank that is a Subchapter S-Corporation for the previous calendar year as reported on the Consolidated Reports of Income, Schedule RI-Income Statement; and

(c) The ratio of Tier 1 Capital to Average Total Assets shall not be less than six (6) percent.

(2) Any dividend to be declared by the Board of Directors of a bank at a time when each of the foregoing conditions does not exist must be approved, in writing, by the Department prior to the payment thereof pursuant to the provisions of Section 7-1-460(a)(3) of the Code of Georgia. Requests for approval of dividends shall be on forms prescribed by the Department.

(3) The definition of Tier 1 Capital and Average Total Assets as used herein shall be consistent with the definition utilized by the Federal Regulatory Agencies.

Authority: O.C.G.A. §§ 7-1-61; 7-1-460.

SUBJECT 80-1-15

EXTENSIONS OF EXISTING OFFICES AND FACILITIES

80-1-15-.01 Automated Teller Machine ("ATM") and Night Depository.
80-1-15-.06 Representative Offices.

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

~~(1)~~ An ATM machine, which by definition in O.C.G.A. § 7-1-603~~.~~ takes deposits, and a night depository may be established anywhere in this state. Establishment of an ATM machine in this state does not constitute doing a banking business here.

~~(2) Combinations of facilities such as a loan production office, deposit production office and an ATM or cash dispensing machine are permitted.~~

Authority: O.C.G.A. § 7-1-61.

Rule 80-1-15-.06. Representative Offices

(1) A bank or bank holding company chartered by the Department or a subsidiary of such bank or bank holding company may establish and maintain representative offices upon registering such locations with the Department.

(2) A representative office shall be staffed and accessible to the public.

(3) A representative office may not engage in the banking business which includes, but is not limited to, accepting deposits, opening deposit or savings accounts, paying withdrawals, drafts, or checks, approving loans, disbursing loan proceeds, or accepting payments.

~~(2)~~(4) The combination of representative offices with other facilities such as an automatic teller machine or cash dispensing machine is permitted.

(5) In the event a bank or bank holding company chartered by the Department or a subsidiary of such bank or bank holding company closes a representative office, notice must be provided to the Department prior to the closure in compliance with Rule 80-1-1-.08.

Authority: O.C.G.A. § 7-1-61.

CHAPTER 80-2

~~RULES OF DEPARTMENT OF BANKING AND FINANCE~~ CREDIT UNIONS

SUBJECT 80-2-3

SHARES, DEPOSITS AND DIVIDENDS

80-2-3-.05 ~~Third Party Payment Services; Other Consumer Services~~Repealed.

Rule 80-2-3-.05. ~~Third Party Payment Services; Other Consumer Services~~Repealed

~~(1) Third Party Payment Services (TPPS) may be offered by State-chartered credit unions to their members provided the credit union complies with Code Section 7-1-670.~~

~~(2) Applications for TPPS which do not qualify for the notice only procedure in subsection (3) shall require prior approval and shall be in letter form signed by an officer of the credit union. Applications shall contain such schedules and exhibits as are necessary to provide the following information:~~

~~(a) A resolution of the board of directors of the credit union authorizing management to file the application and stating that the board has reviewed the application in its entirety and concurs with its contents;~~

~~(b) A statement of the assets and liabilities of the credit union as of a date not more than thirty (30) days prior to the date of the application;~~

~~(c) Appropriate assurance that the credit union has the ability to post all transactions occurring on its books on a daily basis, including the preparation of a daily statement of assets and liabilities;~~

~~(d) Appropriate assurance that all necessary personnel are familiar with the requirements of the Uniform Commercial Code as applicable to checks and deposits and the credit union will comply with the provisions of that Code. In this regard, the application should include a copy of the proposed signature card contract to be signed by the accountholder as well as a general outline of the proposed TPPS program;~~

~~(e) The application should contain a statement of the policy of the board of directors relative to the charge off of losses, whether disclosed through examination reports or otherwise, and their policy with regard to the replenishing of appropriate allowance accounts following such charge-offs. Approval of the application may be conditioned upon appropriate increases to the allowance account to bring the allowance to a level determined to be adequate relative to the asset condition of the credit union and this level may or may not be in excess of the statutory minimums;~~

~~(f) A statement of the board's policy relative to any interest payments to be made on the proposed TPPS accounts including frequency and amount of interest to be paid;~~

~~(g) A statement relative to any changes in management or other personnel resources, internal control and operating procedures, and equipment and premises which might be proposed to implement the TPPS program. Copies of all data processor and clearing bank contracts should be included in the application;~~

~~(h) Such other information as has bearing upon the application.~~

(3) A credit union that meets the financial and management criteria below may offer TPPS to its members by means of a letter notice to the department, at least thirty (30) days before the credit union intends to offer the services. The letter, from an officer of the credit union, shall state that the credit union meets the criteria in this rule, and that it has determined that the factors in Code Section 7-1-670(a) have all been satisfied. The department may notify the credit union of any problems or issues it has with the offering, but if the credit union does not receive such notification during the thirty (30) day period following receipt of the notice, it may proceed. The criteria to qualify for a notice only procedure are that the credit union must:

(a) Have a CAMEL Composite rating of 1 or 2 on the most recent report of examination;

(b) Have a CAMEL Management component rating of 1 or 2;

(c) Not be subject to any form of administrative action;

(d) Be determined by the regulatory and policy requirements of the Department of Banking and Finance and the National Credit Union Administration to be well capitalized; and

(e) Have total assets of at least $1,000,000.

(4) The application for prior written approval must demonstrate that:

(a) There exists a need among the membership; and

(b) The service can be implemented on a profitable basis as determined by a three-year projection of the number of accounts, volume of transactions, and average aggregate balances in such accounts. Such projections should take into account the influence, if any, due to the stability of the credit union's field of membership. These variables as well as others thought applicable should be utilized to arrive at the three-year pro forma profitability analysis reflecting anticipated costs of providing the services and revenues to be generated by the services themselves as well as by investment (in loans and other investments) of funds generated by the accounts. Projections should recognize that funds must be set aside in certain statutory form to meet legal liquidity reserve requirements with the Federal Reserve.

(5) Credit unions that offer TTPS and that meet the requirements of Subparagraph (3) above may offer, with the approval of the department, other services as provided by Code Section 7-1-670 to consumers eligible for membership. Letter form applications shall contain such schedules and exhibits as the department deems necessary to demonstrate the following:

(a) There exists a need for the credit union to offer the specific service;

(b) A plan proposed by the credit union will serve that need; and

~~(c) The plan can be implemented on a safe, sound, convenient and responsive basis to consumers eligible for membership.~~Repealed

Authority: O.C.G.A. § 7-1-61.

SUBJECT 80-2-4

INVESTMENT OF CREDIT UNION FUNDS

80-2-4-.03 Investment of Credit Union Funds in Subsidiaries.

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

Rule 80-2-4-.03. Investment of Credit Union Funds in Subsidiaries

(1) Unless otherwise precluded by law or regulations, a credit union may acquire and hold for its own account shares of stock or interest in a subsidiary or affiliate corporation or limited liability company engaged in the following functions or activities that do not pose undue risk to the safety and soundness of the credit union and that are consistent with the objectives of O.C.G.A. § 7-1-3. The functions or activities that the credit union subsidiary or affiliate is authorized to conduct include, but are not limited to:

(a) offering third-party payment services ~~as provided in O.C.G.A. § 7-1-670~~;

(b) holding real estate;

(c) acting as a financial planner or investment adviser;

(d) offering a full range of investment products;

(e) exercising powers incidental to financial activities as provided in O.C.G.A. § 7-1-650; and

(f) exercising powers granted by Department rules or powers determined by the Commissioner to be financial in nature or incidental to the provision of financial services.

(2) O.C.G.A. § 7-1-650(6) contemplates that a credit union can have a separate subsidiary or affiliate to exercise powers that are express or incidental to the credit union's authority with the approval of the Department. Subject to certain investment limitations for credit unions, the subsidiary or affiliate can conduct such powers as may be financial in nature or incidental or complimentary to the provision of financial services. Prior to the subsidiary or affiliate engaging in any functions or activities that a credit union is authorized to engage, the credit union must submit a letter form application to the Department describing the proposed activity, detailing the activity's relationship to the business of the credit union, and setting

forth the provisions that will be implemented in order to mitigate any related risks. Upon review of the application, the Department may request additional information if it determines such additional information is necessary in order to fully and completely evaluate the application. After completion of its review, the Department shall either approve, conditionally or otherwise, or deny such application in writing.

(3) If more than one credit union has an ownership interest in such subsidiary or affiliate, the credit union that has the largest percentage ownership in the subsidiary or affiliate must submit the application to the Department. In the event the largest credit union percentage ownership in the subsidiary or affiliate is held by multiple credit unions, then only one credit union is required to submit an application to the Department.

(4) For purposes of this rule only, "affiliate" means a corporation or limited liability company, that a credit union has less than a majority ownership interest.

Authority: O.C.G.A. § 7-1-61.

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

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

(2) Unless the provisions related to an expedited application in paragraph (3) is satisfied, a credit union must submit an application to the Department in order to obtain approval to establish a branch office. An application will not be deemed to have been accepted by the Department until all portions of the application have been completed to the satisfaction of the Department. If the Department notifies the credit union of deficiencies in the application, the credit union must complete the application within thirty (30) days of receipt of the notification of the Department. The Department will approve or deny an application for a branch office within thirty (30) days of receipt of a completed application.

(3) In lieu of an application, a credit union is authorized to submit an expedited application to establish a new branch office subject to the below conditions.

(a) The credit union must meet the following criteria:

(i) The credit union must be well capitalized as defined by the capital requirements of the Department and the NCUA;

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

(iii) The credit union must not be subject to any agreements, orders, or other enforcement or administrative agreements with the Department or the NCUA; and

(iv) Total investments in fixed assets do not exceed sixty (60) percent of total equity capital and reserves (excluding the allowance for loan losses).

(b) The expedited application must include the following:

(i) The physical address of the branch office;

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

(iii) The anticipated fixed asset investment for this proposal and whether the credit union will be in compliance with Rule 80-2-4-.02; and

(iv) A statement certifying that the credit union qualifies for expediated processing under subparagraph (a).

(c) Unless it has previously issued an approval letter under subparagraph (d), the Department will attempt to acknowledge receipt of an expedited application or notify the applicant that it does not qualify for expedited processing and may submit an application for regular processing within two business days of receipt of such notice.

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

(e) Notwithstanding the above, the Department may deny or remove from expedited processing any credit union's application where it finds that:

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

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

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

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

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

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

Authority: O.C.G.A. §§ 7-1-61; 7-1-79; 7-1-655.

SUBJECT 80-2-7

CREDIT UNION SERVICE CONTRACTS

80-2-7-.04 Debt Cancellation Contracts and Debt Suspension Agreements.

Rule 80-2-7-.04. Debt Cancellation Contracts and Debt Suspension Agreements

(1) ~~State-chartered credit unions may offer Debt Cancellation Contracts and Debt Suspension Agreements to customers. Credit unions will be subject to the Rule at 80-1-2-.09 and the policies and procedures of the department. Such policies include requirements for certain disclosures as well as prohibited practices. Credit unions are expected to comply with all of these requirements. Such products will not be considered insurance products in this state when offered by financial institutions.~~State chartered credit unions may offer Debt Cancellation Contracts and Debt Suspension Agreements to members, subject to this rule and policies and procedures of the Department. Policies of the Department include requirements for disclosures and certain prohibited practices. Credit unions are expected to comply with all these requirements. Such products will not be considered insurance products in this state when offered by credit unions.

(2) Definitions and Explanation:

(a) A "Debt Cancellation Contract" (DCC) is a contractual agreement modifying loan terms that is linked to a credit union's extension of credit, under which the credit union agrees to cancel all or part of a member's obligation to repay an extension of credit from that credit union upon the occurrence of a specified event.

(b) A "Debt Suspension Agreement" (DSA) is a contractual agreement that modifies loan terms and that is linked to an extension of credit, wherein the credit union agrees to suspend all or part of a member's obligation to repay an extension of credit upon the occurrence of some specified event.

(c) Typically, these products are tied to the life, injury or disability of the borrower, although some products are based on the occurrence of some other specified event, such as termination of employment.

(d) Fees are assessed to the borrower for the ability to cancel or suspend loan payments on the loan, in accordance with the terms of the agreement.

(e) To "underwrite" in the context of this rule means to directly provide for any losses resulting from the operation of the product.

(3) State chartered credit unions desiring to offer DCC or DSA products where the credit union is not underwriting the product shall provide a letter form notification to the Department. The credit union must keep on file the following information, which must be obtained before execution of a contract:

(a) A listing of the types of contracts offered and the underwriting standards for each product;

(b) A copy of the written policies and procedures developed regarding administration of debt cancellation or debt suspension products and their compliance with Department policies;

(c) Identification of any vendor or third party service provider used in conjunction with the product offerings, including a list of the products and services being provided (see also Rule 80-2-7-.01 for contracting with third parties);

(d) A copy of the credit union's plan demonstrating the ability to administer claims;

(e) An analysis of the credit union's risk evaluation and mitigation procedures, including any plans to obtain insurance coverage to fully or partially indemnify itself for losses resulting from the operation of the DCC or DSA product; and

(f) An analysis of the expected impact on credit union staffing.

(4) If a credit union intends to underwrite any part of the DCC or DSA, the following information must also be submitted to the Department in the form of a letter application. No underwriting will be permitted until such approval is granted.

(a) Analysis of management expertise, based on education and experience, in the areas of product design, underwriting, actuarial analysis, claims processing and risk reserving and accounting practices to support the ability to provide these functions in-house.

(b) An explanation of the risk management techniques the credit union will undertake, including product design criteria, underwriting procedures, limitations and conditions on DCC or DSA products, and other risk mitigation procedures in order to limit risk exposure to the credit union.

(c) A well-documented analysis of risk of the products being proposed, including the risks posed by catastrophic events that could result in unusually high claims upon the credit union.

(d) An outline of the proposed practices for properly reserving for risks related to these products based on industry practices and Generally Accepted Accounting Principles.

(e) An analysis of the credit union to support that the credit union has the proper financial position, cash flow performance and capital position to sustain continued operations in the event of an unusually high claims event.

(5) State chartered credit unions desiring to offer DCC or DSA products where third party service providers will underwrite the products or will administer any part of the program shall provide the letter form notification described in this rule. In addition to any requirements of Rule Chapter 80-2-7 governing service providers, the following information shall also be obtained by the credit union before any contract is executed, and such information will be kept on file at the credit union:

(a) A description of the experience of the third party service provider in offering such DCC or DSA products;

(b) An analysis of the financial stability of the third party service provider, including but not limited to: operating or cash flow statements, analysis of capital and reserves and the use of external company ratings performed by a nationally recognized rating service;

(c) In lieu of (a) and (b) of this paragraph, the credit union may provide proof of the third party's appropriate licensure with the state of Georgia Department of Insurance.

(d) A copy of the standard form contract to be utilized. The contract must contain the third party service provider's assurance that:

1. It will make its books and records available for examination by the Department; and

2. The Department shall have the authority to periodically review the internal routine and controls of the service provider to ascertain that the operations are being conducted in a sound manner in keeping with industry practices and Generally Accepted Accounting Principles.

(e) A schedule of fees to be charged for each product or service performed; and

(f) A listing of reports, printouts, schedules or program that will be provided by the third party service provider to the credit union to permit management, auditors, examiners and other interested parties to monitor the services provided.

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

FIELD OF MEMBERSHIP

80-2-8-.01 Definitions.

80-2-8-.02 ~~Affiliated Organizations as Additions to Non-Geographic Group Common Bonds~~Expedited Applications for Non-Geographic Group Common Bonds.

80-2-8-.03 Requirements for Adding Additional Common Bond Groups to a Credit Union's Field of Membership.

Rule 80-2-8-.01. Definitions

(1) The field of membership of a state-chartered credit union shall consist of those persons, groups of persons, or organizations, each bound together by its own "common bond," i.e., a specific relationship of occupation, association or interest; residence or employment within a well-defined neighborhood, community, or rural district; employment; or membership in a bona fide cooperative, educational, fraternal, professional, religious, rural or similar organization. The common bond shall be such as would tend to create a mutual interest between persons sharing the relationship and must exist outside of the credit union itself. A common bond within a field of membership shall include persons related by blood, adoption, or marriage to or living in the same household with a person having the common bond as well as persons and surviving spouses of persons who are no longer within the common bond but who were members of the credit union in good standing when they left.

(2) Organizations, where more than 50% of the organization consists of employees, members, or owners within a non-geographic common bond shall be eligible for membership in the credit union under the same conditions as such employees, members or owners. Organizations that are headquartered within a geographic common bond shall be eligible for membership in the credit union under the same conditions as natural persons located within the field of membership.

Authority: O.C.G.A. §§ 7-1-61; 7-1-651; 7-1-663.

Rule 80-2-8-.02. ~~Affiliated Organizations as Additions to Non-Geographic Group Common Bonds~~Expedited Applications for Non-Geographic Group Common Bonds

(1) Requests for approval of non-geographic common bonds can be submitted to the Department via an expedited application form so long as the following conditions are satisfied:

(a) The credit union must have received a CAMELS composite rating of “1” or “2” as a result of the most recent state or federal examination;

(b) The credit union must not be subject to any agreements, orders, or other enforcement or administrative agreements with the Department or the NCUA;

(c) The requested field of membership addition consists of 5,000 potential members or less;

(d) The requested field of membership is not a geographic common bond;

(e) The requested field of membership is located entirely within the State of Georgia; and

(f) The requested field of membership satisfies all of the requirements in this rule and Rule 80-2-8-.03.

(2) Notwithstanding the above, the Department may remove from expedited processing any credit union's application where it finds that:

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

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

(c) The requirements for expedited processing have not been satisfied; or

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

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

(3) The Department shall approve, deny, or remove from expedited processing any expedited application for field of membership approval within ten (10) business days of receipt of a completed expedited application.

~~(1) Organizations whose employees, members, or owners are primarily (more than fifty (50) percent) composed of persons or organizations within a non-geographic group common bond shall be eligible for membership in the credit union and all employees, members and owners of such an organization shall likewise be eligible for membership within the related common bond group, subject to approval according to this rule.~~

~~(2) Organizations and employees and members of organizations having a continuing contractual relationship with a non-geographic group common bond for other than membership eligibility purposes shall be eligible for membership in such group, provided they are approved according to this rule.~~

~~(3) Inclusion of organizations set forth in (1) and (2) above and employees and members of such organizations as members of a common bond group within a credit union must be approved by a majority of the Board of Directors of the credit union based upon a written request from a senior policy-making official of the organization certifying that the organization desires credit union services and that the organization will provide payroll deduction facilities or a technological equivalent enabling automatic access to members' payroll or designated financial account wherever located.~~

~~(4) Membership by the affiliated organization shall not be effective until:~~

~~(a) The Board of Directors amend the bylaws to add such organization to the field of membership; and~~

~~(b) A copy of the amended bylaws, properly adding such organization to the field of membership, is received by the department. Such receipt of compliant bylaws shall constitute approval of the bylaws by the department.~~

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

Rule 80-2-8-.03. Requirements for Adding Additional Common Bond Groups to a Credit Union's Field of Membership

(1) A field of membership may consist of more than one common bond. Pursuant to O.C.G.A. § 7-1-634, ~~A~~application to the ~~department~~ Department is required ~~to include a proposed~~prior to a credit union ~~amendment~~ amending ~~to the~~its bylaws to add an additional common bond group.

(2) An application to add a common bond group must:

(a) Demonstrate that ~~membership is financially and economically viable, that~~ the application promotes competition~~,~~ and that ~~it~~ broadens the availability of financial services to the proposed membership;

(b) Reserved;

(c) Be approved for inclusion into the field of membership by ~~a majority~~two-thirds of the credit union's Board of Directors;

(d) In the case of a non-geographic group common bond, demonstrate sponsor support for any new group sought such as the submission of a written request from a senior policy making official of the organization certifying that the organization desires inclusion in the credit union's field of membership ~~or if necessary, the impact of loss of support from a sponsor~~; and

(e) Meet any additional requirements in this rule chapter.

(3) A credit union may expand its field of membership pursuant to this section only where:

(a) It has demonstrated sufficient managerial and financial capacity to safely and soundly serve such expanded membership; and

(b) It has developed a comprehensive business plan acceptable to the ~~department~~ Department designed to accomplish such expansion program in a safe, sound and business-like manner.

(4) Requests for approval of additional groups of any type must be in writing and include evidence that all the requirements of this rule chapter have been met.

(5) The field of membership shall not be expanded to include the additional common bond group until:

(a) The Department approves the application;

(b) The Board of Directors amends the bylaws to add such common bond to the field of membership; and

(c) A copy of the amended bylaws, properly adding such common bond to the field of membership, is received by the Department.

Authority: O.C.G.A. §§ 7-1-61; 7-1-~~633~~630; 7-1-634.

SUBJECT 80-2-9

INVESTMENT SECURITIES

80-2-9-.01 Investment Securities.

Rule 80-2-9-.01. Investment Securities

(1) Subject to such further restrictions and limitations as its board of directors may set forth in this investment policy, a credit union may purchase, sell and hold securities:

(a) Without limitation if such securities are:

1. The general obligations of the United States Government or any agency or instrumentality thereof;

2. Guaranteed as to principal and interest by the United States Government or any agency or instrumentality thereof; or

3. Separate Trading of Registered Interest and Principal of Securities which are offered exclusively in book entry form, are direct obligations of the United States, and are issued under Chapter 31, Title 13 USC.

(b) Up to twenty-five (25) percent of the shares and deposits of the credit union if the securities are the general obligations of the State of Georgia or any of its counties, school districts, or municipalities;

(c) Up to fifteen (15) percent of the retained earnings of the credit union if the securities are:

1. General and direct obligations of any state other than Georgia or counties, municipalities, or other political subdivisions of such states authorized to levy taxes;

2. Secured by the pledge or assignment of tax receipts sufficient to pay the principal and interest of such securities as they become due;

3. The revenue obligations of a political subdivision authorized to establish utility fees, public transportation usage fees, or public use fees where such levies or fees are pledged to and are sufficient to pay the principal and interest of the securities as they become due; and

4. The securities are the securities of, or other interests in, any open-end or closed-end management type investment fund or investment trust which:

   (i) Is registered under the Investment Company Act of 1940,

   (ii) Expressly requires that any changes in the investment objectives, fundamental operating policies, and limitations of the fund or trust must receive prior approval by a majority of the shareholders authorized to vote on such matters,

   (iii) Limits the investment portfolio of such investment fund or investment trust to:

      (I) Obligations otherwise authorized under subparagraphs (1)(a)1., (1)(a)2., and (1)(a)3. of this Rule;

      (II) Commercial paper and repurchase agreements, which are fully collateralized by securities authorized in subparagraph (1)(a)1., (1)(a)2., and (1)(a)3. of this Rule, and where the fund or trust takes delivery of such collateral either directly or through an authorized custodian; or

      (III) Certificates of deposit issued by financial institutions insured by an instrumentality of the United States government, and;

   (iv) Does not:

      (I) Except to the extent authorized in subparagraph (1)(a)3. of this Rule, acquire investments in the form of stripped or detached interest obligations associated with any security which otherwise constitutes a permissible investment under the provisions of this Rule;

      (II) Engage in the purchase or sale of interest rate futures contracts;

      (III) Purchase securities on margin, make short sales of securities or maintain a short position; or

      (IV) Otherwise engage in futures, forwards or options transactions, except, however, that forward commitments may be entered into for the express purpose of acquiring securities on a when-issued basis.

5. Bankers Acceptances and Subordinated Securities issued by financial institutions domiciled in Georgia; or by financial institutions affiliated with a financial institution domiciled in Georgia;

6. Commercial paper issued by corporations domiciled within the United States which is rated in the highest rating category by a nationally recognized rating service; or

7. Such other securities as the Department may approve and subject to such limitations as the Department may specify upon a finding that the securities are marketable under ordinary circumstances, with reasonable promptness, at a fair value. Securities issued by political subdivisions which are rated in the three highest rating categories by a nationally recognized rating service shall be deemed approved for investment up to fifteen (15) percent of the credit union's retained earnings.

8. Credit unions may invest in such other investment securities as may be authorized for federally chartered credit unions subject to the prior approval of the Department.

9. In the case of a central credit union, the Department may approve investments of the type described in subparagraph (1)(c) of this rule which may exceed the fifteen (15) percent limitation. Prior approval is required, and may be subject to certain conditions of approval.

(d) Aggregate limitations for all investments pursuant to subparagraph (1)(c)4. of this Rule shall not exceed:

1. Thirty (30) percent of the credit union's retained earnings per fund/trust family or sponsor, and

2. Sixty (60) percent of the credit union's retained earnings; however, an additional aggregate limitation of one-hundred-twenty (120) percent of the credit union's retained earnings shall be allowed if the funds or trusts:

(i) Are managed so as to maintain the fund or trust shares at a constant net asset value,

(ii) Are no-load, and

(iii) Are rated in the highest rating category by either Moody's Investors Service or Standard and Poor's Corporation.

(2) In lieu of the limitation on investments issued by any single obligor as set forth in subparagraph (1)(c) of this Rule, credit unions having shares and deposits of $ 1,000,000 or less, may elect to purchase such obligations which in the aggregate do not exceed ten (10) percent of the credit union's shares and deposits provided the obligations of any single issuer

do not exceed the greater of $ 10,000 or one (1) percent of the credit union's shares and deposits.

(3) With the exception of revenue obligations listed in subparagraph (1)(c)3. of this Rule, where the repayment of revenue obligations is dependent upon rentals or other fees payable to a political subdivision by a non-governmental unit, the obligor for the purpose of applying legal limitations shall be the non-governmental unit responsible for the payment of such rentals or other fees and any guarantor of such payments.

(4) Asset backed securities repayable in both interest and principal which are issued under:

(a) Governmentally sponsored programs which are fully collateralized by obligations fully guaranteed as to principal and interest by a governmental entity may be purchased to the same extent as direct obligations of the governmental entity granting the guarantee; and

(b) Private programs which are fully collateralized by obligations fully guaranteed as to principal and interest by a governmental entity may be purchased to the same extent as direct obligations of the governmental entity granting the guarantee.

(5) Except for those investments specifically authorized in subparagraph (1)(a)3. of this Rule, futures, forwards, option contracts, interest rate swaps, and direct and indirect investments associated with any security which otherwise constitutes a permissible investment under provisions of this Rule may be approved in writing by the Department for credit unions demonstrating technical expertise and policies sufficient to promote safe and sound use of such investments as part of prudent investment strategies.

(6) Subordinated debt is a security issued by a credit union after approval by the National Credit Union Administration, which may qualify as capital under federal regulatory capital guidelines. The subordinated debt must be scrutinized under the suitability analysis in this rule as if it was a loan being underwritten by the purchasing credit union. Subordinated debt is an authorized investment for a state credit union subject to compliance with the terms and conditions contained in this paragraph.

(a) Notwithstanding any provision in this rule to the contrary, the credit union's aggregate investment in subordinated debt shall not exceed the credit union's policy limits or twenty-five percent of net worth, whichever is less. For purposes of determining compliance, this aggregation requirement applies to all subordinated debt investments, whether purchased pursuant to this paragraph or any other paragraph of this rule.

(b) The securities shall be of investment quality or the credit equivalent of investment quality. Investment quality means that a rating in one of the four highest categories has been assigned to the securities by a nationally recognized rating service and, as such, are not predominantly speculative in nature. If the securities are not rated by a nationally recognized rating service, then credit equivalency shall be determined by the methods in subsection (c) of this rule.

(c) Before the purchase of subordinated debt, the credit union shall perform a due diligence suitability analysis to determine whether the subordinated debt is suitable for purchase relative to the credit union's tolerance for credit risk, asset liability position, sensitivity to market risk, and its liquidity exposure. Such analysis shall include, at a minimum, the following:

1. A complete credit analysis, including pro forma financial statements and cash flow analysis, sufficient to determine that the issuer is creditworthy and thus has the ability to meet the debt repayment schedule;

2. A review of the subordinated debt plan submitted by the issuing credit union to the National Credit Union Administration;

3. An analysis of the quality, capability, and leadership expertise of the management of the issuing credit union;

4. A marketability analysis, sufficient to determine whether or not the securities may be sold with reasonable promptness at a price corresponding to their fair value, which analysis may be supported by input from the placement agent for such securities;

5. The documentation of the suitability analysis shall be in written form and maintained in the credit union's files; and

6. A periodic update of the suitability analysis shall be performed by the credit union at least as frequently as annually during the term of the investment

(d) The credit union shall obtain and monitor the securities' market values on an ongoing basis.

(e) The credit union's written policies and procedures shall adequately address the various risks inherent in these securities including credit risk, price or market risk, interest rate risk, and liquidity risk.

(~~6~~7) In the event a credit union's investment in securities no longer conforms to this Rule but conformed when the investment was originally made, the credit union shall provide written notification to the Department regarding the nonconforming investment within 30 days of discovering the nonconforming investment or 120 days of the investment becoming nonconforming, whichever event occurs first. In the event a credit union wishes to hold the nonconforming investment, the credit union must submit a letter form application to the Department describing the efforts the credit union will undertake to bring the nonconforming investment into conformity and the anticipated time it will take to bring the investment into conformity. Upon review of the application, the Department may request additional information if it determines such additional information is necessary in order to fully and completely evaluate the application. After completion of its review, the Department shall either approve, conditionally or otherwise, or deny such application in writing

(~~7~~8) A credit union may sell a nonconforming investment without Department authorization but only if it provides the Department with written notice no later than five (5) business days after the sale.

Authority: O.C.G.A. § 7-1-650; § 7-1-654; § 7-1-663.

SUBJECT 80-2-12

CREDIT UNION LOANS

80-2-12-.02 Real Estate Loans.

80-2-12-.03 Participation Loans and Whole Loans.

Rule 80-2-12-.02. Real Estate Loans

(1) A real estate loan shall be any loan secured by real estate where the credit union relies upon such real estate as the primary security for the loan. If the proceeds of the loan are used for the purchase of the real estate pledged, the loan will be presumed to be a real estate loan. Where the credit union relies substantially upon other factors, such as the general credit standing of the borrower, guaranties, or security other than real estate, the loan does not constitute a real estate loan, although as a matter of prudent underwriting it may also be secured by real estate, provided:

(a) Current credit information on the borrower and/or the guarantors is maintained ~~sufficient~~ to sufficiently show the credit worthiness of the borrower or guarantors is adequate to support the debt; and

(b) The other collateral is properly pledged to the credit union, protected by adequate hazard insurance, and supported by a statement of appraised or estimated value.

(2) A loan may be secured by a first lien although subordinate to another lien if:

(a) The credit union takes obligations of the borrower in an amount equal to the debt outstanding on the prior mortgage obligation plus the amount secured by such credit union's lien; and

(b) The credit union may at any time effect payment of the prior lien. In such case the credit union may require the borrower to make all mortgage payments to such credit union, with that credit union servicing the prior lien from such payments, provided that:

1. Where such "wrap around" arrangements are made, the credit union will obtain a statement from the borrower and the holder of the first lien that no further advances will be made to the borrower by the first lien holder and subject to its lien without the prior consent of the credit union, and that

2. The credit union may repay the first lien at its option with no penalty or a stated prepayment penalty.

(3) Conditions common to all real estate loans as to legal requirements and technical aspects shall be met, including but not limited to evidence of title search, recordation, an independent written appraisal or, in the alternative, a written estimate of market value in conformity with 12 CFR 722.3 (hereinafter "estimate"), and adequate insurance protection upon the insurable improvements with loss payable clause to the credit union. The lack of the foregoing technical requirements, while causing the loan to be technically defective, shall not be cause to consider the loan as nonconforming and in violation of law unless the total aggregate borrowings by the borrower exceed the unsecured lending limits of O.C.G.A. §~~Code Section~~ 7-1-658(d), in which case the real estate collateral will not contribute to the "ample security" of the line.

(4) Interpretations of provisions within the statute:

Nonamortized commercial real estate loans shall not exceed seventy-five percent (75%) of the fair market value of the property pledged, such loans and renewals thereof may be made payable on demand, or on demand after a specified future date, but no such loans or renewals may be made or held for a period in excess of five years, after which time sufficient principal payments must be made on a regular basis to amortize the loan.

(5) Other exemptions from the limitations as to loan to value ratios and requirements for first lien are as follows:

(a) Loans to the extent secured in whole or in part by guarantees or commitments to take over, insure, participate in, or purchase the same, made by any governmental agency of the United States or entities sponsored by the United States, including corporations wholly owned either directly or indirectly by the United States.

(b) Loans which are fully guaranteed or insured by this State or by a State Authority.

(c) Loans secured in whole or in part by real estate occupied by the borrower for residential purposes, provided the credit is extended for purposes other than acquisition of the property and the aggregate outstanding debt secured by the property does not exceed the ~~appraised~~ value of the property as established by appraisal or estimate plus reasonable estimated values for other collateral held against the total indebtedness.

(d) Commercial loans made for operating funds, working capital, or similar purposes, (other than the purchase of, investment in, or development of real estate) predicated upon the credit standing of the borrower or endorser, guarantor or co-maker, or other such security, but on which real estate collateral (including second mortgages) is taken as precautionary measure against possible contingencies may be exempt from the restrictions and limitations imposed upon real estate loans, provided such loans are supported (in addition to adequate credit information and/or collateral documents) by a general purpose statement signed by the borrower or by a credit memorandum signed

by a loan officer, stating the purpose for which the loan is made and sufficient to indicate the exemption is valid.

(e) Loans representing the sale by the credit union of other real estate acquired for debts previously contracted shall be exempt from the limitations as to property values and membership requirements exempted by O.C.G.A. §~~Code Section~~ 7-1-650(9), but shall be subject to all other requirements of this regulation, provided that the amount so financed shall not be for a greater sum than the credit union's investments in such property.

(f) Loans which, when made, were either unsecured or secured by personalty, but which are now secured in whole or in part by liens on real estate taken in order to prevent loss on a debt previously contracted.

(g) Amortized loans in excess of ninety-five percent (95%) of fair market value, but not more than one hundred percent (100%) of fair market value, where not less than twenty percent (20%) of the outstanding principal balance on the loan is insured or a commitment is made to insure for the first ten (10) years of the loan by a mortgage guaranty insurance company licensed to do business in this State.

(h) Temporary loans maturing in not more than one year made for the purpose of financing the acquisition of single-family, residential property to be used as the principal residence of the borrower and where the aggregate total of all liens against the property does not exceed the purchase price of such property; provided, such loan is to be repaid from the sale of the borrower's former principal residence and the proceeds in excess of amounts owed against the former residence and costs of sale are assigned to the credit union.

(6) All construction and development loans made or held by a credit union shall be exempt from the state loan to value limitations of this statute when made to comply with the following conditions:

(a) Loans having maturities not to exceed sixty (60) months may be made to finance the construction of industrial or commercial buildings where there is a valid and binding agreement entered into by a financially responsible lender to advance the full amount of the credit union's loan upon completion of the buildings.

(b) Loans having maturities not to exceed twenty-four (24) months may be made for residential construction or development purposes where the credit union holds a firm (or conditional) commitment to guarantee or insure from any instrumentality or corporation wholly-owned by the United States or by any Authority of this State as indicated in Rule 80-2-12-.02(5)(a) and (b) of this Rule, or where there is a take-out agreement by any financially responsible lender to advance the full amount of the credit union's loan upon completion of the dwelling.

(c) Temporary construction or development loans may be made by a credit union for a period not to exceed sixty (60) months where the loan is made to finance the construction of residential development which will exceed nine (9) units or industrial or commercial buildings, or for a period not to exceed twenty-four (24) months where the loan is made to finance construction of nine (9) or less residential units or farm buildings or to improve and develop land preliminary to such construction, without a prior commitment to guarantee or insure or take-out agreement by an instrumentality or corporation wholly-owned by the United States or of this State or any other financially responsible lending agency. The parties must actually intend the loan to be paid off or refinanced by a purchaser within the specified maturities and the lots, when development is residential, must be released periodically during the development of land for such purposes, and pro rata reductions must be made in the principal of the debt. All such temporary construction and development loans must be supported by a statement of purpose or intent, and if held beyond the construction or development periods, must be made to conform to the seventy-five percent (75%) and ninety-five percent (95%) limitations; otherwise, they will be held to be nonconforming real estate loans.

~~1.~~
~~–~~For purposes of this Rule, 75% and 95% limitations are defined ~~for purposes of this Rule~~ as loans for not more than 75 percent of the fair market value of the real estate in the case of a single maturity loan, or for not more than 95 percent of the fair market value of the real estate in the case of loans that must be regularly amortized.

(d) Commitments to guarantee, insure or purchase must be currently valid, and maturities of the loans may not be extended or loans held beyond the periods stipulated above.

(7) Except as otherwise provided in law or regulations, credit unions may not acquire directly or indirectly an ownership interest in real estate without the prior written approval of the Department.

Authority: O.C.G.A. § 7-1-61.

Rule 80-2-12-.03. Participation Loans and Whole Loans

(1) Credit unions may invest in loans made by other lenders. Credit unions may purchase one hundred percent or less of a loan as part of a participation. Alternatively, credit unions may purchase one hundred percent of a loan as a whole loan. Loans purchased must conform to all laws and regulations applicable to that category of loan to the same extent as if the purchasing credit union had originated the loan itself. Applicable statutory and regulatory requirements, including, but not limited to, collateral documentation requirements, loan to collateral value requirements, and loan limitations must be met. The purchasing credit union shall obtain from the selling lender copies of all pertinent collateral and credit documents or,

solely in the case of a loan participation, a summary of information sufficient to conclude that all legal and regulatory requirements have been met.

(2) A credit union that purchases a loan has the responsibility of conducting loan underwriting procedures on the loan to determine that it complies with the policies of the credit union and meets the credit union's credit standards.

(3) The following additional requirements apply to a participation purchase in pools of loans and, those that are applicable, apply to a whole loan purchase in pools of loans:

(a) Loans in the pool or discount line must be specifically identifiable on the records of the selling ~~financial institution~~lender.

(b) The participation agreement must call for the participant to share pro rata in losses experienced by the pool.

(c) The participation agreement must provide for a periodic, at least quarterly, report by the seller to the purchaser to account for settlement for losses incurred and to provide information on past due status of loans contained in the pool or discount line.

(d) Where the purchase exceeds the purchasing credit union's unsecured lending limit, the purchase must be accorded prior written approval from the Board or the Board-approved credit committee.

(e) The purchase in the pool must satisfy safety and soundness. In determining whether a participation in a pool of loans is safe and sound, the ~~department~~ Department will consider:

1. The credit union's understanding of the selling ~~financial institution~~lender's organization, business model, financial health, and the related risks of the participation;

2. The credit union's due diligence in monitoring and protecting against participation risks;

3. If contracts between the credit union and the selling ~~financial institution~~lender grants the credit union sufficient control over the seller's actions and provides for replacing an inadequate servicer; and

4. Other factors relevant to safety and soundness.

(4) Where agreements exist for the seller to repurchase or indemnify loss, participation and whole loan purchases shall be treated as loans to the seller by the purchasing credit union and the amount of the purchase shall be considered to be remaining on the seller's books for the purposes of the seller's loan limitations.

(5) The purchasing credit union shall be deemed in compliance with the documentation requirements of this Rule so long as the credit union may electronically access, on demand, the required pertinent documentation required by this Rule.

Authority: O.C.G.A. §§ 7-1-61; 7-1-650; 7-1-663.

SUBJECT 80-2-13

APPLICATIONS

80-2-13-.01 Procedures for Other Transactions, Applications

Rule 80-2-13-.01. Procedures for Other Transactions, Applications

(1) Conversion to state-chartered credit union. A meeting with the Department should precede filing a letter form application, which application should include all of the information requested in the Applications Manual.

(2) Mergers. The procedure for approval of a merger involves the filing of a letter application to the Department, which should include all of the information requested in the Applications Manual.

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

(4) Creation and Operation of a Subsidiary of a Credit Union. A credit union can exercise powers incidental to banking and create a separate subsidiary to effect such powers as may be financial in nature, incidental or complementary to the provision of financial services, subject in most cases to certain investment limitations. Most require a letter form application describing the activity, how it relates to the business of banking and finance, and what protections will be in place to deal with any associated risks. An application to create and operate a subsidiary of a credit union can be expedited if the requirements of Rule 80-1-1-.10 are satisfied.

(5) Letter form applications are required for name reservations and permissions set forth in O.C.G.A. §§ 7-1-130, 7-1-131, 7-1-242, and 7-1-243.

Authority: O.C.G.A. § 7-1-61.

CHAPTER 80-3

~~RULES OF DEPARTMENT OF BANKING AND FINANCE~~ MONEY TRANSMISSION

SUBJECT 80-3-1

DISCLOSURES, LOCATIONS, AND AUTHORIZED AGENTS

80-3-1-.04 ~~Repealed and Reserved~~Notice of Unauthorized Access to Personal Information.

80-3-1-.05 ~~Reserved~~Information Security Safeguards for Consumer Financial Information.

Rule 80-3-1-.04 ~~Repealed and Reserved~~Notice of Unauthorized Access to Personal Information

(1) In the event that a licensee provides notice under applicable federal or state law of an information security incident involving unauthorized access to personal information, then the licensee shall simultaneously provide a duplicate of such disclosure to the Department. For purposes of this rule, personal information is any record containing nonpublic personal information about a customer or potential customer whether in paper, electronic, or other form maintained by or on behalf of the licensee.

(2) Pursuant to O.C.G.A. § 10-1-912, a business that satisfies the definition of an information broker is required to provide notice to Georgia residents in the event of a data breach that results in access or likely access to unencrypted personal information. In the event a licensee or an affiliate of a licensee is required to make such notification to Georgia residents, then a duplicate of the notification will simultaneously be submitted to the Department.

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

Rule 80-3-1-.05. ~~Reserved~~Information Security Safeguards for Consumer Financial Information

All licensees shall create and maintain an information security program to safeguard the nonpublic personal information of customers to the extent required by 16 C.F.R. Part 314 (the "Safeguards Rule"). As part of its regulatory oversight, the Department shall review, to the extent applicable, licensee's information security programs, risk assessments, incident response plans, and other required elements of the Safeguards Rule.

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

SUBJECT 80-3-2

FINANCIAL CONDITION, REPORTING, AND CONTROL

80-3-2-.02 Net Worth.
80-3-2-.04 Change in Control.
80-3-2-.05 Notice of Change in Executive Officer.
80-3-2-.06 Passive Investor.

Rule 80-3-2-.02. Net Worth

Every applicant for a license shall demonstrate to the Department that such applicant has sufficient financial resources in the form of working capital and tangible net worth to successfully engage in the business of selling payment instruments or money transmission. Sufficiency of financial resources shall be determined through financial analysis by the Department of pro-forma and historical financial information of the applicant, including, but not limited to, audited financial statements for the most recent fiscal year and the previous two years or, if determined to be acceptable by the Department for a more recently formed entity, certified unaudited financial statements for the most recent fiscal year or other relevant period. Each licensee shall be required to complete and attest to official questionnaires and statements of assets and liabilities when requested for examination purposes. Licensees shall be prohibited from withholding, deleting, destroying, or altering information requested by an examiner of the Department or making false statements or material misrepresentations to the Department during the course of an examination or on any application or renewal form sent to the Department.

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

Rule 80-3-2-.04. Change in Control

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

(2) A licensee acquiring another licensee under the provisions of O.C.G.A. § 7-1-688(d)(2) shall provide the written notice required by such statute at least thirty (30) days prior to such proposed acquisition.

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

Rule 80-3-2-.05. Notice of Change in Executive Officer

The notice of change in executive officer required by O.C.G.A. § 7-1-687(e) shall be timely furnished to the Department through the Nationwide Multistate Licensing System and Registry ("NMLSR"). Supporting documentation for the notice demonstrating whether the executive officer meets the requirements of O.C.G.A. §§ 7-1-684 and 7-1-687 shall be submitted via NMLSR within thirty (30) days of the effective date of the change in executive officer. Such documentation shall include, but is not limited to, a background check, credit history, responses to disclosure questions, and additional information that may be requested by the Department. If the notice is

not disapproved by the Department within ninety (90) days after the date on which the supporting documentation was determined to be complete, the notice is deemed approved.

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

Rule 80-3-2-.06. Passive Investor

(1) Each applicant or licensee who has an owner or potential owner who claims to satisfy the passive investor definition in O.C.G.A. § 7-1-680 shall provide to the Department the following documentation at the time of initial license application or at least thirty (30) days prior to the proposed acquisition by such person:

(a) a document in a form and manner prescribed by the Department in which the purported passive investor, or individual in control of such person if an entity, attests to meeting the criteria for a passive investor; or,

(b) a written agreement signed by both the applicant or licensee and the purported passive investor, or individual in control of such person if an entity, in which such person commits to meeting the criteria for a passive investor.

(2) If an applicant or licensee has an owner or potential owner who claims to satisfy the passive investor definition in O.C.G.A. § 7-1-680 and fails to provide acceptable documentation establishing that the person is a passive investor or the person fails to continuously satisfy the passive investor requirements, then

(a) the applicant for a new license shall promptly supplement its license application by submitting documentation required by the Department to investigate the person as an ultimate equitable owner of the applicant pursuant to O.C.G.A. §§ 7-1-683 and 7-1-684, or the license application shall be subject to denial; or,

(b) the licensee shall timely file a change in control application and submit related documentation required by the Department, or the licensee shall be subject to penalties for failure to obtain approval for a change in control pursuant to Rule 80-3-1-.07(4)(h).

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

SUBJECT 80-3-3

BOOKS AND RECORDS

80-3-3-.01 Minimum Books and Records.

Rule 80-3-3-.01. Minimum Books and Records

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

(1) A record of each payment instrument sold;

(2) A general ledger which shall be posted at least monthly containing all assets, liabilities, capital, and income and expense accounts;

(3) Settlement sheets received from authorized agents;

(4) Bank statements and bank reconciliation records;

(5) Records of outstanding payment instruments;

(6) Records of each payment instrument paid;

(7) A list of the names and addresses of all of the licensee's authorized agents;

(8) A copy of all currency transaction reports and suspicious activity reports that are required by law to be filed by the licensee and the related work papers;

(9) For money transmitters, records of all money transmissions sent or received as well as all outstanding money transmissions; ~~and~~

(10) Supporting documentation for all reports required to be prepared or filed with the Department or the Nationwide Multistate Licensing System and Registry~~;~~. and

(11) Information security program materials maintained by the licensee in accordance with 16 C.F.R. Part 314, ("the Safeguards Rule") and Rule 80-3-1-.05, including, but not limited to, any risk assessment and incident response plan.

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

SUBJECT 80-3-4

ADMINISTRATIVE FINES AND PENALTIES

80-3-4-.01 Administrative Fines.

Rule 80-3-4-.01. Administrative Fines

(1) Except as otherwise indicated, these fines and penalties apply to any person, partnership, association, corporation, or any other group of individuals, however organized, that is required to be licensed under Article 4 of Chapter 1 of Title 7. The Department, at its sole discretion, may waive or modify a fine based upon the financial resources of the person,

gravity of the violation, history of previous violations, and such other facts and circumstances deemed appropriate by the ~~department~~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) The Department establishes the following fines and penalties for violation of the laws and rules governing payment instrument sellers and money transmitters.

(a) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain its books and records according to the requirements of O.C.G.A. § 7-1-689 and Rules 80-3-1-.01(3), 80-3-1-.02(2), 80-3-1-.03, 80-3-2-.01, 80-3-3-.01, or 80-3-3-.02, such licensee shall be subject to a fine of one thousand dollars ($1,000) for each books and records violation listed in Rule 80-3-1-.01(3), 80-3-1-.02(2), 80-3-1-.03, 80-3-2-.01, 80-3-3-.01 or 80-3-3-.02.

(b) Operating Without Proper License. Any person who acts as a payment instrument seller or money transmitter prior to receiving a current license required under O.C.G.A. Article 4 of Chapter 1 of Title 7, or who acquires a payment instrument seller or money transmission business without its own license, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars ($1,000) per day.

(c) Felons. Any licensee that hires or retains a covered employee who is a felon as described in O.C.G.A. § 7-1-684(b), when such covered employee has not complied with the remedies provided for in O.C.G.A. § 7-1-684(b) for each conviction before such employment, shall be subject to a fine of five thousand dollars ($5,000) for each such covered employee.

(d) Locations and Authorized Agents. Any licensee that does not give timely notice to the Department of new locations or agents beyond those previously reported as required in O.C.G.A. § 7-1-686(d) and Rules 80-3-1-.01(3) and 80-3-1-.03(2), shall be subject to a fine of five hundred dollars ($500) for each location or agent not reported.

(e) GCIC Background Checks on Employees. Any licensee that does not obtain a Georgia Crime Information Center ("GCIC") criminal background check on each covered employee prior to the initial date of hire or retention shall be subject to a fine of one thousand dollars ($1,000) per occurrence. Proof of the required GCIC criminal background check must be retained by the licensee until five years after termination of employment by the licensee. Notwithstanding compliance with this requirement to perform a GCIC criminal background check prior to employment, failure to maintain criminal background checks as required will result in a fine of one thousand dollars

($1,000) for each covered employee for which the licensee is missing this documentation.

(f) Authorized Agents. Any licensee that does not give notice of an authorized agent whose agency certificate has been revoked, suspended, cancelled, terminated, or voluntarily closed by the licensee as required by Rule 80-3-1-.03(2), shall be subject to a fine of five thousand dollars ($5,000) for each authorized agent revocation, suspension, cancellation, termination, or voluntary closure not reported in writing to the Department.

(g) Failure to Provide Receipt. In the event a licensee or its authorized agent does not provide the customer with a written receipt or other evidence of acceptance as required in Rule 80-3-1-.02(2), it shall be subject to a fine of one thousand dollars ($1,000) per transaction where the receipt was not provided.

(h) Failure to Notify or Obtain Approval from the Department of Change in Ownership, Change in Control, or Designation of Executive Officer. Any licensee or other person who fails to obtain the Department's prior approval of a change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control of the licensee in compliance with O.C.G.A. § 7-1-688 and Rule 80-3-2-.04 shall be subject to a fine of one thousand dollars ($1,000). Any licensee or other person who fails to timely notify the Department of a change in executive officer not resulting from a change in control or ownership in compliance with O.C.G.A. § 7-1-687 shall be subject to a fine of one thousand dollars ($1,000).

(i) Other Business Activities. Any licensee found to have violated any law of this state by conducting any other business that is not lawful in conjunction with the selling of payment instruments or money transmission, shall be subject to a fine of five thousand dollars ($5,000).

(j) Failure to Report. Any licensee who fails to provide required reports as established by the Department and file the reports with the Department or the Nationwide Multistate Licensing System and Registry within the designated time periods shall be subject to a fine of one thousand dollars ($1,000) for each such occurrence.

(k) Failure to Submit to Exam. The penalty for the refusal of a licensee to permit the Department to conduct an investigation or examination of its books, accounts, and records (after a reasonable request by the Department), shall be ~~the revocation of its license and~~ a five thousand dollars ($5,000) fine. Refusal shall require at least two attempts by the Department to schedule an examination or investigation.

(l) Consumer Complaints. Any licensee who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department's correspondence to such licensee, shall be subject to a fine of one thousand dollars ($1,000) for each occurrence.

(m) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or the requirements referred to in Rules 80-3-6-.01, 80-3-6-.02, and 80-3-6-.03, such licensee shall be subject to a fine of one thousand dollars ($1,000) for each instance of non-compliance.

(n) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensed payment instrument seller or money transmitter that fails to disclose that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee within ten (10) business days of the date of the event necessitating the disclosure, shall be subject to a fine of one thousand dollars ($1,000). Any licensed payment instrument seller or money transmitter that fails to submit a new lawful presence affidavit from a current owner or executive officer within ten (10) business days of the owner or executive officer that executed the previous lawful presence affidavit no longer being in that position with the licensee, shall be subject to a fine of one thousand dollars ($1,000) per day until the new affidavit is provided.

(o) Failure to Timely Update Information on the Nationwide Multistate Licensing System and Registry. Any licensee that fails to update its information on the Nationwide Multistate Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars ($1,000) per occurrence. In addition, the failure of a control person of a licensee to update the individual's information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions by the control person, within ten (10) business days of the date of the event necessitating the change, shall subject the licensee to a fine of one thousand dollars ($1,000) per occurrence.

(p) Failure to Post Required License. Any licensee that fails to post a copy of its license in the premises where money is transmitted or where payment instruments are issued or sold shall be subject to a fine of five hundred dollars ($500) for each instance of non-compliance.

(q) Prohibited Acts. Any licensee or other person who violates the provisions of O.C.G.A. § 7-1-692 shall be subject to a fine of one thousand dollars ($1,000) per violation or transaction that is in violation.

(r) ~~Failure to Submit to Examination or Investigation. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department) shall be a five thousand dollar ($5,000) fine. Refusal shall require at least two attempts by the Department to schedule an examination or investigation.~~Unauthorized Access to Customer Information. Any licensee that fails to provide the Department with notice of unauthorized access to customer information as

required by Rule 80-3-1-.04 shall be subject to a fine of one thousand dollars ($1,000) a day until the notice is provided.

(s) Failure to Timely Increase the Amount of the Surety Bond. Any licensee that fails to increase the amount of the applicable surety bond when its average daily outstanding balances for payment instruments or outstanding orders to transmit not yet paid, as required by Rule 80-3-2-.03, exceed the face amount of the surety bond by ten percent (10%) or more shall be subject to a fine of one thousand dollars ($1,000) per occurrence.

Authority: O.C.G.A. §§ 7-1-61, 7-1-690, 7-1-694.

SUBJECT 80-3-5

LICENSING

80-3-5-.02 Nationwide Multistate Licensing System and Registry.
80-3-5-.03 International Investigative Background Report.

80-3-5-.02. 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") unless otherwise expressly exempted from this requirement by the Department in writing. 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 non-refundable.

(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/or 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 reinstatement application in order to conduct business as a check casher, money transmitter, or payment instrument seller 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 result in the denial of the application. In the case of a licensee, failure to timely update any disclosure information may result in the revocation of its license.

(c) 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.

(d) 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) All written notices required pursuant to O.C.G.A. §§ 7-1-687(a) and 7-1-687(d) and Rule 80-3-1-.04 shall be submitted to the Department via NMLSR. Such notices shall be uploaded as state-specific documents under the document type "Additional Requirements." The file name for each document shall begin with "Georgia Required Written Notice" but may contain additional words at the option of the licensee.

Authority: O.C.G.A. §§ 7-1-61, 7-1-690, 7-1-683.3.

Rule 80-3-5-.03. International Investigative Background Report

Upon request by the Department, the international investigative background report authorized by O.C.G.A. § 7-1-689(f)(1)(C) shall be provided by any individual who has resided outside the United States at any time within ten (10) years prior to applying for a licensee or occupying any role in connection with an applicant, licensee, or authorized agent requiring approval or subject to disapproval by the Department. Such report shall be prepared by an independent search firm that has demonstrated that it has sufficient knowledge and resources, employs accepted and reasonable research methodologies, and is not affiliated with and does not have an interest in the individual it is investigating. Such report shall include the following information, presented in English:

(a) Comprehensive credit history report, or any equivalent information obtained or generated by the independent search firm to accomplish such report, including a search of court data in the countries, provinces, states, cities, towns, and contiguous areas where the individual has resided and worked to the extent such information is available in any jurisdiction where the individual has resided within the past ten (10) years;

(b) Criminal record information outside of the United States, including, but not limited to, felonies, misdemeanors, or similar convictions for violations of law in the countries, provinces, states, cities, towns, and contiguous areas where the individual has resided and worked;

(c) Employment history;

(d) Media history, including an electronic search of national and local publications, wire services, and business applications; and,

(e) Financial services-related regulatory history, including but not limited to, money transmission, sale of payment instruments, securities, banking, insurance, and mortgage-related industries.

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

CHAPTER 80-4

CHECK CASHERS

SUBJECT 80-4-1

BOOKS AND RECORDS; OTHER REQUIREMENTS

80-4-1-.01 Books and Records; Other Requirements.
80-4-1-.05 Administrative Fines and Penalties.
80-4-1-.07 Nationwide Multistate Licensing System and Registry.

80-4-1-.08 ~~Repealed and Reserved~~Notice of Unauthorized Access to Personal Information.

80-4-1-.09 ~~Repealed and Reserved~~Information Security Safeguards for Consumer Financial Information.

Rule 80-4-1-.01. Books and Records; Other Requirements

(1) For purposes of this Rules Chapter and Rule 80-5-1-.02(2), the terms that are defined in O.C.G.A. § 7-1-700 shall have the identical meaning.

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

(3) Every licensee shall maintain an original written authorization or other evidence of verification attesting to the fact that each specific corporation or other business association has authorized its officers and employees or specific officers or employees to present payment instruments, drawn by the corporation or other business association payable to cash or drawn by any party payable to the corporation or other business association, to a licensee for cashing. A check casher shall not cash a payment instrument payable to persons other than natural persons unless the check casher has on file such written authorization or verification indicating that the payee has authorized the presentation of such payment instruments on behalf of the payee.

(4) Every licensee shall post in prominent view of each teller window or other customer service station a copy of its license. Advertising material related to the cashing of payment instruments and distributed within this state shall contain the licensee's name, which shall conform to the name on record with the Department, and unique identifier, which shall clearly indicate that the number was issued by the Nationwide Multistate Licensing System and Registry.

(5) Minimum Books and Records.

(a) Books and records required herein shall be maintained by every licensee.

(b) A record of cashed payment instruments shall be maintained by each licensee as a log of all transactions occurring each day. The log must be maintained in chronological order based on the date of negotiation of the payment instrument.

1. For all cashed payment instruments, such record shall include:

(i) The date of negotiation of the payment instrument;

(ii) Name, address, and identifying number (social security, driver's license, passport, etc.) of the person negotiating the payment instrument;

(iii) Amount of the payment instrument; and

(iv) Amount of fee charged for cashing the payment instrument.

2. For all cashed payment instruments in an amount of one thousand dollars ($1,000) or more, such record shall also include:

(i) Date of the payment instrument;

(ii) Payment instrument number;

(iii) Name and location or routing number of the payor bank or, if a pre-paid card, the branded card name; and

(iv) Name of the drawer of the payment instrument.

(c) A daily cash reconcilement statement shall be maintained summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business. Such reconcilement statement shall separately reflect cash received from the sale of payment instruments (if also licensed as a seller of payment instruments or an authorized agent of such licensee), redemption of returned items, bank cash withdrawals, cash disbursed in cashing of payment instruments, and bank cash deposits.

(d) A general ledger containing records of all assets, liabilities, capital, income and expenses shall be maintained. The general ledger shall be posted from the daily record of cashed payment instruments or other record of original entry, at least quarterly, and shall be maintained in such manner as to facilitate the preparation of an accurate trial balance of accounts in accordance with generally accepted accounting practices. A consolidated general ledger reflecting activity at two or more locations under the same license may be maintained provided books of original entry are separately maintained for each location.

(e) For all entities cashing payment instruments, each customer cashing a payment instrument shall be offered the option of receiving a receipt showing the name of the licensee or trade name of the licensee, the transaction date, the amount of the payment instrument, and the fee charged.

(f) All licensees shall maintain supporting documentation for all reports and logs required to be prepared or filed with the Department or the Nationwide Multistate Licensing System and Registry.

(g) Information security program materials maintained by the licensee in accordance with 16 C.F.R. Part 314, ("the Safeguards Rule") and Rule 80-3-1-.05, including, but not limited to, any risk assessment and incident response plan.

(6) All payment instruments drawn on a financial institution domiciled in the United States and cashed by a licensee shall be sent for deposit to the licensee's account at a financial institution authorized to do business in the State of Georgia whose deposits are federally insured or sent for collection not later than the close of business on the next business day after the date on which the payment instrument was cashed.

(7) Each licensee shall maintain a principal location at which its books and records are maintained and which is accessible to the Department for examination during normal business hours. Records required to be maintained under this rule may be maintained in a photographic, electronic, or other similar format at a central location within or outside the State of Georgia provided specific records can be transmitted to a location designated by the Department within ten (10) days of the Department's request. The Department may examine any person that purports to satisfy the exemption from licensure set forth in O.C.G.A. § 7-1-701.1 to verify that the person qualifies for the exemption from licensure. A licensee that refuses to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department), that withholds material information or makes a misrepresentation shall have its license revoked.

(8) The business of the licensee may be conducted through additional outlets, including those operated as mobile facilities, provided that mobile facilities maintain a regular schedule of times and locations at which they cash payment instruments, file the schedule with the Department, and comply with local licensure requirements at each location at which business is conducted. A licensee must provide the Department with written notice at least thirty (30) days prior to it conducting business at any additional outlets.

(9) A licensee shall notify the Department in writing within fifteen (15) days of the closing of the portion of its business that cashes payments instruments and shall surrender its original license to the Department at that time.

(10) A licensee shall make a written request to the Department seeking approval for any proposed change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control of the licensee as required by O.C.G.A. § 7-1-705.1 at least thirty (30) days prior to the proposed change.

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

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

Rule 80-4-1-.05. Administrative Fines and Penalties

(1) Except as otherwise indicated, these fines and penalties apply to any person, partnership, association, corporation, or any other group of individuals, however organized, that is

required to be licensed under Article 4A of Chapter 1 of Title 7. The Department, at its sole discretion, may waive or modify a fine based upon the financial resources of the person, gravity of the violation, history of previous violations, and such other facts and circumstances deemed appropriate by the ~~department~~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) The Department establishes the following fines and penalties for violation of the law and rules governing check cashers.

(a) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain its books and records according to the requirements of O.C.G.A. § 7-1-706(a) and Rules 80-4-1-.01(2) or 80-4-1-.01(5), such licensee shall be subject to a fine of one thousand dollars ($1,000) for each books and records violation listed in Rules 80-4-1-.01(2) or 80-4-1-.01(5).

(b) Excessive Fees. If the Department, in the course of an examination or investigation, finds that a licensee has charged fees for cashing payment instruments in excess of the amount set forth in O.C.G.A. § 7-1-707(f), such licensee shall be subject to a fine of five thousand dollars ($5,000) per occurrence.

(c) Posting of Charges. Any licensee who does not display, at all locations, a notice stating the charges/fees for cashing payment instruments in accordance with O.C.G.A. § 7-1-707.1 shall be subject to a fine of five hundred dollars ($500).

(d) Operating Without Proper License. Any person who acts as a check casher prior to receiving a current license required under Article 4A of Chapter 1 of Title 7, or who acquires a business that cashes payment instruments and operates without its own license, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars ($1,000) per day.

(e) Felons. Any licensee that hires or retains a covered employee who is a felon as described in O.C.G.A. § 7-1-703(b), when such covered employee has not complied with the remedies provided for in O.C.G.A. § 7-1-703(b) for each conviction before such employment, shall be subject to a fine of five thousand dollars ($5,000) for each such covered employee.

(f) GCIC Background Checks on Employees. Any licensee that does not obtain a Georgia Crime Information Center ("GCIC") criminal background check on each covered employee prior to the initial date of hire or retention shall be subject to a fine of one thousand dollars ($1,000) per occurrence. Proof of the required GCIC criminal background check must be retained by the licensee until five years after termination of

employment by the licensee. Notwithstanding compliance with this requirement to perform a GCIC criminal background check prior to employment, failure to maintain criminal background checks as required will result in a fine of one thousand dollars ($1,000) for each covered employee for which the licensee is missing this documentation.

(g) Deferred Payment. Any licensee that defers payment on a payment instrument pending collection and has not obtained the surety bond as required by O.C.G.A. § 7-1-707(c) shall be subject to a fine of five thousand dollars ($5,000) per occurrence.

(h) Other Business Activities. Any licensee found to have violated any law of this state by conducting any other business that is not lawful in conjunction with cashing payment instruments, shall be subject to a fine of five thousand dollars ($5,000).

(i) Corporate Checks. Any licensee that cashes a payment instrument made payable to a corporation or other business association or cashes a payment instrument drawn by the corporation or other business association and made payable to cash without the proper written authorization as required by O.C.G.A. § 7-1-707(d) and Rule 80-4-1-.01(3) shall be subject to a fine of one thousand dollars ($1,000) per occurrence.

(j) Advertising - "No Identification Required." A licensee that advertises that it will cash payment instruments with no identification required will be subject to a fine of one thousand dollars ($1,000).

(k) Identification Requirements for Cashing Payment Instruments. No licensee shall cash payment instruments without identification of the bearer of such check. Failure to comply with the requirements of O.C.G.A. § 7-1-707(e) shall subject the licensee to a fine of one thousand dollars ($1,000) per occurrence.

(l) Failure to Submit to Exam. The penalty for the refusal of a licensee to permit the Department to conduct an investigation or examination of its books, accounts, and records (after a reasonable request by the Department), shall be a five thousand dollar ($5,000) fine. Refusal shall require at least two attempts by the Department to schedule an examination or investigation.

(m) Consumer Complaints. Any licensee who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department's correspondence to such licensee, shall be subject to a fine of one thousand dollars ($1,000) for each occurrence.

(n) Failure to Notify or Obtain Approval from the Department of Change in Ownership, Change in Control, or Designation of Executive Officer. Any licensee or other person who fails to obtain the Department's prior approval of a change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control of the licensee in compliance with O.C.G.A. § 7-1-705.1 and Rule 80-4-1-.01 shall be subject to a fine of one thousand dollars ($1,000). Any licensee or other person who fails to timely

notify the Department of a change in executive officer not resulting from a change in control or ownership in compliance with O.C.G.A. § 7-1-705 shall be subject to a fine of one thousand dollars ($1,000).

(o) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or the requirements referred to in Rules 80-4-1-.02, 80-4-1-.03, and 80-4-1-.04, such licensee shall be subject to a fine of one thousand dollars ($1,000) for each instance of non-compliance.

(p) Failure to Post Required License or Failure to Include Required Legend on Advertising. Any licensee that fails to post a copy of its license in prominent view of each teller window or other customer service station, or distributes advertising in this state related to the cashing of payment instruments that fails to comply with the requirements of Rule 80-4-1-.01(4) shall be subject to a fine of five hundred dollars ($500) for each instance of non-compliance.

(q) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensed check casher that fails to disclose that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee within ten (10) business days of the date of the event necessitating the disclosure, shall be subject to a fine of one thousand dollars ($1,000). Any licensed check casher that fails to submit a new lawful presence affidavit from a current owner or executive officer within ten (10) business days of the owner or executive officer that executed the previous lawful presence affidavit no longer being in that position with the licensee, shall be subject to a fine of one thousand dollars ($1,000) per day until the new affidavit is provided.

(r) Failure to Timely Update Information on the Nationwide Multistate Licensing System and Registry. Any licensee that fails to update its information on the Nationwide Multistate Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars ($1,000) per occurrence. In addition, the failure of a control person of a licensee to update the individual's information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions by the control person, within ten (10) business days of the date of the event necessitating the change, shall subject the licensee to a fine of one thousand dollars ($1,000) per occurrence.

(s) Prohibited Acts. Any licensee or other person who violates the provisions of O.C.G.A. § 7-1-708 shall be subject to a fine of one thousand dollars ($1,000) per violation or transaction that is in violation.

(t) ~~Failure to Submit to Examination or Investigation. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request~~

~~by the Department) shall be a five thousand dollar ($5,000) fine. Refusal shall require at least two attempts by the Department to schedule an examination or investigation.~~ Unauthorized Access to Customer Information. Any licensee that fails to provide the Department with notice of unauthorized access to customer information as required by Rule 80-4-1-.08 shall be subject to a fine of one thousand dollars ($1,000) a day until the notice is provided.

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

Rule 80-4-1-.07. 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") unless otherwise expressly exempted from this requirement by the Department in writing. 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 non-refundable.

(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/or 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 reinstatement application in order to conduct business as a check casher 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 result in the denial of the application. In the case of a licensee, failure to timely update any disclosure information may result in the revocation of its license.

(c) 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.

(d) 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) All written notices required pursuant to O.C.G.A. §§ 7-1-705(a) and 7-1-705(b) and Rule 80-4-1-.08 shall be submitted to the Department via NMLSR. Such notices shall be uploaded as state-specific documents under the document type "Additional Requirements." The file name for each document shall begin with "Georgia Required Written Notice" but may contain additional words at the option of the licensee.

Authority: O.C.G.A. §§ 7-1-61, 7-1-702.2.

Rule 80-4-1-.08. ~~Repealed and Reserved~~Notice of Unauthorized Access to Personal Information

(1) In the event that a licensee provides notice under applicable federal or state law of an information security incident involving unauthorized access to personal information, then the licensee shall simultaneously provide a duplicate of such disclosure to the Department. For purposes of this rule, personal information is any record containing nonpublic personal

information about a customer or potential customer whether in paper, electronic, or other form maintained by or on behalf of the licensee.

(2) Pursuant to O.C.G.A. § 10-1-912, a business that satisfies the definition of an information broker is required to provide notice to Georgia residents in the event of a data breach that results in access or likely access to unencrypted personal information. In the event a licensee or an affiliate of a licensee is required to make such notification to Georgia residents, then a duplicate of the notification will simultaneously be submitted to the Department.

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

Rule 80-4-1-.09. ~~Repealed and Reserved~~Information Security Safeguards for Consumer Financial Information

All licensees shall create and maintain an information security program to safeguard the nonpublic personal information of customers to the extent required by 16 C.F.R. Part 314 (the "Safeguards Rule"). As part of its regulatory oversight, the Department shall review, to the extent applicable, licensee's information security programs, risk assessments, incident response plans, and other required elements of the Safeguards Rule.

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

CHAPTER 80-5

FINANCIAL INSTITUTIONS

SUBJECT 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, Mortgage Lenders, Mortgage Brokers, and Installment Lenders; Due Dates.

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

80-5-1-.07 ~~Repealed~~Collection and Remittance of Per Loan Fee on Loans Made by Installment Lenders.

80-5-1-.08 Collection and Remittance of Per Loan Fee on Loans Made by Installment Lenders Through June 30, 2022

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

(1) Payment instrument sellers and money transmitters.

(a) The annual license fee is one thousand nine hundred dollars ($1,900) for payment instrument sellers and ~~nine hundred dollars ($900) for~~ money transmitters.

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

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

(d) Applicants for Department approval of a change in ownership, change in control, or change in executive officer as set forth in O.C.G.A. § 7-1-688 shall pay a nonrefundable investigation, application, and processing fee of five hundred dollars ($500).

(2) Check Cashers.

(a) The annual license fee is three hundred dollars ($300).

(b) The annual renewal license fee is three hundred dollars ($300).

(c) An initial investigation and supervision fee shall be five hundred fifty dollars ($550) for the first year. It is not refundable, but if the license is granted it shall satisfy the annual fee for the first license period.

(d) Initial and renewal license fees shall also include an additional thirty dollars ($30) for the second and each additional location, plus a fee in an amount as directed by the Department to cover the cost of the required number of fingerprints for each individual background check.

(e) Annual renewal license fees shall be due and must be received by the Department on or before the first day of December of each year. A licensee whose renewal application and annual renewal license fee is not received by the Department on or before the first day of December of each year may be assessed a late fine of three hundred dollars ($300) and cannot be assured of renewal of its license prior to January 1.

(f) Applicants for Department approval of a change in ownership, change in control, or change in executive officer as set forth in O.C.G.A. § 7-1-705.1 shall pay a nonrefundable investigation, application, and processing fee of five hundred dollars ($500).

(3) Registrants of 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~~ two hundred dollars ($~~100~~200). Subsequent renewal application fees must be received by the Department on or before December 1 of each year or the applicant may be assessed a late fine of ~~one~~ two hundred dollars ($~~100~~200). A renewal application is not deemed received until all required information, including a renewal fee in the appropriate amount and documentation showing that the requisite continuing education hours have been obtained, has been provided by the licensee. A renewal application, containing all of the required information along with the correct fees and proof of required continuing education that is not received by the Department on or before the December 1 renewal application deadline of each year

cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct mortgage loan origination activity without a current license.

(d) Lender Registrants. The initial and renewal application and registration fee for mortgage lenders required to register but not be licensed with the Department shall be nine hundred dollars ($900), due on or before December 1 of each year. An initial investigation fee of two hundred fifty dollars ($250) per applicant shall also apply. Subsequent renewal applications and registration fees must be received on or before December 1 of each year or the applicant may be assessed a late fine of three hundred dollars ($300). A renewal application and registration fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.

(e) Broker Registrants. The initial and renewal application and registration fee for mortgage brokers required to register but not be licensed with the Department shall be four hundred dollars ($400), due on or before December 1 of each year. An initial investigation fee of two hundred fifty dollars ($250) per applicant shall also apply. Subsequent renewal applications and registration fees must be received on or before December 1 of each year or the applicant may be assessed a late fine of three hundred dollars ($300). A renewal application and registration fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.

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

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

(h) Application for an additional office of a licensee shall be accompanied by a nonrefundable fee of three hundred thirty dollar ($330), as provided in O.C.G.A. § 7-1-1006.

(5) Installment Lenders.

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

(b) The annual license renewal fee is five hundred dollars ($500) and must be received by the Department on or before the first day of December of each year. A licensee whose renewal application and annual license renewal fee is not received by the Department on or before December 1 may be assessed a late fine of three hundred dollars ($300) and cannot be assured of renewal of its license prior to January 1.

(c) An additional nonrefundable initial application investigation fee of two hundred fifty dollars ($250) will be assessed.

(d) Applicants for Department approval of a change in ownership, change in control, or change in executive officer as set forth in O.C.G.A. § 7-3-32 shall pay a nonrefundable investigation, application, and processing fee of five hundred dollars ($500).

(e) An application for an additional location of a licensee shall be accompanied by a nonrefundable fee of ~~four~~ three hundred dollars ($~~400~~300). An annual renewal fee of ~~four~~ three hundred dollars ($~~400~~300) per each approved additional location shall be due and must be received by the Department on or before the first day of December of each year.

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

(7) Any fees or charges imposed by the Nationwide Multistate Licensing System and Registry ("NMLSR") shall be independent of any fees charged by the Department. Applicants, licensees, and registrants will be responsible for any and all fees or charges imposed by NMLSR.

(8) All license, investigation, and supervision fees, late fees, fines, taxes owed to the Department, and assessed civil penalties must be paid prior to renewal, reinstatement, or reapplication for a license or any other approval from the Department.

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

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

(a) Applicants for approval by the D~~d~~epartment for the addition of a single geographic common bond group shall pay an investigation fee of $1,000.

(b) Applicants for D~~d~~epartment approval of merger of two credit unions where neither is considered financially or otherwise unsafe or unsound shall pay an investigation fee of $1,000.

(c) Applicants for Dd~~d~~epartment approval of conversion from a federal or out of state credit union to a state credit union shall pay an investigation fee of $1,000.

(d) Applicants for Dd~~d~~epartment approval of a credit union subsidiary shall pay a processing fee of $500 for each application that is processed as a regular application. Applicants for approval of a credit union subsidiary are not required to pay a processing fee for each application that is processed as an expedited application.

(e) Applicants for Dd~~d~~epartment approval of conversion of a financial institution, other than a credit union, to a state credit union shall pay an investigation fee of $1,000.

(f) Applicants for new branch offices or relocations of branches shall pay an investigation fee of $1,250 for each application that is processed as a regular application. Applicants for new branch offices or relocations of branches are not required to pay an investigation fee for each application that is processed as an expedited application. A simple redesignation of an existing credit union location, which does not entail the closure or opening of a location, only requires a written application but does not require a fee.

(g) Applicants for approval of a new credit union shall pay an investigation fee of $20,000 for each application.

(h) If a credit union satisfies the 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 credit union that desires to exercise full trust powers files a regular application. A complete application will be reviewed in 30 days; the fee is $1,250.

(i) Applicants for Department approval of the acquisition of the majority of the assets of a bank shall pay an investigative fee of $5,000.

(~~h~~j) The Dd~~d~~epartment may in its discretion waive or reduce a fee based on the circumstances of the application.

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

Rule 80-5-1-.07. ~~Repealed~~Collection and Remittance of Per Loan Fee on Loans Made by Installment Lenders

(1) For installment loans made on or after July 1, 2022, the fees payable on the gross loan amount of each loan under the provisions of O.C.G.A. § 7-3-16 shall be payable to the Department by the licensee on a semiannual basis. More specifically, such fees for the period January 1

through June 30 of each year shall be remitted to the Department no later than the first business day of September of each year and such fees for the period July 1 through December 31 of each year shall be remitted to the Department no later than the first business day of March of each year. A fee statement indicating the number of installment loans made during the applicable reporting period by the installment lender, the gross loan amount of such loans, and the total amount of fees remitted for the period shall accompany the fees remitted. The per loan fees and the corresponding fee statement shall be remitted to the Department through its online reporting and payment system.

(2) In the event that any licensee fails to timely remit fees along with the corresponding fee statement via the online reporting and payment system, the unpaid fees shall bear interest at the rate of one percent (1%) per month from the date the fees are due until the date the fees are paid, and there shall be added to the fees a penalty equivalent to twenty-five percent (25%) of the fees, or not less than five dollars ($5). In the event that any licensee fraudulently remits the incorrect fees, there shall be added to the fees a penalty equivalent to fifty percent (50%) of the fees, or not less than five dollars ($5).

(3) For purposes of this rule, the "gross loan amount" is the total of all of the borrower's precomputed payments related to the loan. For loans requiring multiple payments, the obligations that have to be disclosed as the total of payments under 12 CFR 1026.18 shall be included in the gross loan amount.

Authority: O.C.G.A. §§ 7-3-16, 7-3-51.

Rule 80-5-1-.08. Collection and Remittance of Per Loan Fee on Loans Made by Installment Lenders Through June 30, 2022

(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) through June 30, 2022. 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).

(4) The requirement to pay the taxes pursuant to Chapter 3 of Title 7 (Georgia Installment Loan Act) and this rule shall apply to interest charged on all installment loans through June 30, 2022.

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

SUBJECT 80-5-3

REGULATIONS REGARDING THE SALE OF ANNUITIES BY FINANCIAL INSTITUTIONS

80-5-3-.02 Notification of Intent to Sell Annuities.

Rule 80-5-3-.02. Notification of Intent to Sell Annuities

A financial institution that wishes to sell annuities must give prior notification to the ~~Department~~ Office of the Commissioner of Insurance pursuant to Rule 120-2-71-.03~~, with a copy of the notice and any subsequent amendments to the Department of Banking and Finance~~.

Authority: O.C.G.A. §§~~Secs.~~ 7-1-61, 7-1-261(11), 7-1-288.

SUBJECT 80-5-4

REGULATIONS REGARDING THE SALE OF INSURANCE BY FINANCIAL INSTITUTIONS

80-5-4-.02 Notification of Intent to Sell Insurance.

Rule 80-5-4-.02. Notification of Intent to Sell Insurance

A financial institution that wishes to sell insurance must give prior notification to the Office of the Commissioner of Insurance pursuant to Rule 120-2-76-.03~~, with a copy of the notice and any subsequent amendments to the Department of Banking and Finance~~.

Authority: O.C.G.A. §§ 7-1-61, 7-1-261(11).

CHAPTER 80-6

HOLDING COMPANIES

SUBJECT 80-6-1

APPLICATIONS AND ACQUISITIONS

80-6-4-.01 Holding Companies, Generally.

80-6-1-.02 Regular Applications.

80-6-1-.03 Qualifying Criteria for Expedited Processing; Acquisitions and One-bank Holding Company Formations.

80-6-1-.04 Qualifying Criteria for Expedited Processing: Establishment of a De Novo Wholly Owned Bank Subsidiary By a Holding Company Lawfully Operating in Georgia.

80-6-1-.06 Public Information.

80-6-1-.09 Non-Banking Acquisitions.

Rule 80-6-1-.01. Holding Companies, Generally

(1) Georgia's holding company statutes ~~(Code Sections 7-1-605 through 7-1-612)~~ govern all holding companies which have or wish to acquire, by purchase or formation, banks chartered by the Department. Once a holding company acquires a Georgia bank, it shall be registered annually with the Department. Subsequent acquisitions by that holding company may require approval, a letter form notification, or after the fact notification, depending upon the relationship of the acquisition to Georgia banks. The Department requires the submission of certain reports from Georgia bank holding companies and from holding companies that own Georgia banks.

(2) Interstate acquisitions by holding companies are dealt with in Part 19 of Article 2 of Title 7; related mergers of the banks in Part 20 of Article 2 of Title 7. Definitions in those Parts should be applied to interstate transactions.

(3) Expedited processing is available to holding companies which qualify under the criteria in Department of Banking and Finance Rule 80-6-1-.03 or 80-6-1-.04, depending on the transaction. ~~A letter form application with a copy of the federal application may be used and public notice may be coordinated so long as the Department is referenced in the notice as a regulator to whom comments should be submitted.~~ A holding company lawfully owning a bank chartered by the Department that meets the criteria in Rule 80-6-1-.04 may qualify for expedited processing for formation of a de novo bank, provided the de novo bank is to be wholly owned by the holding company.

(4) A bank holding company which acquires a bank chartered by the Department must apply and seek approval from the Department pursuant to O.C.G.A. §~~Code Section~~ 7-1-622. Approval to become a bank holding company of a Georgia bank as defined in O.C.G.A. §~~Code Section~~ 7-1-605 is similarly required. A bank holding company lawfully owning a bank in Georgia, or lawfully owning a branch of a bank in Georgia which was formed by the acquisition and subsequent merger of a Georgia bank, may form a de novo bank with Department approval pursuant to O.C.G.A. §~~Code Section~~ 7-1-608(b)(3).

(5) ~~An Applications Manual and a Statement of Policies are available from the Department. Details of and policies underlying all required applications, notifications and registrations are contained in these manuals.~~ A letter form application with a copy of the federal application may be used and public notice may be coordinated so long as the Department is referenced in the notice as a regulator to whom comments should be submitted.

(6) ~~Fees for all transactions are provided in Department and Banking and Finance Rule Chapter 80-5-1.~~

~~(7)~~ A Georgia bank holding company for the purposes of ~~this~~ Chapter 80-6 shall be defined as in O.C.G.A. §~~Code Section~~ 7-1-621.

Authority: O.C.G.A. § 7-1-61.

Rule 80-6-1-.02. Regular Applications

(1) ~~A state bank must follow procedures and meet the criteria of the Federal Reserve Bank to become a financial holding company. No state application is necessary.~~ Regular applications for permission to become a bank holding company as defined in O.C.G.A. § 7-1-605~~.~~, ~~or~~ to acquire control of a banking subsidiary, to acquire 5% or more of the shares of another bank holding company, or to continue to be a holding company after becoming a holding company under circumstances contemplated by O.C.G.A. §~~Section~~ 7-1-605 which are beyond the control of the company, shall be in letter form accompanied by the following exhibits:

(a) A copy of any form or documents filed with the Board of Governors of the Federal Reserve System;

(b) A letter from the applicant's legal counsel containing a definitive statement concerning whether any securities to be issued in the proposed transactions are subject to registration under State and/or Federal Securities Laws and stating that, in the opinion of such counsel, the applicant is taking the necessary action to comply with the applicable State and Federal Securities Laws and Regulations;

(c) A draft copy of any proposed proxy statements or offering circulars or letters prepared in connection with the applicant's proposed bank acquisition;

(d) A copy of the most recent independent audit, if any and if not already on file with the Department, of the applicant's books and records, performed by independent public accountants; and

(e) Proof of publication of the notice described in Rule 80-6-1-.05, if notice is required.

(2) ~~Applicants desiring expedited processing for formation of a one-bank holding company for an existing bank with no publication requirement must meet the qualifying criteria in Department of Banking and Finance~~ Rule 80-6-1-.13~~, and submit a letter application describing the transaction and support for qualification under the Department's criteria. Completed applications will be processed in 30 days~~Reserved.

(3) Regular applications for permission for a holding company to acquire shares of stock in a bank including a savings bank or savings and loan association which will result in the holding company having direct or indirect control of five (5) percent to twenty-five (25) percent of the voting shares of the acquired bank shall be in letter form accompanied by the following exhibits:

(a) Material requested in subparagraphs (a) through (e) of Paragraph (1) of this Rule.

(4) ~~Interstate and intrastate holding company acquisitions requiring approval may qualify for expedited processing. A letter form application describing the transaction shall be filed together with support for qualification under the Department's criteria and a copy of the federal form or documents. Publication may be done according to Department of Banking and Finance~~ Rule 80-6-1-.03 ~~or in conjunction with the federally required notice, provided the reference to the Department of Banking and Finance is included as provided in the notice regulation,~~ Rule 80-6-1-.03~~Reserved~~.

(5) Regular applications for permission for a holding company or a subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank, or to merge two or more holding companies, shall be in letter form accompanied by the following exhibits:

(a) Material requested in paragraphs (a) through (e) of Paragraph (1) of this Rule.

(6) ~~Expedited processing for acquisitions or mergers described in Paragraph (5) of this rule is available to qualifying institutions under the same terms as in Paragraph (4)~~Reserved.

(7) ~~Expedited processing may be allowed for a qualifying bank holding company lawfully owning a bank or branch office in Georgia, to form a de novo bank. The procedure is outlined in the Applications Manual~~Reserved.

(8) No application filed pursuant to Paragraphs (3~~),~~) or (5) ~~or (7)~~ of this Rule shall request approval to acquire shares of more than one bank. In general, applications will be considered by the Department in order of receipt; simultaneous applications by a single applicant will be considered in the order requested by the applicant. No application filed pursuant to Paragraph (5) of this Rule shall request approval of more than one merger or acquisition.

(9) Final copies of written materials to be transmitted to shareholders to consummate any transaction which has been the subject of an application under this Rule, marked to indicate changes from the preliminary materials filed pursuant to Paragraphs (1)(c), (3)(b) and (5)(b) of this Rule, shall be filed with the Department prior to the actual transmission thereof to the shareholders. The Department may, in the event changes in such materials necessitate additional review, require that transmission to shareholders be delayed until such time as its review shall have been completed. This section shall not be applicable to an application which is subject to registration under the provisions of The Securities Act of 1933, as amended, or the Georgia Uniform Securities Act of 2008, as amended.

(10) Approval of an application filed pursuant to this Rule shall be valid for a period of twelve (12) months and shall expire at that time unless the acquisition has been completed prior to such expiration or unless extended by the Department.

(11) Any material additions or changes in the method of acquisition by purchase or formation or in the representations set forth in an application must be approved by the Department, and could delay processing. The Department may examine, investigate, and evaluate facts related to any filing as necessary to reach an informed decision.

(12) In lieu of submitting the application required by this Rule, an applicant may submit a copy of the application filed with the Federal Reserve to the Department and supplement the application with any additional required information.

Authority: O.C.G.A. § 7-1-61.

Rule 80-6-1-.03. Qualifying Criteria for Expedited Processing; Acquisitions and One-bank Holding Company Formations

(1) The qualifying criteria for a bank holding company to be eligible for expedited processing for an acquisition is as follows:

(a) Well-capitalized organization.

1. Bank holding company (BHC). Both at the time of and immediately after the proposed transaction, the acquiring BHC is well capitalized.

2. Insured depository institutions. Both at the time of and immediately after the proposed transaction.

(i.) The lead insured depository institution of the acquiring BHC is well capitalized;

(ii.) Well-capitalized insured depository institutions control at least eighty (80) percent of the total ~~risk-weighted~~average total assets of insured depository institutions controlled by the acquiring BHC; and

(iii.) No insured depository institution controlled by the acquiring BHC is undercapitalized.

(3) Well capitalized and undercapitalized shall be as defined in the appropriate capital regulation and guidance of the applicable institution's primary federal regulator.

(b) Well-managed organization.

(1) Satisfactory examination ratings. At the time of the transaction, the acquiring BHC, its lead insured depository institution, and insured depository institutions that control eighty (80) percent of the total risk-weighted assets of insured depository institutions controlled by the BHC are well managed as defined by the Board of Governors of the Federal Reserve System, and have received "satisfactory" or better composite ratings at the most recent examination.

(2) No poorly managed institutions. No insured depository institution controlled by the acquiring BHC has received one of the two lowest composite ratings at the institution's most recent examination or subsequent review by the state or appropriate federal banking agency for the institution.

~~(3.) Recently acquired institutions excluded. Any insured depository institution that has been acquired by the BHC during the 12 month period preceding the date on which written notice is filed may be excluded from the preceding paragraph if:~~

~~(i.) The BHC has developed a plan acceptable to the Department for the institution to restore the capital and management of the institution; and~~

~~(ii.) All insured depository institutions excluded under this paragraph represent, in the aggregate, less than ten (10) percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the BHC.~~

(c) ~~Convenience and needs criteria.~~

~~1. Effect on the community. The record indicates that the proposed transaction would meet the convenience and needs of the community standard in O.C.G.A. § 7-1-606.(b) or the BHC Act; and~~

~~2.~~Established CRA performance record. At the time of the transaction, the lead insured depository institution of the acquiring BHC and insured depository institutions that control at least eighty (80) percent of the total risk-weighted assets of insured institutions controlled by the BHC have received a satisfactory or better composite rating at the most recent CRA examination.

(d) Public comment. No comment that is timely and substantive in response to any notice of a transaction is received by the Department or is made known to it by any other regulatory agency, other than a comment that supports approval of the proposal.

(e) Competitive criteria. Without regard to any divestitures proposed by the acquiring BHC, the acquisition does not cause:

1. Insured depository institutions controlled by the acquiring BHC to control in excess of thirty ~~five~~ (~~35~~30) percent of market deposits in any relevant banking market; or

2. The Herfindahl-Hirschman index to increase by more than 200 points in any relevant banking market with a post-acquisition index of at least 1800 and with a population in excess of 10,000.

3. Any state or federal agency with authority to find that the consummation of the transaction is likely to have a significant adverse effect on competition in any relevant banking market.

(f) Size of acquisition.

1. Limited growth. Except as provided below, the sum of the aggregate ~~risk-weighted~~average total assets to be acquired in the proposal and the aggregate ~~risk-weighted~~average total assets acquired by the acquiring BHC in all other qualifying transactions does not exceed thirty-five (35) percent of the consolidated ~~risk-weighted~~average total assets of the acquiring BHC. For purposes of this paragraph "other qualifying transactions" means any transaction approved under 12 CFR §~~Section~~ 225.14 or 12 CFR §~~Section~~ 225.23 during the 12 months prior to filing the notice; and

2. Individual size limitation. The ~~total~~ ~~risk-weighted~~average total assets to be acquired do not exceed $7.5 billion;

3. Small bank holding companies. The limited growth section shall not apply if, immediately following consummation of the proposed transaction, the consolidated ~~risk-weighted~~average total assets of the acquiring BHC are less than $300 million.

(g) Supervisory Actions. During the 12 month period ending on the date on which the BHC proposes to consummate the proposed transaction, no formal administrative order, including a written agreement, cease- and- desist order, capital directive, prompt- corrective- action directive, asset-maintenance agreement or other formal enforcement action, is or was outstanding against the BHC or any depository institution subsidiary of the BHC, and no formal administrative enforcement proceeding involving any such enforcement action, order, or directive is or was pending.

(h) Consummation of the transaction must not violate any provision of the Bank Holding Company Act.

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

1. Safety and soundness concerns of the Department dictate a more comprehensive review;

2. Any material adverse comment is received by the Department;

3. Other supervisory concerns, legal issues, or policy issues come to the attention of the Department; or

4. Any other good cause exists for denial or removal.

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

(2) The qualifying criteria for a one-bank holding company formation to be eligible for expedited processing is as follows:

(a) The shareholder or shareholders who control at least 67 percent of the shares of the bank will control, immediately after the reorganization, at least 67 percent of the shares of the holding company in substantially the same proportion, except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under state or federal law;

(b) No shareholder or group of shareholders acting in concert will, following the reorganization, own or control 10 percent or more of any class of voting shares of the BHC unless that shareholder or group of shareholders was authorized by the

Department and the appropriate federal banking agency for the bank, to own or control 10 percent or more of any class of voting shares of the bank;

(c) The bank is adequately capitalized as defined in Section 38 of the Federal Deposit Insurance Act (12 USC § 1831o);

(d) The bank has received at least a composite "1" or "2" rating at its most recent examination, in the event that the bank was examined;

(e) At the time of the reorganization, neither the bank nor any of its officers, directors, or shareholders is involved in any unresolved supervisory or enforcement matters with any appropriate state or federal banking agency;

(f) The company demonstrates that any debt that it incurs at the time of the reorganization, and the proposed means of retiring this debt, will not place undue burden on the holding company or its subsidiary on a pro forma basis;

(g) The holding company would not, as a result of the reorganization, acquire control of any additional bank or engage in any activities other than those of managing and controlling banks; and

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

1. Safety and soundness concerns of the Department dictate a more comprehensive review;

2. Any material adverse comment is received by the Department;

3. Other supervisory concerns, legal issues, or policy issues come to the attention of the Department;

4. Any other good cause exists for denial or removal.

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

(i) If the application satisfies the requirements for expedited treatment and it is not removed from expedited consideration by the Department, then the applicant is not required to issue the public notice required by Rule 80-6-1-.05.

(3) In the event an applicant qualifies for expedited processing and is not removed from expedited consideration by the Department, the expedited application will be processed within 30 days of the Department receiving a completed application.

Authority: O.C.G.A. § 7-1-61.

Rule 80-6-1-.04. Qualifying Criteria for Expedited Processing: Establishment of a De Novo Wholly Owned Bank Subsidiary By a Holding Company Lawfully Operating in Georgia

(1) Only a holding company which has lawfully purchased or acquired a bank in Georgia may qualify under this Rule to form a de novo bank, pursuant to provisions of ~~Code Section~~O.C.G.A. § 7-1-608(b)(3). The holding company must wholly own the proposed bank to qualify for expedited processing.

(2) An eligible holding company must have:

(a) An assigned composite rating of 2 or better at its most recent state or federal examination; and

(b) At least seventy-five (75) percent of its consolidated depository institution assets comprised of eligible depository institutions.

(3) An eligible depository institution, for the purposes of this Rule, shall be one that:

(a) Received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS) as a result of its most recent federal or state examination;

(b) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary federal regulator at its most recent examination, if the depository institution is subject to such examination;

(c) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination;

(d) Is well-capitalized as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator; and

(e) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary federal regulator or chartering authority.

(4) An application may be removed from expedited processing for reasons including the following:

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

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

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

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

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

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

(5) In the event an applicant qualifies for expedited processing and is not removed from expedited consideration by the Department, the expedited application will be processed within 30 days of the Department receiving a completed application.

Authority: O.C.G.A. § 7-1-61.

Rule 80-6-1-.06. Public Information

~~Unless otherwise indicated in the instructions, a~~Applications~~, annual reports~~ and registration statements filed with the Department ~~or requested by applicants or registrants,~~and documents submitted to the Department in connection with such filings shall be public information, subject to Rule 80-1-11-.01. Requests for confidential treatment shall be subject to review by the Department. Comments received pursuant to Rule 80-6-1-.05 shall be public information.

Authority: O.C.G.A. § 7-1-61.

Rule 80-6-1-.09. Non-Banking Acquisitions

(1) Whenever a Georgia bank holding company or a holding company owning a Georgia bank plans to engage in, or to acquire shares of stock in a company to be or which is currently engaged in, non-banking activities, the Department shall be notified of such intentions ~~within ten (10) days of~~contemporaneously with the filing of any application with the Federal Reserve System for approval to engage in such activities or acquire such shares. ~~or, i~~In the event such approval is not required, the Department shall be notified of such intention within ten (10) days after the Board of Directors of the holding company authorizes such specific activities or acquisition or, ~~in lieu thereof~~alternatively, ~~ten (10) days after~~ contemporaneously with any notice of engagement in such activities or acquisitions is filed with the Federal Reserve.

(2) Notice to the Department required pursuant to Section (1) of this Rule shall be in letter form and, insofar as is known at the time, shall state the following:

(a) Name and principal location of the company to be acquired, if any;

(b) Number of shares to be acquired, percentage of shares to be acquired to total shares outstanding, and price to be paid for such shares;

(c) Sources of funds to be used to pay for such shares and, if borrowed funds are to be used, the terms of any borrowings;

(d) Statement of Assets and Liabilities and Statement of Income for the most recent fiscal year and year-to-date on the company to be acquired or to otherwise be engaged in non-banking activities;

(e) Nature of business in which company is engaged or is to be engaged; and

(f) Description of additional markets to be served and additional nonbanking activities to be performed.

(3) In the event an application or notice to the Federal Reserve is required, a bank holding company may provide only a copy of that application or notice to the Department in lieu of the information required in ~~p~~Paragraph 2.

Authority: O.C.G.A. § 7-1-61.

CHAPTER 80-7

FOREIGN BANKING

SUBJECT 80-7-1

BANKING ACTIVITIES IN GEORGIA BY ORGANIZATIONS DOMICILED OUTSIDE OF GEORGIA

80-7-1-.06 ~~Lockbox Operations Involving Banks Domiciled Outside of Georgia~~Repealed.

Rule 80-7-1-.06. ~~Lockbox Operations Involving Banks Domiciled Outside of Georgia~~Repealed

~~(1) For purposes of this Rule 80-7-1.06:~~

~~(a) Party "A" shall mean the customer or purchaser of lockbox services;~~

~~(b) Party "B" shall mean the Georgia depository bank or banks for items received through a lockbox service;~~

~~(c) Party "C" shall mean the lockbox operator;~~

~~(d) Party "D" shall mean the non-Georgia bank sponsor or consultant to Party A or Party C with respect to lockbox services; and~~

~~(e) "Lockbox service" shall mean an arrangement whereby Party C maintains a place of business in this state at which it receives checks or drafts (items) payable to Party A, accumulating such items and depositing them into an account maintained at a location of Party B for the purpose of commencing the clearing and collection process relative to such items.~~

~~(2) A bank (whether acting as Party C or Party D) domiciled outside of Georgia shall be deemed to operate a "Business Production Office" and shall not be deemed to be engaged in the business of banking in this state relative to a lockbox service to be offered through a location in Georgia and a nonbank operator shall not be deemed to be engaged in the business of banking in this state relative to such lockbox service, provided:~~

~~(a) Each deposit account maintained with Party B shall be maintained at all times as an account of Party A, or its duly authorized agent, under the control of such Party A or its duly authorized agent for the principal purpose of providing lockbox services; provided, however, that the duly authorized agent of Party A shall not be a bank;~~

~~(b) Account balance access mechanisms shall be solely a matter of contract between Party A, or its duly authorized agent, and Party B and shall not be conditions precedent to contracting for lockbox services by and between Party A, Party C, and/or Party D.~~

~~(3) The purpose of this Rule is to separate as a matter of contract between the parties and in practice the normal bank/customer relationship from the relationship resulting from nonbanking operation of a lockbox service so that the normal operation of the separate activities can continue without contravention of statutes and regulations governing either activity through contractual or agency arrangements tying the two activities together.~~

Repealed

Authority: Ga. L. 1974, pp. 705, 733.

CHAPTER 80-9

SUSPICIOUS ACTIVITIES~~: BANKS~~

SUBJECT 80-9-1

CURRENCY TRANSACTION REPORTS AND SUSPICIOUS ACTIVITIES~~: BANKS~~

Authority: O.C.G.A. § 7-1-61.

CHAPTER 80-11

RESIDENTIAL MORTGAGE BROKERS, ~~AND~~ LENDERS, AND LOAN ORIGINATORS

SUBJECT 80-11-1

DISCLOSURE, ADVERTISING AND OTHER REQUIREMENTS

80-11-1-.03 Place of Business Requirements; Definitions.
80-11-1-.04 Branch Managers.
80-11-1-.05 Employee Background Checks; Covered Employees.
80-11-1-.07 Notice of Unauthorized Access to Personal Information.
80-11-1-.08 Information Security Safeguards for Consumer Financial Information.

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

(1) Each licensee with a physical place of business in Georgia shall provide to the D~~d~~epartment a complete listing of all such offices or locations.

(2) Reserved.

(3) A "physical place of business" in this state shall mean an enclosed room or building where a licensee alone, if it has no employees, otherwise where one or more supervised employees conduct a residential mortgage business.

(4) A location, including a personal residence, shall be considered a branch for purposes of the Georgia Residential Mortgage Act if any of the following conditions are met:

(a) The location address is printed on or contained in letterheads, business cards, announcements, advertisements, solicitations for business, flyers, brochures, or the like;

(b) Georgia consumers are received at the location or are directed to deliver any information by any means to the location;

(c) Loan files, applications (approved, denied, pending and pre-qualification) and any other books and records required by Georgia Residential Mortgage Act or D~~d~~epartment 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;~~.~~ or

(e) An independent contractor of a licensed mortgage broker operates from the location and all of the conditions for the exemption contained in O.C.G.A. § 7-1-1001(a)(17) are satisfied.

(5) Notwithstanding Paragraph (4) of this rule, a location, including a personal residence, will not be deemed a branch and will be required to have its own license if:

(a) It is a franchise arrangement;

(b) It is separate entity that may be referred to as a "net branch," and it is an independent business or mortgage operation which is not under the direct control, management, supervision and responsibility of the licensee;

(c) The licensee is not the lessee or owner of the branch and the branch is not under the direct and daily ownership, control, management, and supervision of the licensee;

(d) All employees exempt from individual licensing, including the branch manager, do not meet the requirements for such exemption in Article 13 and the rules of the Dd~~d~~epartment;

(e) All assets and liabilities of the branch are not assets and liabilities of the licensee and income and expenses of the branch are not income and expenses of the licensee and are not properly accounted for in the financial records and tax returns of the licensee; or

(f) All practices, policies, and procedures, including but not limited to those relating to employment and operations, are not originated and established by the licensee and are not applied consistently to the main office and all branches.

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

(7) The "main office" is the location indicated on the application as the principal place of business, where the books and records are kept.

(8) The mailing address of a licensee or registrant may be different from the main office address but shall be the address where the Dd~~d~~epartment is authorized to send all correspondence, official notices and orders. The licensee or registrant is responsible for keeping the Dd~~d~~epartment informed of any changes in this mailing address.

(9) The "contact person for consumer complaints" referred to in O.C.G.A. § 7-1-1006. shall be a person who is available and has authority to investigate and resolve questions and complaints from consumers which have come to the Dd~~d~~epartment for resolution. Each licensee must keep the Dd~~d~~epartment informed of the name and telephone number of the current contact person.

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

Rule 80-11-1-.04. Branch Managers

(1) A "branch manager" shall mean an individual who supervises daily activities in Georgia of a licensee, whether at a main or branch location, and regardless of job title. Branch manager shall include an independent contractor of a mortgage broker as contemplated under O.C.G.A. § 7-1-1001(a)(17) if such independent contractor works from a branch under 80-11-1-.03(3)(e).

(2) In order to be approved as a branch manager, an individual must be licensed by the Dd~~d~~epartment as a mortgage loan originator.

(3) No individual shall be permitted to manage a location in Georgia without being approved by the Dd~~d~~epartment as a branch manager. A branch manager may be put in place subject to departmental approval, but the Dd~~d~~epartment must receive a complete application for approval within 15 calendar days of the placement. No individual may serve as the branch manager of more than one location of a licensee unless the licensee can demonstrate that the proposed branch manager will be able to effectively manage these locations to ensure that they operate in compliance with state and federal law, and that the manager can adequately supervise the daily functions performed by the employees at the locations. In order to qualify for the employee exemption, an employee must be supervised on a daily basis by the licensee. Considerations by the Dd~~d~~epartment in determining whether a branch manager may supervise more than one location will include: proximity of branches to each other, volume of business at each, experience level of proposed manager and plans to handle the supervision.

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

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

Authority O.C.G.A. §§~~Secs.~~ 7-1-61, 7-1-1006, 7-1-1012.

Rule 80-11-1-.05. Employee Background Checks; Covered Employees

(1) As required by O.C.G.A. § 7-1-1004(k), applicants and licensees must complete background checks on all covered employees as defined in O.C.G.A. § 7-1-1000(5.1). ~~Covered employees include those employees who physically work in the state of Georgia and who may enter, delete or verify any information on any mortgage loan application form or document. Employees of a licensee or applicant who are not involved in the mortgage loan business are not covered employees.~~ Background checks on all covered employees must be completed and found satisfactory by the applicant or licensee within ninety (90) days of the

initial date of hire. Employers should submit background information to the proper law enforcement authorities promptly upon initial hire in order to meet the ninety (90) day requirement. A background check must be initiated for a person in the employ of a licensee or applicant within ten (10) days of the date of initial hire.

(2) The term "~~mortgage loan application form or document~~access to residential mortgage loan origination, processing, or underwriting information" in O.C.G.A. § 7-1-1000(5.1), shall mean any prospective borrower's personal electronic or printed information and documents, including but not limited to bank statements, W-2 forms, income tax returns, employment records, and other personal financial information required to be submitted in the course of making an application for a mortgage loan. It also includes access to documents maintained and generated by the licensee in the course of the application and administration of the mortgage loan, including but not limited to electronic or printed/written information on the mortgagor and their loan, including personal and loan database information, payments and payment history information, past due reports and schedules, coupon books, information generated for tax purposes, including escrow information, and any other information generated which would include the financial and loan history of the mortgagor. Documents would also include computer displays of personal and mortgage loan information on an individual borrower or client which may be disseminated by the licensee's personnel in the course of verifying information for customers and other business related inquiries.

(3) Applicant's and licensee's requests for background checks are handled by the Georgia Crime Information Center (GCIC) following their rules and regulations (see also 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.

(a) If the information from the background check is unclear or incomplete, appears to address or makes reference to a felony conviction, or indicates that the employee has a criminal record in any state other than Georgia ("multi-source offender"), the applicant or licensee must immediately submit two sets of fingerprints of the person, along with the applicable processing fee and any additional information the Department may require to complete an expanded background investigation. A money order or certified check in an amount as directed by the Department made payable to the Department shall be submitted with the cards in order to have the cards processed. Applicant or licensee shall discuss the Georgia Residential Mortgage Act's legal requirements for employment with the subject employee.

(b) An employee may remain employed by the applicant or licensee pending results of a fingerprint follow up investigation if no felony convictions appear on the GCIC report. If the employee is found to have disqualifying conviction data according to O.C.G.A. § 7-1-1004(h), or if the applicant or licensee knows that a disqualifying conviction is

present, the applicant or licensee must immediately take action to comply with O.C.G.A. § 7-1-1004(h).

(4) Notwithstanding any conflicting terminology in O.C.G.A. § 7-1-1004(i), for all purposes of the Georgia Residential Mortgage Act, including O.C.G.A. § 7-1-1004, and this Rule Chapter, a covered employee is any employee of a mortgage lender or mortgage broker who is involved in residential mortgage loan related activities for property located in Georgia and includes, but is not limited to: a mortgage loan originator, a processor, an underwriter, or other employee who has access to residential mortgage loan origination, processing, or underwriting information.

O.C.G.A. §§~~Secs.~~ 7-1-61, 7-1-1004, 7-1-1012.

Rule 80-11-1-.07. Notice of Unauthorized Access to Personal Information

(1) In the event that a licensee provides notice under applicable federal or state law of an information security incident involving unauthorized access to personal information, then the licensee shall simultaneously provide a duplicate of such disclosure to the Department. For purposes of this rule, personal information is any record containing nonpublic personal information about a customer or potential customer whether in paper, electronic, or other form maintained by or on behalf of the licensee.

(2) Pursuant to O.C.G.A. § 10-1-912, a business that satisfies the definition of an information broker is required to provide notice to Georgia residents in the event of a data breach that results in access or likely access to unencrypted personal information. In the event a licensee or an affiliate of a licensee is required to make such notification to Georgia residents, then a duplicate of the notification will simultaneously be submitted to the Department.

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

Rule 80-11-1-.08. Information Security Safeguards for Consumer Financial Information

All licensees shall create and maintain an information security program to safeguard the nonpublic personal information of customers to the extent required by 16 C.F.R. Part 314 (the "Safeguards Rule"). As part of its regulatory oversight, the Department shall review, to the extent applicable, licensee's information security programs, risk assessments, incident response plans, and other required elements of the Safeguards Rule.

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

SUBJECT 80-11-2

BOOKS AND RECORDS

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

(1) Any mortgage broker or lender required to be licensed or registered under Article 13 of Chapter 1 of Title 7 ("licensee" or "registrant") must maintain the following books, accounts and records:

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) Employee file for each employee. The employee file must contain all documents related to hiring the employee, including criminal background check, date employment began, and a print out or screenshot confirming that the Department's public records were reviewed on NMLS Consumer Access to verify eligibility for employment with such review taking place prior to the date of hire; ~~and~~

(o) Copies of all submitted mortgage call reports, including any amended reports, for the previous five (5) years and all related work papers and supporting documentation that support the accuracy of the information contained in the mortgage call reports;

(p) Documentation showing that a sale or other transfer of closed mortgage loans to an unlicensed entity who is not otherwise exempt from licensure is for the sole purpose of securitization of the loans in the secondary market and that the historical practices and documented intent of the unlicensed entity is to hold such loans for not more than seven (7) days as required by O.C.G.A. § 7-1-1001(a)(19). Examples of such documentation may include, but are not limited to, a copy of the mortgage loan purchase agreement, evidence of the securitization into a secondary market, the dates of purchase and securitization, and a sworn document executed at or before purchase by an executive officer of the loan purchaser to the effect that the sole purpose of the loan purchase is securitization of the loan in the secondary market and the purchaser will not hold the loan for more than seven (7) days; and

(q) Information security program materials maintained by the licensee in accordance with 16 C.F.R. Part 314, ("the Safeguards Rule") and Rule 80-3-1-.05, including, but not limited to, any risk assessment and incident response plan.

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

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

SUBJECT 80-11-3

ADMINISTRATIVE FINES AND PENALTIES

80-11-3-.01 Administrative Fines.

Rule 80-11-3-.01. Administrative Fines

(1) The Department establishes the following fines and penalties for violation of the Georgia Residential Mortgage Act ("GRMA") or its rules. Except as otherwise indicated, these fines and penalties apply to any person who is acting as a mortgage lender or broker and who is required to be licensed or registered under Article 13 of Chapter 1 of Title 7 ("licensee" or "registrant"). The Department, at its sole discretion, may waive or modify a fine based upon the financial resources of the person, gravity of the violation, history of previous violations, and such other facts and circumstances deemed appropriate by the Dd~~d~~epartment.

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

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

(4) Permitting unlicensed persons to engage in mortgage loan originator activities. Any licensee or registrant who employs a person who does not hold a mortgage loan originator's license or does not satisfy the temporary authority to operate requirements set forth in 12 U.S.C. § 5117 but engages in licensed mortgage loan originator activities as set forth in O.C.G.A. § 7-1-1000(22) shall be subject to a fine of one thousand dollars ($1,000) per occurrence and the licensee or registrant shall be subject to suspension or revocation. Licensees are responsible for the actions of their employees.

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

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

(7) Change in Ownership. Any person who acquires ten percent (10%) or more of the capital stock or a ten percent (10%) or more ownership of a mortgage broker or mortgage lender licensee without the prior approval of the Department in violation of O.C.G.A. § 7-1-1008 shall be subject to a fine of one thousand dollars ($1,000) and their license or registration will be subject to revocation or suspension.

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

(9) Hiring a Felon. Any mortgage broker or mortgage lender licensee or registrant who hires or retains a~~n~~ covered employee as defined in O.C.G.A. § 7-1-1000(5.1) who is a felon as described in O.C.G.A. § 7-1-1004(h), which covered employee has not complied with the remedies provided for in O.C.G.A. § 7-1-1004(h), may be fined five thousand dollars ($5,000) per covered employee found to be in violation of such provision and their license or registration will be subject to revocation or suspension.

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

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

(12)

(a) Maintenance of Loan Files. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or any lender acting as a broker who fails to maintain a loan file for each mortgage loan transaction as

required by Rule 80-11-2-.04 or who fails to have all required documents in such file shall be subject to a fine of one thousand dollars ($1,000) per file not maintained or not accessible, or per file not containing required documentation.

(b) Maintenance of Service Files. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage lender who fails to maintain a servicer file for each mortgage loans it services, as required by Rule 80-11-6-.04(1)(b), or who fails to have all required documents in such file shall be subject to a fine of one thousand dollars ($1,000) per file not maintained or not accessible, or per file not containing required documentation.

(13) Payment of $10.00 fees and filing of fee statement. Pursuant to Rule 80-5-1-.04 and O.C.G.A. § 7-1-1011, any person who is the collecting agent at a closing of a mortgage loan transaction, is liable for payment of the $10.00 fee to the Department. The remittance of any $10.00 fees required to be collected after the date on which they are due shall subject the collecting agent to a late payment fee of one hundred dollars ($100) for each due date missed. If the Department finds that the collecting agent has not, through negligence or otherwise, submitted $10.00 fees within six months of the due date, the collecting agent will be subject to an additional fine of twenty (20) percent of the total amount of $10.00 fees required to be collected for the applicable period. Repeated failures to submit $10.00 fees may be grounds for revocation of license.

(14) ~~Repealed. Reserved.~~ Failure to Maintain Documentation for Securitization Transfer Exemption. Any licensee who sells or otherwise transfers closed mortgage loans to an unlicensed person who purports to be exempt from licensure pursuant to O.C.G.A. § 7-1-1001(a)(19) and fails to maintain documentation showing the purpose of the transfer and applicable time limitation as required by Rule 80-11-2-.02(1)(p) shall be subject to a fine of one thousand dollars ($1,000) per loan transferred to the unlicensed entity.

(15) Failure to Timely Report Certain Events. Any person required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage lender or broker, who fails to report any of the events enumerated in O.C.G.A. § 7-1-1007(d), shall be subject to a fine of one thousand dollars ($1,000) per act not reported in writing to the Department within 10 days of knowledge of such act.

(16) Prohibited Acts. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or mortgage lender who violates the provisions of O.C.G.A. § 7-1-1013 shall be subject to a fine of one thousand dollars ($1,000) per violation or transaction that is in violation and his or her license shall be subject to suspension or revocation. Misrepresentations also subject the person making them to a fine. Misrepresentations include but are not limited to the following:

(a) inaccurate or false identification of applicant's employer;

(b) significant discrepancy between applicant's stated income and actual income;

(c) omission of a loan to applicant, listed on loan application, which was closed through same lender or broker;

(d) false or materially overstated information regarding depository accounts;

(e) false or altered credit report; and

(f) any fraudulent or unauthorized document used in the loan process.

A fine of one thousand dollars ($1,000) shall be assessed for any other violation of O.C.G.A. § 7-1-1013. The Department shall upon written request provide evidence of the violation.

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

(18) ~~Repealed. Reserved~~Unauthorized Access to Customer Information. Any mortgage broker or mortgage lender licensee that fails to provide the Department with notice of unauthorized access to customer information as required by Rule 80-11-1-.07 shall be subject to a fine of one thousand dollars ($1,000) a day until the notice is provided.

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

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

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

(22) Failure to Review Public Records Prior to Hiring. Any licensee who fails to examine the Department's public records on NMLS Consumer Access to determine if a job applicant is subject to an order set forth in O.C.G.A. § 7-1-1004(o) prior to hiring such individual shall be subject to a fine of one thousand dollars ($1,000) for each employee on whom the public records were not timely examined.

(23) Background Checks. Any licensee who fails to perform proper background checks on covered employees as defined in O.C.G.A. § 7-1-1000(5.1) in accordance with the provisions of O.C.G.A. § 7-1-1004(h), (i), and (k) shall be subject to a fine of one thousand dollars ($1,000) for each employee on whom the required background check was not conducted.

(24) Change in Executive Officers. Any licensee who fails to notify the Department of a change in executive officers of the company in violation of O.C.G.A. § 7-1-1006(e) shall be subject to a fine of five hundred dollars ($500).

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

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

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

(28) Failure to File Timely or Accurate Call Reports. Any licensee or registrant who fails to file a timely Call Report as required through the Nationwide Multi-Sstate Licensing System and Registry or fails to file an accurate Call Report shall be subject to a fine of one hundred dollars ($100) per occurrence. Repeated failure to file timely or accurate Call Reports may subject the license or registration to revocation or suspension.

(29) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensed mortgage lender, mortgage broker, or registrant that fails to disclose that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee or registrant within ten (10) business days of the date of the event necessitating the disclosure, shall be subject to a fine of one thousand dollars ($1,000). Any licensed mortgage broker, mortgage lender, or registrant that fails to submit a new lawful presence affidavit from a current owner or executive officer within ten (10) business days of the owner or executive officer that executed the previous lawful presence affidavit no longer being in that position with the licensee or registrant, shall be subject to a fine of one thousand dollars ($1,000) per day until the new affidavit is provided.

(30) Failure to Timely Update Information on the Nationwide Multi-Sstate Licensing System and Registry. Any licensed mortgage broker, mortgage lender, or registrant that fails to update

its information on the Nationwide Multi-Sstate Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions on an application or a licensee's or registrant's NMSLR MU-1, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars ($1,000) per occurrence. In addition, the failure of a control person of a licensed mortgage broker, mortgage lender, or registrant to update the individual's information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions on the control person's NMSLR MU-2, within ten (10) business days of the date of the event necessitating the change, shall subject the licensed mortgage broker, mortgage lender, or registrant to a fine of one thousand dollars ($1,000) per occurrence.

(31) Bank Secrecy Act. If the Department in the course of an examination or investigation, finds that a licensee that satisfies the definition of loan or finance company has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or the requirements referred to in Rule 80-11-1-.06, such licensee shall be subject to a fine of one thousand dollars ($1,000) for each instance of non-compliance.

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

SUBJECT 80-11-4

LICENSING

80-11-4-.03 Licensing requirements; registrants; exemptions~~; term for bond~~.

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

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

80-11-4-.11 Information on the Nationwide Multi-State Licensing System and Registry.

Rule 80-11-4-.03. Licensing requirements; registrants; exemptions~~; term for bond~~

(1) The Department will take appropriate action against all persons found to be improperly engaging in mortgage brokerage or lending activities without a license or valid exemption. In accordance with O.C.G.A. § 7-1-1018(a), if proper evidence is provided to the Department within thirty (30) days of the date the Order is issued that shows the person had the proper license or was acting pursuant to a valid exemption at the time noted in the Order, the Order shall be rescinded by the Department.

(2) The exemption from licensing provided pursuant to O.C.G.A. § 7-1-1001(a)(14) to an employee of a licensee or exemptee applies only to natural persons who meet all of the following criteria:

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

(b) An employee may not solicit, process, or place loans for anyone else while claiming the exemption;

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

(d) An employee may not be paid or compensated for performance of mortgage activity as an independent contractor or on a 1099 basis, except as specifically provided for in O.C.G.A. § 7-1-1001(a)(17)~~paragraph (3) of this rule~~.

~~(3) The exemption from licensing provided pursuant to O.C.G.A. § 7-1-1001(17) only applies to a natural person acting in the capacity as an independent contractor working under an exclusive written contract for a licensee that is a wholly owned subsidiary of a financial holding company or bank holding company, savings bank holding company, or thrift holding company, under conditions and limitations as set forth in O.C.G.A. §7-1-1001(17) and applies only if all of the following criteria are met:~~

~~(a) The independent contractor may only work in the capacity of a mortgage broker~~as a mortgage loan originator for the licensee ~~and may only broker loans to the licensed subsidiary or its affiliates~~license~~;~~

~~(b) The licensee must provide annually, or more often if required by the Department, a list of each of the independent contractors brokering loans for the licensee under this exemption. This list must be submitted electronically in a form prescribed by the Department. The licensee must certify at the time of submission that each independent contractor brokering loans for them under this exemption are working under a current Undertaking of Accountability, in a form prescribed by the Department;~~

~~(c) The surety bond required pursuant to O.C.G.A. §7-1-1001(17) must be in full force and effect at all times, unless or until such time as the licensee is no longer licensed. In the event that the licensee is no longer licensed, all independent contractors brokering loans for the licensee as independent contractors under this exemption must cease all mortgage brokerage activity immediately upon termination of said license. In the event that the required surety bond coverage falls below the amounts required by O.C.G.A. §7-1-1001(17), the licensee must immediately provide coverage sufficient to meet the requirements as set forth therein, or the license will be subject to revocation or suspension. Adequacy of bond coverage will be determined annually by the Department based on the list of independent contractors as provided by the licensee in Rule 80-11-4-.03(3)(b).~~

(43) Registrants shall complete all information as indicated on the Department's application. Registrants must submit financial information as provided in O.C.G.A. § 7-1-1003.2 and § 7-1-1010, are subject to books and records requirements as provided in O.C.G.A. § 7-1-1009,

and must submit an annual fee to the Department. Registrants must provide updated consumer contact information to the Department, and are responsible for resolving consumer complaints satisfactorily and in conformity with the Department's guidelines and timeframes. Fines will apply for failure to comply with any Georgia mortgage laws or rules.

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

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

(1) It is prohibited for any person to knowingly purchase, sell or transfer a mortgage loan or loan application to or from an unlicensed mortgage loan originator, mortgage lender or broker, unless that entity is exempt from licensure or qualified to operate under the temporary authority provisions of 12 U.S.C. § 5117. It is expected that all persons who purchase, sell, or transfer mortgage loans use reasonable diligence to determine whether the entities they do business with are licensed or exempt from licensure. To that end, the Dd~~d~~epartment makes available through NMLS Consumer Access information as to whether an entity is licensed.

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

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

(4) The mere act of sponsoring an employee seeking licensure from the Department as a mortgage loan originator through the Nationwide Multistate Licensing System and Registry shall not be regarded in and of itself as engaging in the mortgage business with an unlicensed person as long as the applicant is not performing for the sponsoring licensee or registrant those regulated activities set forth in O.C.G.A. § 7-1-1000(22)unless qualified to operate under the temporary authority provisions of 12 U.S.C. § 5117.

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

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

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

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

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

(b) O.C.G.A. § 7-1-1004 provides for remedies to "cure" a felony conviction. These remedies must be completed and in place prior to employment. Hiring or continuing to employ a ~~person~~ covered employee with an unremedied felony conviction subjects a licensee to revocation of its license.

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

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

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

(4) The Department may regularly publish information identifying persons and natural persons to whom final administrative actions have been issued.

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

Rule 80-11-4-.11. Information on the Nationwide Multi~~-S~~state Licensing System and Registry

(1) It shall be the sole responsibility of each applicant for a mortgage lender or mortgage broker licensee, each applicant for a registration, each licensed mortgage broker and mortgage lender, and each registrant to keep current at all times its information on the Nationwide Multi~~-S~~state Licensing System and Registry ("NMLSR"). Amendments to any information on file with the NMLSR must be made by the applicant, licensee, or registrant 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, licensee, or registrant due to its failure to maintain current contact information on the NMLSR as required.

(2) Amendments to any responses to disclosure questions on an NMLSR MU-1 by an applicant for a mortgage lender or mortgage broker license, an applicant for a registration, a licensed mortgage lender or mortgage broker, or a registrant must be made within ten (10) business days following the date of the event necessitating the change. Failure by an applicant for a mortgage lender or mortgage broker license or an applicant for a registration to timely update the applicant's NMLSR MU-1 may result in the denial of the application. In the case of a licensed mortgage lender or mortgage broker or a registrant, failure to timely update any disclosure information on the NMLSR MU-1 may result in the revocation of its license or registration.

(3) It shall be the responsibility of each applicant for a mortgage lender or mortgage broker licensee, each applicant for a registration, each licensed mortgage broker and mortgage lender, and each registrant to ensure that its control persons keep current at all times their information on the ~~Nationwide Multi-State Licensing System and Registry ("~~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, licensee, or registrant, whether through the ownership of voting or nonvoting securities, by contract, or otherwise.

(4) Amendments to any responses to disclosure questions on an NMLSR MU-2 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 mortgage lender or mortgage broker license or an applicant for a registration to timely update the control person's NMLSR MU-2 may result in the denial of the application. In the case of a licensed mortgage lender or mortgage broker or a registrant, failure by a control person to timely update any disclosure information on the NMLSR MU-4 may result in the revocation of the mortgage broker or mortgage lender license or registration.

(5) All written notices required pursuant to O.C.G.A. §§ 7-1-1007(a) and 7-1-1007(d) and Rule 80-11-1-.07 shall be submitted to the Department via NMLSR. Such notices shall be uploaded as state specific documents under the document type "Additional Requirements." The file name for each document -shall begin with "Georgia Required Written Notice" but may contain additional words at the option of the licensee.

Authority: O.C.G.A. §§ 7-1-61; 7-1-1003; 7-1-1003.5; 7-1-1012.

CHAPTER 80-14

INSTALLMENT LOANS

SUBJECT 80-14-1

PLACE OF BUSINESS, ADVERTISING, AND OTHER REQUIREMENTS

80-14-1-.04 Advertising Requirements.

80-14-1-.05 Notice of Unauthorized Access to Personal Information.

80-14-1-.06 Information Security Safeguards for Consumer Financial Information.

Rule 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 unless such document provides in a clear and concise manner, in no smaller than twelve-point type, that it is an advertisement and not a check or a 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.

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

Rule 80-14-1-.05. Notice of Unauthorized Access to Personal Information

(1) In the event that a licensee provides notice under applicable federal or state law of an information security incident involving unauthorized access to personal information, then the licensee shall simultaneously provide a duplicate of such disclosure to the Department. For purposes of this rule, personal information is any record containing nonpublic personal information about a customer or potential customer whether in paper, electronic, or other form maintained by or on behalf of the licensee.

(2) Pursuant to O.C.G.A. § 10-1-912, a business that satisfies the definition of an information broker is required to provide notice to Georgia residents in the event of a data breach that results in access or likely access to unencrypted personal information. In the event a licensee or an affiliate of a licensee is required to make such notification to Georgia residents, then a duplicate of the notification will simultaneously be submitted to the Department.

Authority: O.C.G.A. §§ 7-1-61, 7-3-51.

Rule 80-14-1-.06. Information Security Safeguards for Consumer Financial Information

All licensees shall create and maintain an information security program to safeguard the nonpublic personal information of customers to the extent required by 16 C.F.R. Part 314 (the "Safeguards Rule"). As part of its regulatory oversight, the Department shall review, to the extent applicable, licensee's information security programs, risk assessments, incident response plans, and other required elements of the Safeguards Rule.

Authority: O.C.G.A. §§ 7-1-61, 7-3-51.

SUBJECT 80-14-2

BOOKS AND RECORDS

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

Rule 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) ~~Reserved~~If the licensee defers installment loans, the deferred loan monthly journal required by O.C.G.A. § 7-3-11(6)(G);

(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;

(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; and

(o) Information security program materials maintained by the licensee in accordance with 16 C.F.R. Part 314, ("the Safeguards Rule") and Rule 80-3-1-.05, including, but not limited to, any risk assessment and incident response plan.

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

SUBJECT 80-14-3

ADMINISTRATIVE FINES AND PENALTIES

80-14-3-.01 Administrative Fines.

Rule 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 or Loan Contract that Does Not Comply with Applicable Laws and Rules. 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 or a copy of a loan contract or written itemized statement that satisfies the requirements of 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~~ either a loan contract or itemized statement was not provided or a loan contract or itemized statement that satisfies the requirements of O.C.G.A. § 7-3-15 and Rule 80-14-5-.01 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.

(28) Unauthorized Access to Customer Information. Any licensee that fails to provide the Department with notice of unauthorized access to customer information as required by Rule 80-14-1-.05 shall be subject to a fine of one thousand dollars ($1,000) a day until such notice is provided.

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

SUBJECT 80-14-4

LICENSING

Rule 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.

(5) All written notices required pursuant to O.C.G.A. § 7-3-31(a) and (b) and Rule 80-14-1-.05 shall be submitted to the Department via NMLSR. Such notices shall be uploaded as state specific documents under the document type "Additional Requirements." The file name for each document shall begin with "Georgia Required Written Notice" but may contain additional words at the option of the licensee.

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

SUBJECT 80-14-5

DISCLOSURE, CHARGES, AND MISCELLANEOUS

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

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

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

(1) Loan Contract; Contents.

(a) Every consumer loan transaction shall be pursuant to a written loan contract which may include a loan voucher, itemized statement of loan and charges, and disclosure statement. The loan contract shall be signed by the consumer and delivered to the consumer at the time it is executed by him or her. The loan contract shall be contained in a single document which may contain more than one page. Printed terms shall be printed in at least six-point standard type.

(b) In connection with every consumer loan transaction, the consumer shall be furnished a written itemized statement in clear terms and easily understood language which shall show the following: the transaction date, a description of the subject matter and amount of the transaction, a description of the collateral, if any, securing the consumer's obligations; the identity and address of the consumer and the identity and address of the creditor; a schedule of the payments; the amount of the actual cash advanced to or on behalf of the consumer; the amount of each class of insurance carried and the premium paid thereon, stated separately for each class of insurance; and an itemization of the exact amount of the interest, fees, and other charges, if any, showing each element thereof.

(c) The loan contract shall include immediately above the place for the signature for the parties the following notice:

NOTICE TO CONSUMER

1. Do not sign this agreement if it contains any blank spaces.

2. You are entitled to an exact copy of all papers you signed.

3. You have the right at any time to pay in advance the full amount due under this agreement and under certain conditions to obtain a partial refund of the interest charges.

4. If credit life insurance is required, you have the right to purchase either level term life insurance or reducing term life insurance coverage.

5. You are not required to purchase noncredit insurance as a condition of obtaining this loan.

(d) The creditor shall furnish the consumer with an exact copy of the loan contract including any loan voucher, itemized statement of loan charges, and disclosure statement after the agreement has been signed.

(e) With respect to every installment loan transaction, the creditor shall, at the time of the transaction, furnish to the consumer a written statement of the maximum number of payments required, the amount of such payments, and the exact due dates upon which

each payment is due. The maximum number of payments and the amount and date of such payments need not be separately listed if the payments are stated in terms of a series of scheduled amounts.

(2) The following practices are prohibited in the making of an installment loan pursuant to the Georgia Installment Loan Act:

(a) Blank Agreements. Every contract evidencing an installment loan transaction shall be completed as to all essential provisions prior to the signing thereof by the parties. No licensee shall induce, encourage, or otherwise permit the consumer to sign a contract containing blank spaces. Blank spaces inapplicable to a transaction must be completed in a manner which reveals their inapplicability.

(b) Negotiable Instruments. No licensee shall take or otherwise arrange for the consumer to sign an instrument payable "to order" or "to bearer", other than a check, as evidence of the credit obligation of the consumer in an installment loan transaction.

(c) Balloon and Irregular Payments. Except for single payment loans, no licensee shall enter into a contract which contains or anticipates a schedule of payments under which the final payment exceeds the amount of any other payment by more than $1.00. A single payment loan shall be repayable on terms not to exceed ninety (90) days. All other installment payments shall be scheduled at regular intervals in equal amounts. Notwithstanding the requirement that payments be made at regular intervals for all loans except for single payment loans, the initial payment on an installment loan shall be due within a period not to exceed forty-five (45) days from the date on which the loan is made but no sooner than the regular interval for all other installment loan payments.

(d) Multiple Agreements to the following extent:

(i) No authorized location of a 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 authorized location of a 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 authorized location of a licensee shall split a consumer loan into separate agreements by spouses if as a result thereof the authorized location of a 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 authorized location of a 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.

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

Rule 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~~11(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.

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