
# BANK AND BANK HOLDING COMPANY

# STATEMENT OF POLICY

**Revised November 2023**

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## GENERAL

The Statement of Policy of the Department of Banking and Finance ("Department") is intended to provide the public and the banking industry with a better understanding of the basis for decisions by the Department. The Statement of Policy is intended to provide insight into the decision-making process in most cases. However, deviations from these general processes may be appropriate in certain situations. The policy is subject to review and revision to reflect changes in law, guidance, standards, and interpretations.

References to laws and regulations are generally not incorporated in this Statement of Policy. Applicable laws are generally found in Chapter 1 of Title 7 of the Financial Institutions Code of Georgia which can be accessed from the Georgia General Assembly's website at www.legis.ga.gov. The Rules and Regulations of the Department are available on the Secretary of State's website at https://rules.sos.ga.gov/. State-chartered banks and bank holding companies are subject to the dual supervision of the Department and one or more federal banking agencies, and applicants should consult those agencies to determine if concurrent application for approval by the State, as well as the federal agency, is required. Forms and instructions utilized by federal agencies as well as their policy pronouncements must be obtained from the federal agency unless specific instructions accompanying State forms indicate otherwise. Any portions of the application that the applicant requests to be confidential should be submitted separately and so noted when the application is filed. Based on the content, the Department will determine whether the information will be considered confidential. In most instances the confidentiality request will be honored.

In the event of any conflict between the Statement of Policy and Georgia law or the Department's rules and regulations, Georgia law and the Department's rules and regulations will control over the Statement of Policy.

## BANK CHARTERS

The Department evaluates bank charter applications pursuant to O.C.G.A. § 7-1-394 and Rules 80-1-1-.02 through 80-1-1-.05. It is the policy of the Department to maintain a sound banking system without placing undue restraint upon entry into that system. The vital relationship of banking to the monetary system precludes complete free market operation with unlimited entry, and its corollary, unlimited exit. A healthy competitive banking environment providing optimum choice and convenience to the public and stimulating economic growth and efficiency is an important objective of the chartering process. Although each new entrant to the market increases the competitive alternatives, it is not in the public interest to charter so many banks that none can grow to a size sufficient to offer a full range of needed services. In chartering banks, the Department will admit only those qualified applicants that can be economically supported and profitably operated.

From time to time, specialized forms of banking activity which are not directed at the retail or community level are developed and the Department reserves the right to modify the policies and provisions set forth herein in order that the entire economy of this State may be adequately served at both the wholesale and retail levels. Organization of a new bank for speculative purposes or resale to undisclosed buyers is not permitted.

Georgia law requires FDIC insurance for all state bank charters, therefore applicants need to refer to the following FDIC resources: "Deposit Insurance Applications Procedures Manual," "DSC Risk Management Manual of Examination Policies" Section 12.1 Applications; and "FDIC Applying for Deposit Insurance: A Handbook for Organizers of De Novo Institutions." A new bank application will be assessed by the Department utilizing the six Evaluation Factors detailed below.

### EVALUATION FACTORS

FINANCIAL HISTORY AND CONDITION. Primary consideration in analyzing this factor is the reasonableness and achievability of the Business Plan and the premises and other fixed assets to be owned or leased by the proposed bank.

ADEQUACY OF CAPITAL STRUCTURE. The minimum initial capital required for a new bank must be sufficient to provide a tier 1 capital to assets leverage ratio of not less than 8% throughout the first three years of operation. In addition, the institution must maintain an adequate allowance for credit losses. State law requires that the capital stock for newly chartered banks be not less than $3,000,000. In practice, greater amounts of capital are required, depending upon the location and the particulars of the charter application. Refer also to the "Department's Guidance on Capital Adequacy and Considerations."

The ability of a bank to attract capital funds for future growth is important to the chartering process. It will generally be assumed that a broad and diverse group of stockholders providing the initial capitalization will maintain the capital funding at adequate levels. Smaller or concentrated shareholder groups will be required to demonstrate their ability to support the capital funding needs of a growing bank through a broad range of economic circumstances. Banks must also comply with O.C.G.A. § 7-1-416, which prohibits a bank from making a loan or refinancing any loan associated with the initial purchase of bank or holding company stock to which it is affiliated.

Stock Distribution

To enhance community support, the Department encourages a broad and diversified shareholder base for a new bank. Stock subscriptions are considered a measure of community need and support for a new bank. An applicant that is unable to provide such broad and diverse stock subscribers as would normally be expected relative to the size of the community in which the new bank is to be located must be prepared to demonstrate the community need and support by other means. However, the Department recognizes that in some instances the organizing group may wish to limit the number of shareholders due to certain tax considerations or for other purposes. In such situations the Department may approve the charter provided the limited shareholder base does not adversely affect the benefits of the new charter for its proposed market area and provided the applicant demonstrates adequate support for the bank in the proposed market area by means other than a diverse shareholder base. Generally, at least 50% of the stock to be issued should be to local residents of the community, or persons with substantial business interests in the community, or others who may reasonably be expected to utilize the services of the bank.

O.C.G.A. § 7-1-391 prohibits the payment of any fee, compensation, or commission for promotion in connection with the organization of a new bank. This restriction does not impair the payment of reasonable compensation to attorneys, accountants, or consultants for services rendered in connection with the preparation and filing of an application or the payment of out-of-pocket expenses incidental to the preparation of an application and other matters necessary and incidental to preparations toward commencing business as a bank. Person(s) not otherwise involved or affiliated with the bank during its organization, who are utilized to locate purchasers of stock and who charge a fee for such service shall not be considered promoters and such expenses shall be considered usual and ordinary in the organization of a new bank. All such expenses must be fully documented and commensurate with local market prices for similar services and products.

Investment in Community Banks by Investment Funds

As stated previously, the Department expects at least 50 percent of the proposed bank's stock will be owned within the trade area of the bank. Any investment in the proposed community bank by investment funds should represent a relatively small percentage of total stock holdings; not greater than 10 percent of the stock on an aggregate basis. One of the factors in the decision to charter a new bank is a clear indication that there is tangible community support for a bank. If a prospective bank is unable to sell their stock within the community but instead has to raise capital from outside investment funds, it raises a concern regarding whether a bank charter is needed in the proposed trade area. Any bank that proposes to have an alternative capital structure or composition should discuss this with the Department prior to filing their bank application.

NOTE: The forgoing limitation on aggregate investment by investment funds is for community banks. Larger banks with broader business plans, greater levels of capital, and more sophisticated management may have higher levels of such investment, with regulatory approval.

Stock Benefit Plans

Stock benefit plans established to compensate incorporators, officers, and directors in connection with the organization of a bank including stock options, stock warrants, or other stock-based compensation plans may be appropriate if the plans enhance the probability of success of the bank and reflect the contributions made to the bank. If a bank holding company is being organized simultaneously with the organization of a new bank and stock benefit plans are established at the bank holding company, similar rules and conditions regarding these stock benefit plans would apply. These stock benefit plans must be fully disclosed in the application filed with the Department and subsequent offering material used in

stock subscription solicitations. The original Articles of Incorporation must provide for sufficient shares without preemptive rights to meet such stock benefit plans.

Stock benefit plans issued to directors and officers of the bank/holding company, as well as those issued to other incorporators as compensation for financial risk borne during the organizational phase or as compensation for professional or other services rendered in conjunction with the organization, shall contain the following minimum terms:

1. Must serve as compensation for services rendered or money placed at risk during the organizational phase of the bank (as applicable);
2. Must be exercised within ten years from the date of the bank's incorporation;
3. Must be exercised at a price equal to or in excess of the fair market value of the stock at the time the rights are granted;
4. May not result in the holder (including shares owned by the holder's spouse and minor children) owning more than 20% of the outstanding stock of the institution, unless the Department has approved the holder owning more than 20% of the outstanding stock of the institution in the approval of the bank's charter application;
5. Must contain a provision allowing the institution's primary state and/or federal regulator to direct the institution to require plan participants to exercise or forfeit their stock rights if the institution's capital falls below the minimum requirements, as determined by its primary state or federal regulator;
6. May not be transferable under any circumstances; and
7. Must be accounted for in accordance with Generally Accepted Accounting Principles.

FUTURE EARNINGS PROSPECTS. Projections of income and expenses of the proposed bank should be based on realistic, supportable estimates of deposit and loan volume. While initial operating losses may be expected, net earnings should result in a month-to-month operating profit which is adequate to support the bank by the end of the third year.

GENERAL CHARACTER OF MANAGEMENT. Organizers, incorporators, proposed directors, and officers should be of good moral character and reputation, should have employment and business histories demonstrating success, and should be responsible in personal and financial affairs. A majority of the incorporators, organizers, and directors of a proposed bank must be from the local community and should represent a diversification of occupational and business interests. At least two directors should have prior, successful statutory bank board experience. Executive officers should have demonstrated abilities and experience commensurate with the position for which proposed. Members of the initial management group, which includes directors and officers, and changes within the management group during the first three years of operation, require prior approval of the Department. To protect current employment, such information may be included in the confidential section of the application. In the case of trust companies, the proposed company will have sufficient personnel with adequate knowledge and experience to administer fiduciary accounts.

All proposed directors, executive officers, and all non-director stock subscribers to ten percent or more of the proposed capital stock shall file financial and biographical information on forms prescribed by the Department including supplemental reports relative to all equity interest which constitute more than ten percent of their individual net worth. The applicant group shall provide the Department with personal, independent credit reports on each of the foregoing individuals as part of the financial and biographical information. Persons subsequently proposed to be added to the board and any new executive officer employed during the first three years after the granting of the charter or subscribing to 10% or more of

the capital stock issue shall be required to make similar filings and be approved by the Department prior to their taking office or being issued any stock.

Any insider contracts and transactions with the proposed institution must be made on non-preferential terms, submitted to the Department for review, and disclosed in the stock offering material. Additional information may be required to establish evidence that transactions are fair, reasonable, and comparable to similar arrangements that could have been made with unrelated parties.

CONVENIENCE AND NEEDS OF THE COMMUNITY TO BE SERVED. The current economic condition or growth potential of the market in which the new bank proposes to locate is an important consideration in determining the bank's probable success. Essential to the concept of banking opportunity is that there does or will exist a volume of business for which the new bank can realistically compete. Also important is a determination of the portion of that business the new bank could acquire and whether that portion is sufficient to generate a profit. Where the de novo bank is purchasing and assuming the assets/liabilities of an existing branch(es), the amount of information required in support of the Convenience and Needs factor may be abbreviated since the bank would be replacing a competitor in the market.

Evidence of banking opportunity may be indicated in several ways including trends in population, employment, residential and commercial construction, sales, company payrolls, and businesses established. Geographic and environmental restrictions for further development should be fully explored. In addition to support provided in the Business Plan, applicants often include a Feasibility Study that contains information in support of the economic vitality of the community to be served and its financial services industry, both historical and projected into the future.

Primary Service Area

Within the broader concept of a market, the applicant should delineate a Primary Service Area (PSA). The dimensions of the PSA will necessarily vary with the type of market to be served. A rural bank may serve a relatively large area if banking alternatives are limited; conversely, the PSA of an urban bank may be limited to several city blocks. The PSA is defined as the smallest area from which the bank expects to draw approximately 75% of its deposits and should be drawn around a natural customer base. It should not be unrealistically delineated to exclude competing banks or to include areas of concentrated population. Barriers to access such as major highways, rivers, mountains, or other impediments should be considered.

Location

The importance of the specific site depends upon the type of market to be served. The precise location of a bank in a sparsely populated area with limited competition may be less significant than that of an urban or suburban bank whose success may be more dependent upon the convenience of its location.

Population

Composition of the population, including daily or seasonal inflows, within the PSA is an important indication of the potential support for a bank. Population characteristics such as income, age distribution, educational level, occupation, and stability should be considered. Ratios of population per banking office are not conclusive evidence of support for a new bank.

Market Competition

The growth rate and size of financial institutions in the market are important indicators of economic condition and potential business for a new bank. Location and services offered are indicative of the competitive climate of the market. Other financial institutions such as savings and loan associations, credit unions, finance companies, mortgage companies, and insurance companies may be considered competing institutions to the extent their services parallel those of the new bank.

CONSISTENCY OF CORPORATE POWERS. Normally a proposed bank is chartered for the purpose of performing all powers that a commercial bank is allowed under the law. If the bank has the word "Trust" in their name or anticipates exercising trust powers in the future, it must be chartered as a "bank and trust company" in the Articles of Incorporation. No bank may exercise trust powers, other than those allowed for Individual Retirement Accounts, without the prior written approval of the Department.

## PROCESSING PROCEDURES

A pre-filing meeting with the Department is required with attendance by members of the organizing group (including potential investors, management, and directors); representatives of the organizing group (such as attorneys or consultants); applicable professional staff of the FDIC; and, as appropriate, the Federal Reserve Bank (FRB). Prior to scheduling this meeting, the Department must receive and review acceptable documents which include, at a minimum, a draft 3-year business plan; management detail including professional background and relevant experience for proposed executive officers, directors, and principal shareholders; and details of the capitalization plan.

Since all banks in the State of Georgia must have federal deposit insurance coverage, simultaneous submission of the “Interagency Charter and Federal Deposit Insurance Application” to both the FDIC and Department is required. The Department and FDIC conduct charter investigations jointly to minimize burden to the applicant and to eliminate duplicative regulatory effort. However, the decision to grant or deny the charter application is an independent decision from the decision to grant or deny deposit insurance; therefore, each regulatory agency must make separate decisions. Banks electing to be a state member bank of the FRB will be required to file a membership application with the FRB.

If a holding company is anticipated at the time of application of the proposed bank, it is appropriate for the applicant to submit the holding company application to the Department and the FRB. No additional fee will be required if the holding company application is filed within 120 days of the filing of the charter application. Refer to the “Bank Holding Company Formation” sections of the Statement of Policy and Applications Manual for detailed information.

The proposed name of the new bank will be evaluated in accordance with the Statement of Policy for “Name Permission, Reservation, and Change.”

If the applicant meets the qualifying criteria, the expedited processing procedures will be followed. In such cases, the applicant should discuss the proposal with the Department prior to submitting the application. If the application qualifies for expedited processing, the Department will act within 30 days of acceptance of the application, or the end of the public comment period, whichever is later. For all other bank charter applications, including where the applicant will be an independent bank, regular processing procedures will be followed. Typically, the Department will act with 90 days of acceptance of the application.

Publication for public comment on the charter application may commence no sooner than five (5) days prior to the date the application is mailed or delivered to the Department. The publication may jointly mention the relevant federal regulator. The publication should be published in a newspaper of general circulation in the community in which the applicant's main office is or will be located and in which the applicant proposes to engage in business as notification to any interested parties of their right to protest the application. A Publication of the Articles of Incorporation will have to be made, following acceptance of the Articles by the Department, in accordance with O.C.G.A. § 7-1-392.

No information regarding the charter proposal or the organizing group is released to the public until after the application is filed with the Department, is determined to be substantially complete, and is officially accepted in writing by the Department. Once the application has been officially accepted by the Department, the public portion of the file is available for public inspection. Confidential sections of the application, including biographical and financial information on the organizers, incorporators, directors, executive officers, and 10% shareholders, the Business Plan, and any other proprietary information (as determined by the Department), will not be available to the public.

All expenses incurred in connection with the organization of a bank are to be assumed by the organizers and incorporators. If a charter is issued, expenses determined to be reasonable by the Department may be reimbursed by the bank after the commencement of business. In no event shall the amount of or payment of any fee be solely contingent upon action, decision, or forbearance on the part of the Department. A contingent expense or fee will ordinarily result in disapproval of the application.

Requests for reconsideration of disapproved applications will not be accepted. A new application may be filed at any time by submitting substantive new or additional information to the Department. To the extent relevant, the Department will consider and incorporate the prior administrative record. A supplemental filing fee will be required. When a charter application is disapproved, a written statement of the reasons for the disapproval will be furnished to the applicant.

The time allowed to open for business normally will be two years from the date of preliminary approval. Preliminary approval will be rescinded if the bank is not open for business within this two-year period.

Importance Of Filing Priority In The Event Of Conflicting Applications

When two or more applications are pending concurrently from different applicants, priority of filing ordinarily will not be a factor in the decision-making process relative to matters before the Department. The Department's first obligation is to determine that each proposed activity complies with applicable laws, regulations, and policies. Where the selection must be made between conflicting applications by the Department, the Department shall exercise its discretion in favor of the application which it perceives to be most favorable to the delivery of quality financial services to the community to be served. Absent a difference in the quality of prospective financial services or the proposed delivery system, priority shall be determined on the basis of one or more of the following factors:

a) Submission of preliminary and final documents;
b) Preliminary meetings with the Department to discuss the transaction and subsequent applications, investigations, and approvals;
c) Employment of outside consultant services utilized in completing applications and expenditure of other significant out-of-pocket funds incidental to the filing of an application; and
d) Publication of public notices.

The Department recognizes that applications and decisions leading up to the filing of an application in today's regulatory environment may require a substantial outlay of funds without any assurance of final approval. It is also recognized that careful and deliberate research, study, and consideration of alternatives is the best avenue to achieve a successful operation. Accordingly, an applicant which has out of caution, prudence, or other motivation elected to expend such time and money to ensure a greater probability of success in their decision-making process should not be disadvantaged relative to a conflicting application which has been ill-conceived or hastily prepared simply to establish priority in the regulatory process.

## BRANCH OFFICE (ESTABLISH OR RELOCATE)

The Department evaluates branch office applications or notifications to establish or relocate pursuant to O.C.G.A. § 7-1-602 and Rules 80-1-1-.06 and 80-1-1-.08. The Department considers the applicant's capacity to support the location of major importance when evaluating a branch office application. The judgment of the applicant as to the viability of a proposed branch office or relocation will ordinarily be granted deference, provided that, in the opinion of the Department, the applicant's capacity is sufficient or will be enhanced by the new activity. A relocation is applicable when 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. A bank which desires to relocate its main office to an already existing location can request that the Department consider the move as a redesignation rather than a relocation. Refer to the "Redesignation of Branch and Main Office" section of the Statement of Policy and the Applications Manual as well as Department Rule 80-1-1-.08. An application to establish or relocate a branch office will be assessed by the Department utilizing the Evaluation Factors detailed below.

Pursuant to Rule 80-1-15-.02, banks may provide unlimited banking services through mobile banking units that do not have a single, permanent site and use a vehicle that travels to various locations to enable customers to conduct banking business. Mobile branches are required to maintain logs indicating the specific locations and times in which the mobile unit is operating. Banks are required to publish the mobile unit schedule on their website. If a bank alters the approved banking service area, management must submit advanced notice to the Department. Since a mobile unit will function as a branch, application for approval is made through the branch approval process.

Banks that are not chartered by the Georgia Department of Banking and Finance are **not** required to file any branch application or notice with the Department. The appropriate application should be filed with the home state regulator or the Office of the Comptroller of the Currency, as appropriate.

### EVALUATION FACTORS

CONDITION OF THE APPLICANT. The applicant's general condition should be satisfactory. Significant or serious problems will normally preclude approval. A bank should not have an undue amount of criticized assets (particularly in relation to capital), serious or frequent violations of law, inadequate liquidity, adverse operating trends, poor internal controls, or other significant problems.

CAPITAL AND EARNINGS. Capital, earnings, and retention of earnings should be sufficient to support the current level of operations as well as the proposed expansion. In determining the applicant's capacity to support the proposed branch office, the estimated cost of establishing and operating the branch office and the volume and scope of anticipated business will be considered.

CHARACTER AND FITNESS OF MANAGEMENT. Management should have demonstrated the ability to supervise a sound banking operation. This determination will generally relate to the overall condition of the bank and management's ability to recognize and correct deficiencies. Depth and continuity of management are also relevant factors in considering the bank's capacity to expand through the establishment of branch offices.

INSIDER INTERESTS. Any financial arrangement or transaction involving the branch office and the bank or holding company's directors, officers, major shareholders, or their associates or interests should

be exercised with caution. If insider transactions exist, they must be fair, approved by the full Board with abstention of the insider, fully disclosed in the application, reasonable, and compare to similar arrangements that could have been made with unrelated parties.

FIXED ASSET LIMITATIONS. Rule 80-1-10-.01 limits the amount of investment in fixed assets by a bank to a maximum of 60% of the bank's Statutory Capital Base, unless prior approval from the Department is granted to exceed this limit. The institution's investment in fixed assets will be reviewed for compliance with this statutory limit. If the fixed asset investment is in excess of this limit, the Department may consider corrective plans including immediately restructuring the capital accounts to comply with the 60% limit, or by the bank providing an orderly plan for restoring the fixed asset investments to the 60% limitation within five years, either through depreciation or predetermined plans to restructure the capital accounts to comply with the 60% legal limitation, or a combination of these methods.

## PROCESSING PROCEDURES

Applicants qualifying for expedited processing should file a letter form application with the Department. Details regarding the content of the letter form application can be found in the Department's Applications Manual.

A bank desiring to establish or relocate a branch office which does not meet the expedited processing qualifying criteria should obtain the "Branch Office Application" from the Department's website – https://dbf.georgia.gov. The Department will accept the Federal Regulator's application in lieu of the Department's application if the bank submits the application through secure e-mail. The bank is also required to electronically submit the filing fee to the Department.

If applicable, applicants will be advised of the reasons for disapproval. Requests for reconsideration of denied applications will not be accepted. A new application may be filed at any time if it contains substantively new or additional information. A supplemental filing fee will be required if expedited processing is not applicable.

The time allowed to open the branch office will normally be eighteen months from the date of the approval; however, a one-year extension of the original approval may be granted at the bank's request and the Department's discretion. In such cases, approval will be rescinded if business has not commenced within this two-year period.

## REDESIGNATION OF BRANCH AND MAIN OFFICE

The Department evaluates redesignations pursuant to O.C.G.A. §§ 7-1-600 and 7-1-602 and Rule 80-1-1-.08. A redesignation is applicable when a branch office becomes a main office and the main office, if it is not closed, becomes a branch office. 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. If the main office is being relocated, the bank's Articles of Incorporation may have to be amended. A redesignation application will be assessed by the Department utilizing the Evaluation Factors detailed below.

### EVALUATION FACTORS

CONDITION OF THE APPLICANT. The applicant's general condition should be satisfactory. Significant or serious problems may preclude approval. A bank should not have an undue amount of criticized assets (particularly in relation to capital), serious or frequent violations of law, inadequate liquidity, adverse operating trends, poor internal controls, or other significant problems.

INSIDER INTERESTS. Any financial arrangement or transaction involving the branch office and the bank or holding company's directors, officers, major shareholders, or their associates or interests should be exercised with caution. If insider transactions exist, they must be fair, approved by the full Board with abstention of the insider, fully disclosed in the application, reasonable, and comparable to similar arrangements that could have been made with unrelated parties.

FIXED ASSET LIMITATIONS. Rule 80-1-10-.01 limits the amount of investment in fixed assets by a bank to a maximum of 60% of the bank's Statutory Capital Base, unless prior approval from the Department is granted to exceed this limit. The institution's investment in fixed assets will be reviewed for compliance with this statutory limit. If the fixed asset investment is in excess of this limit, the Department may consider corrective plans including immediately restructuring the capital accounts to comply with the 60% limit, or by the bank providing an orderly plan for restoring the fixed asset investments to the 60% limitation within five years, either through depreciation or predetermined plans to restructure the capital accounts to comply with the 60% legal limitation, or a combination of these methods.

### PROCESSING PROCEDURES

The bank should file a letter form application with the Department for treatment as a redesignation. The application should include detail of the proposed redesignation including a narrative of the redesignation, description of the overall condition of the bank, anticipated costs, disclosure of insider interests, and calculation of the resultant level of fixed assets in relation to limitations.

If applicable, applicants will be advised of the reasons for disapproval. Requests for reconsideration of denied applications will not be accepted. A new application may be filed at any time if it contains substantively new or additional information.

## BRANCH OFFICE CLOSING

The Department evaluates branch closings pursuant to O.C.G.A. § 7-1-110.1 and Rule 80-5-2-.03. The Department considers the permanent closing of a branch office to be primarily a business decision of management. Banks should review federal requirements for branch closings and consider possible effects on CRA compliance.

### PROCESSING PROCEDURES

Pursuant to O.C.G.A. § 7-1-110.1 and Department Rule 80-5-2-.03, closing of a bank location requires the bank to post notice of the action at such location at least 30 days in advance. The bank must also disclose the closure on its website at least 30 days in advance of the intended action. Such notice shall be posted for at least 30 consecutive days. Within two days of posting the notices, the bank must forward to the Department a copy of the notices posted at the location and on the website along with a letter form notification that includes the following information: the bank location to be closed; a statement of the reason for the proposed closing and a summary of any supporting information; and the proposed closing date. If the actual closing date is different than the proposed closing date, the bank must inform the Department in writing within 15 days of the closing.

## EMERGENCY BRANCH OR MAIN OFFICE CLOSING

Bank offices directly affected by any impending or existing emergency or other catastrophe may close temporarily under the conditions set forth in O.C.G.A. § 7-1-111 and Rule 80-5-2-.02. Banks have the discretion to close business operations in the event of a natural disaster or other emergency, including situations where an emergency may be imminent. Regulations provide for management to exercise its own discretion, with notification to the Department, in closing any institution for one business day upon its determination that the safety of customers, employees, or assets would be in jeopardy due to civil disorder, fire, acts of God, or similar circumstances which render the institution unable to conduct business in a safe manner.

Office closings due to emergency situations should be communicated to the Department as soon as transmission is feasible. Furthermore, banks should make every effort to reopen as quickly as possible to address the needs of their customers.

## EXTENSIONS OF EXISTING BANKING LOCATIONS

The Department evaluates extensions of existing banking locations pursuant to O.C.G.A. § 7-1-603, Rules 80-1-1-.07, and the applicable rules in Chapter 80-1-15. An approved banking location may have an extension which is not considered to be a branch or main office, at which banking activities may occur. Extensions include Automated Teller Machines (ATM), cash dispensing machines, point-of-sale terminals, and night depositories. In addition, an extension is permitted that is located within the boundary lines of a single contiguous area of property owned or leased by the bank and used as a banking location, or if it is within 200 yards of such banking location. Banking services may be performed at the extension.

### PROCESSING PROCEDURES

As defined in Rule 80-1-1-.07, no notification is necessary for an ATM, cash dispensing machine, point-of-sale terminal, or night depository. Refer to O.C.G.A. § 7-1-603 for a full definition of these extensions. Extensions that are located within 200 yards of the boundary lines of a single contiguous area of property owned or leased by the bank and used as a bank location as defined by O.C.G.A. § 7-1-603(d) require notification. All other extensions require an application. Refer to the Bank Applications Manual for specific requirements.

## PURCHASE OF REAL ESTATE FOR FUTURE EXPANSION OR REAL ESTATE LEASING

The Department evaluates the purchase of real estate for future expansion pursuant to O.C.G.A. § 7-1-262 and Chapter 80-1-10.

If qualifications detailed in Rule 80-1-10-.02 are met, a bank may purchase real estate solely for expansion purposes using a letter notification. Although banks are authorized in limited cases to purchase or hold property for future expansion by notification to the Department, banks may wish to seek approval from the Department to establish a branch office at the location prior to purchasing the real estate. Such approval will reduce the possibility that a bank will be precluded from establishing a branch office on real estate purchased for just such purpose. Refer to the "Branch Office (Establish or Relocate)" section for further detail. Pursuant to Rule 80-1-10-.10, an application is required for a bank to become a lessor of real estate and will be assessed by the Department utilizing the Evaluation Factors detailed below.

### EVALUATION FACTORS

CONDITION OF THE APPLICANT. The applicant's general condition should be satisfactory. Significant or serious problems may preclude approval. A bank should not have an undue amount of criticized assets (particularly in relation to capital), serious or frequent violations of law, inadequate liquidity, adverse operating trends, poor internal controls, or other significant problems.

INSIDER INTERESTS. Any financial arrangement or transaction involving the bank or holding company's directors, officers, major shareholders, or their associates or interests should be exercised with caution. If insider transactions exist, they must be fair, approved by the full Board with abstention of the insider, fully disclosed in the application, reasonable, and compare to similar arrangements that could have been made with unrelated parties.

FIXED ASSET LIMITATIONS. Rule 80-1-10-.01 limits the amount of investment in fixed assets by a bank to a maximum of 60% of the bank's Statutory Capital Base, unless prior approval from the Department is granted to exceed this limit. The institution's investment in fixed assets will be reviewed for compliance with this statutory limit. If the fixed asset investment is in excess of this limit, the Department may consider corrective plans including immediately restructuring the capital accounts to comply with the 60% limit, or by the bank providing an orderly plan for restoring the fixed asset investments to the 60% limitation within five years, either through depreciation or predetermined plans to restructure the capital accounts to comply with the 60% legal limitation, or a combination of these methods.

### PROCESSING PROCEDURES

PURCHASE OF REAL ESTATE FOR FUTURE EXPANSION. The purchase of real property for expansion purposes may be made without the prior consent of the Department and by only a letter notification when the real property is to be utilized as bank premises within five years of the date of purchase; the purchase of the real property does not result in the bank exceeding the fixed asset limitation; and the bank is not subject to any special requirements whereby the Department requires prior approval for such purchase. Refer to the Applications Manual for specific notification requirements. Where Department consent is required, it shall be granted only in those cases where the applicant provides reasonable assurance that it plans to utilize the property as bank premises within five years from the date of purchase.

The ability to hold property for future expansion shall expire five years from the date of purchase unless the property is utilized as bank premises prior to that time. Banks holding property beyond the five-year period must divest themselves of the property through sale unless the time limitation is extended by the Department.

BANK AS A LESSOR OF REAL ESTATE. Under certain circumstances and with the prior approval of the Department, a bank may become the owner and lessor of real property. A bank that desires to be a lessor of real property under the conditions in Rule 80-1-10-.10 must submit a letter form application to the Department. The bank must primarily occupy at least 67 percent of the square footage of the individual premise, the real estate must have been acquired in good faith for permissible services, and the bank may not lease real estate to a third-party if it raises safety and soundness concerns. Refer to the Applications Manual for specific application requirements.

If applicable, applicants will be advised of reasons for disapproval. Requests for reconsideration of denied applications will not be accepted. A new application may be filed at any time if it contains substantively new or additional information.

## REPRESENTATIVE OFFICE

A representative office is an office established by a bank, bank holding company, or their subsidiaries for the purpose of conducting business activities other than a banking business. Certain activities that constitute a banking business are set forth in O.C.G.A. § 7-1-241 and Rule 80-1-15-.06. Funds may not be disbursed from and/or collected at a representative office. A representative office does not meet the definition of a branch office or main office. O.C.G.A. § 7-1-590 specifically identifies a loan production office, a deposit production office, and a trust production office as types of representative offices.

Pursuant to O.C.G.A. §§ 7-1-591 and 7-1-592, a Georgia state-chartered bank, bank holding company, or their subsidiaries may establish representative offices anywhere in this state following registration with the Department. Additionally, subject to any limitations or restrictions of the host state and upon registering the representative office with the Department, a Georgia state-chartered bank, bank holding company, or their subsidiaries may conduct activities at any representative office outside Georgia that are authorized by Georgia law or that are permissible for a bank chartered by the host state where the representative office is located, except: (1) to the extent such activities are expressly prohibited by the laws of this state or by any regulation or order of the commissioner applicable to the Georgia state-chartered bank; and (2) where the activity is one that requires approval from the Department, in which case such approval must be secured.

Pursuant to O.C.G.A. § 7-1-592, a bank, a bank holding company, or their subsidiaries operating under the laws of a state other than Georgia or of the United States may establish representative offices anywhere in this state, provided that such bank or bank holding company conforms to the requirements of its primary regulator.

Out-of-state banks and national banks headquartered in Georgia do **not** need Department approval for representative offices. Department approval for representative offices **is required** for international banking organizations opening representative offices in Georgia.

### PROCESSING PROCEDURES

Pursuant to O.C.G.A. §§ 7-1-591 and 7-1-593, a Georgia state-chartered bank, a bank holding company, or their subsidiaries shall register all representative offices with the Department through letter form registration. The "Registration of Representative Offices" form is located on the Department's website – https://dbf.georgia.gov. Examples of representative offices include a loan production office, deposit production office, and trust production office. Refer to the Applications Manual for additional information. In the instance of a representative office closing, the procedures outlined in Rule 80-1-1-.08(12) must be followed.

## AUXILIARY SERVICES

The Department evaluates auxiliary services pursuant to O.C.G.A. § 7-1-241 and the applicable rules in Chapter 80-1-15. Auxiliary services include messenger services, account service representatives, and school savings and banking education programs. An application for auxiliary services will be assessed by the Department utilizing the Evaluation Factors detailed below.

### EVALUATION FACTORS

CONDITION OF THE APPLICANT. The applicant's general condition should be satisfactory. Significant or serious problems may preclude approval. A bank should not have an undue amount of criticized assets (particularly in relation to capital), serious or frequent violations of law, inadequate liquidity, adverse operating trends, poor internal controls, or other significant problems.

INSIDER INTERESTS. Any financial arrangement or transaction involving bank or holding company's directors, officers, major shareholders, or their associates or interests should be exercised with caution. If insider transactions exist, they must be fair, approved by the full Board with abstention of the insider, fully disclosed in the application, reasonable, and compare to similar arrangements that could have been made with unrelated parties.

### PROCESSING PROCEDURES

MESSENGER SERVICES. A messenger service may be established, provided it satisfies the conditions set out in Rule 80-1-15-.03. A letter form application is required for the establishment of messenger services. Refer to the Applications Manual for specific application requirements. The bank should also contact the appropriate federal regulator to determine if an application is required under federal law or regulation. If an application is required by the federal regulator, a copy of the federal application can be submitted to the Department to satisfy the letter form application requirement.

ACCOUNT SERVICE REPRESENTATIVES. Banks may provide for account service representatives to visit public events and commercial locations to provide limited services. These services may include opening deposit accounts and providing services incidental thereto; provided, access to such locations and facilities is available to other financial institutions on a nondiscriminatory basis as detailed in Rule 80-1-15-.04. A letter form application is required for the establishment of account service representatives. Refer to the Applications Manual for specific application requirements.

SCHOOL SAVINGS AND BANKING EDUCATION PROGRAMS. As provided in Rule 80-1-15-.05, banks may participate in school savings and banking education programs, where such programs: are (a) provided for minors in order to promote thrift or to provide banking and financial education; (b) supervised by a school official or an organization affiliated with the school; and (c) in a location where the bank would otherwise be authorized to have a branch as outlined in O.C.G.A. §§ 7-1-601 and 7-1-602. A letter form application is required for the establishment of school savings and banking education programs. Refer to the Applications Manual for specific application requirements.

If applicable, applicants will be advised of the reasons for disapproval. Requests for reconsideration of denied applications will not be accepted. A new application may be filed at any time if it contains substantively new or additional information.

# CONVERSIONS

The Department evaluates conversion applications by a national bank or federal savings bank to a state bank pursuant to O.C.G.A. §§ 7-1-550 through 7-1-555. Approval of a charter conversion must be consistent with the basic objective of maintaining a sound banking system. An application to convert should not be motivated by supervisory pressures from other regulatory authorities. The proposed name of the converting bank will be evaluated in accordance with the Statement of Policy for "Name Permission, Reservation, and Change."

## EVALUATION FACTORS

CONDITION OF THE APPLICANT. The applicant's general condition should be satisfactory. Significant or serious problems will preclude approval. A bank should not have an undue amount of criticized assets (particularly in relation to capital), serious or frequent violations of law, inadequate liquidity, adverse operating trends, poor internal controls, or other significant problems.

CHARACTER AND FITNESS OF MANAGEMENT. Management should have demonstrated the ability to supervise a sound banking operation. This determination will generally relate to the overall condition of the bank and management's ability to recognize and correct deficiencies.

## PROCESSING PROCEDURES

An institution desiring to convert to a state bank should contact the Supervision Division. The Department typically meets with members of senior management and the Board of Directors prior to the bank filing the conversion application.

The Department will conduct an investigation to evaluate the condition of the applicant. If the conversion is approved, the Department will issue a Certificate of Approval. Various conditions to the approval may also be imposed in a letter accompanying the Certificate of Approval based on the results of the investigation and discussions with management. If approved, the applicant must convert within six months of the approval date unless the Department grants an extension.

Pursuant to O.C.G.A. § 7-1-555, converting banks are authorized to only engage in lines of business, activities, exercise powers, or hold assets permissible by Department laws and rules; however, if the converting institution holds assets, engages in any business, activity, or has powers not allowed for a state bank, then the Department shall review a conversion plan to determine whether the activity, power, asset, or line of business should be approved, denied, or phased out within a reasonable period of time.

If applicable, an applicant will be advised of the reasons for disapproval. Requests for reconsideration of a denied application will not be accepted. A new application may be filed at any time if it contains substantively new or additional information. A supplemental filing fee will be required.

## BANK MERGERS

The Department evaluates mergers pursuant to O.C.G.A. §§ 7-1-530 through 7-1-537; 7-1-620 through 7-1-626; and 7-1-628 through 7-1-628.15. It is the policy of the Department to preserve the soundness of the banking system and promote market structures conducive to competition. Upon compliance with the applicable merger requirements of Title 7 and other applicable laws and regulations, including any branching and minimum age laws and regulations, one or more banks or trust companies may merge or consolidate, provided that an institution exercising trust powers alone may merge or consolidate with a bank only if the bank is the surviving entity. A proposed merger, consolidation, or purchase of assets and assumption of liabilities (all hereinafter referred to as mergers) which appears to have a substantially adverse effect on existing or potential competition cannot be approved unless the public benefit clearly outweighs the anti-competitive effects of the proposed merger. A merger which does not appear to have a substantially adverse effect on competition and which appears beneficial to the merging financial institutions and the public, normally will be approved if the Evaluation Factors detailed below are deemed satisfactory.

If the name of the resulting financial institution is not the same as any of the financial institutions involved in the merger, the proposed name will be evaluated in accordance with the Statement of Policy for "Name Permission, Reservation, and Change." If the merger involves holding companies, "Bank Holding Company Formations and Acquisitions" policies and applications will also apply.

### EVALUATION FACTORS

CONDITION OF THE APPLICANTS. The resultant financial institution's general condition should be satisfactory. Anticipated significant or serious problems with the resulting financial institution will preclude approval. The resultant financial institution should not have an undue amount of criticized assets (particularly in relation to capital), serious or frequent violations of law, inadequate liquidity, adverse operating trends, poor internal controls, or other significant problems.

CAPITAL AND EARNINGS. Capital, earnings, and retention of earnings should be sufficient to support the current level of operations as well as any proposed expansion.

CHARACTER AND FITNESS OF MANAGEMENT. Management should have demonstrated the ability to supervise a sound banking operation. This determination will relate to the overall condition of the bank and management's ability to recognize and correct deficiencies.

COMPETITIVE EFFECTS. Anticompetitive conditions resulting from a merger involving a dominant financial institution in a market and any other financial institution in the same market could be determined to have a substantially adverse competitive effect. When substantially adverse competitive effects exist, they must be clearly outweighed by the benefits of the merger and comply with O.C.G.A. § 7-1-622(b)(2)(B). If substantially adverse competitive effects are not clearly outweighed by the public benefit and brought into compliance, the merger will be disapproved. The factors demonstrating a public benefit which may outweigh the anticompetitive effects of a merger potentially include the elimination of a failing, weak, or stagnating financial institution, thereby strengthening the banking system; the achievement of economies of scale, including a better matching of source and need of funds, thereby providing the basis for improved customer service and financial institution earnings; and the

extension of services not available from the merging financial institution and for which there is a clearly definable need.

## PROCESSING PROCEDURES

When a merger involves a national or state bank that is headquartered in Georgia merging into a Georgia state bank, O.C.G.A. §§ 7-1-530 through 7-1-537 apply to the transaction.

When a merger involves an out-of-state national bank, federal thrift, or state-chartered bank merging into a Georgia state bank, O.C.G.A. §§ 7-1-530 through 7-1-537; 7-1-620 through 7-1-626; and 7-1-628 through 7-1-628.15 apply to the transaction. The Department may conduct an examination into the condition of the national bank, federal thrift, or out-of-state bank to the extent deemed necessary. The cost of such examination shall be charged to the applicant in addition to the normal merger fee.

When a merger will result in a Georgia state-chartered bank merged into a non-Georgia state-chartered bank, the applicant is required to provide notification to the Department of filing of an application with the appropriate federal regulator no later than the date on which the application is filed. A copy of the application is required to be provided to the Department. Additionally, the applicant is required to provide satisfactory evidence of all required approvals from all relevant bank supervisory agencies prior to consummation of the merger. When no substantially adverse competitive effects are demonstrated and the conditions of O.C.G.A. § 7-1-534(c) are satisfied, the Department will provide written confirmation that the provisions have been satisfied.

If applicable, an applicant will be advised of the reasons for disapproval. Requests for reconsideration of a denied application will not be accepted. A new application may be filed at any time if it contains substantively new or additional information. A supplemental filing fee will be required.

## DISSENTER'S RIGHTS CREATING TREASURY STOCK

While it has been relatively rare that there have been any dissenting shareholders to merger transactions who have exercised their dissenter's rights pursuant to O.C.G.A. §§ 7-1-537 or 7-1-572 (incorporating by reference O.C.G.A. § 14-2-1302 of the Corporate Code), this has on occasion occurred. The question then arises as to what disposition should be made of shares so acquired. Under other provisions of the Corporate Code the normal procedure for corporations is to void the shares with appropriate reductions in the common stock and surplus accounts; however, these provisions of the Corporate Code are not applicable to banks.

O.C.G.A. §§ 7-1-537 and 7-1-572 constitute sufficient authority for the bank to acquire treasury stock when the Department has approved a merger transaction, but only where there has been strict adherence to the procedures outlined in O.C.G.A. § 14-2-1302. In such cases the stock, while legally acquired, is subject to the provisions of O.C.G.A. §§ 7-1-261(6), 7-1-288, 7-1-436(b), and 7-1-460(a)(4). Reading these sections together, the Code recognizes the situation whereby a bank may lawfully acquire its own shares through a merger transaction but there is no intent to allow indefinite retention of such shares. On the other hand, the Code does not provide guidance as to the disposition of the shares in the case of stock acquired as a debt previously contracted ("D.P.C") under O.C.G.A. § 7-1-263(2). Further, the

stock cannot be automatically voided and considered authorized but unissued simply by completion of the merger transaction as in the case of corporations subject to the Corporate Code.

Divestiture of acquired stock will be required within six months of the date of acquisition and extensions can be requested. The bank has three alternatives for disposition of the stock: (1) petition the federal regulator and the Department for permission to reduce their outstanding stock, (2) sell the stock, and (3) distribute the stock to shareholders as a dividend-in-kind.

Upon receipt of proper notice that a dissenting shareholder wishes to exercise dissenting shareholders' rights, the Department shall be promptly notified of such fact in writing. The Department's approval of the transaction shall be subject to reconsideration or the imposition of additional conditions based upon the effects of the bank's acquisition of such shares, its plans for disposition of the shares, and the financial impact of those transactions unless the application has already addressed such a contingency. The merger may not be consummated without further approval of the Department and the federal regulator after review of this matter. If the resulting bank is a holding company subsidiary, the Federal Reserve must be notified in addition to the bank's primary regulators.

## BANK HOLDING COMPANY ACQUISITIONS

The Department evaluates acquisitions pursuant to O.C.G.A. §§ 7-1-605 through 7-1-608 and 7-1-620 through 7-1-626; and the applicable rules in Chapter 80-6-1. It is the policy of the Department to preserve the soundness of the banking system and promote market structures conducive to competition. Upon compliance with the applicable acquisition requirements of Title 7 and other applicable laws and regulations, including any branching and minimum age laws and regulations, a holding company may acquire banks and bank holding companies. A proposed merger, consolidation, or purchase of assets and assumption of liabilities (all hereinafter referred to as acquisitions) which appears to have a substantially adverse effect on existing or potential competition cannot be approved unless the public benefit clearly outweighs the anti-competitive effects of the proposed acquisition. An acquisition which does not appear to have a substantially adverse effect on competition and which appears beneficial to the merging financial institutions and the public, normally will be approved if the Evaluation Factors detailed below are deemed satisfactory.

With respect to disclosure, particular care should be taken to assure that insiders do not engage in stock transactions prior to the filing of the application without full and adequate disclosure of their knowledge of the application and its implications. Applicants should also be fully aware that, while possibly able to avoid state or federal securities registration requirements, the fraud provisions of those statutes may be applicable to the proposed transactions.

If the name of the resulting bank or holding company is not the same as any of the entities involved in the acquisition, the proposed name will be evaluated in accordance with the Statement of Policy for "Name Permission, Reservation, and Change."

Acquisitions between holding companies that at are not chartered by the Georgia Department of Banking and Finance, unless one or more of the parties is a holding company for a Georgia state-chartered bank, are **not** required to file any acquisition application or notice with the Department. The application should be filed with the home state or federal regulator, as appropriate.

### EVALUATION FACTORS

CONDITION OF THE APPLICANTS. The resultant holding company's general condition should be satisfactory. Anticipated significant or serious problems with the resulting holding company will preclude approval. The resultant holding company should not have an undue amount of criticized assets (particularly in relation to capital), serious or frequent violations of law, inadequate liquidity, adverse operating trends, poor internal controls, or other significant problems.

CAPITAL AND EARNINGS. Capital, earnings, and retention of earnings should be sufficient to support the current level of operations as well as any proposed expansion.

CHARACTER AND FITNESS OF MANAGEMENT. Management should have demonstrated the ability to supervise a sound banking operation. This determination will relate to the overall condition of the bank and holding company, and management's ability to recognize and correct deficiencies.

COMPETITIVE EFFECTS. Anticompetitive conditions resulting from an acquisition involving a dominant holding company in a market and any other holding company in the same market could be

determined to have a substantially adverse competitive effect. When substantially adverse competitive effects exist, they must be clearly outweighed by the benefits of the acquisition and comply with O.C.G.A. § 7-1-606(b)(1). If substantially adverse competitive effects are not clearly outweighed by the public benefit and brought into compliance, the acquisition will be disapproved. The factors demonstrating a public benefit which may outweigh the anticompetitive effects of an acquisition potentially include the elimination of an undercapitalized, weak, or stagnant bank or holding company, thereby strengthening the banking system; the achievement of economies of scale, including a better matching of source and need of funds, thereby providing the basis for improved customer service and holding company earnings; and the extension of services not available from the acquiring financial institution and for which there is a need.

## PROCESSING PROCEDURES

When an acquisition involves a Georgia state-chartered holding company acquiring a Georgia state-chartered bank or bank holding company, O.C.G.A. §§ 7-1-605 through 7-1-608 apply to the transaction. When an acquisition involves a Georgia state-chartered holding company acquiring a non-Georgia state-chartered bank or holding company, O.C.G.A. §§ 7-1-605 through 7-1-608 and 7-1-620 through 7-1-626 apply to the transaction. The Department may conduct an examination into the condition of the parties to the application to the extent deemed necessary. The cost of such examination shall be charged to the applicant in addition to the normal merger fee.

When an acquisition will result in a Georgia state-chartered bank or holding company being acquired by a non-Georgia state-chartered holding company, the applicant is required to provide concurrent notification to the Department of filing of an application with the appropriate federal supervisory regulator. A copy of the application is required to be provided to the Department. Additionally, the applicant is required to provide satisfactory evidence of all required approvals from all relevant bank supervisory agencies prior to consummation of the acquisition.

In the case of a holding company where all banks are already owned by the same holding company, the process will be expedited in most instances since an analysis of the overall condition and structure of the transaction was performed at the time of acquisition and at each subsequent holding company examination. No public notice will be required since a notice was made at the time of formation or acquisition.

Approval of an application 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.

If applicable, an applicant will be advised of the reasons for disapproval. Requests for reconsideration of a denied application will not be accepted. A new application may be filed at any time if it contains substantively new or additional information. A supplemental filing fee will be required.

## DISSENTER'S RIGHTS CREATING TREASURY STOCK

While it has been relatively rare that there have been any dissenting shareholders to merger transactions who have exercised their dissenter's rights pursuant to O.C.G.A. § 14-2-1302 of the Corporate Code, this has on occasion occurred. The question then arises as to what disposition should be made of shares so

acquired. Under the Corporate Code, the normal procedure for corporations is to void the shares with appropriate reductions in the common stock and surplus accounts; however, these provisions of the Corporate Code are not applicable to banks. See O.C.G.A. §§ 7-1-261(6), 7-1-288, 7-1-436(b), 7-1-460(a)(4), 7-1-537, and 7-1-572.

## EXISTING BANK HOLDING COMPANY ACQUIRING 5% TO 25% OWNERSHIP OF A BANK OR BANK HOLDING COMPANY

The Department evaluates change in control pursuant to O.C.G.A. §§ 7-1-605 through 7-1-608, O.C.G.A. §§ 7-1-620 through 626, and applicable rules in Chapter 80-6-1.

### EVALUATION FACTORS

CONDITION OF THE APPLICANTS. The resultant holding company's general condition should be satisfactory. Anticipated significant or serious problems with the resultant holding company will preclude approval. The resultant holding company should not have an undue amount of criticized assets (particularly in relation to capital), serious or frequent violations of law, inadequate liquidity, adverse operating trends, poor internal controls, or other significant problems.

CAPITAL AND EARNINGS. Capital, earnings, and retention of earnings should be sufficient to support the current level of operations as well as any proposed expansion.

CHARACTER AND FITNESS OF MANAGEMENT. Management should have demonstrated the ability to supervise a sound banking operation. This determination will relate to the overall condition of the bank and holding company, and management's ability to recognize and correct deficiencies.

COMPETITIVE EFFECTS. Anticompetitive conditions resulting from an acquisition involving a dominant holding company in a market and any other holding company in the same market could be determined to have a substantially adverse competitive effect. When substantially adverse competitive effects exist, they must be clearly outweighed by the benefits of the acquisition and comply with O.C.G.A. § 7-1-606(b)(1). If substantially adverse competitive effects are not clearly outweighed by the public benefit and brought into compliance, the acquisition will be disapproved. The factors demonstrating a public benefit which may outweigh the anticompetitive effects of an acquisition potentially include the elimination of an undercapitalized, weak, or stagnant bank or holding company, thereby strengthening the banking system; the achievement of economies of scale, including a better matching of source and need of funds, thereby providing the basis for improved customer service and holding company earnings; and the extension of services not available from the acquiring financial institution and for which there is a need.

### PROCESSING PROCEDURES

Bank holding companies should follow the application procedures outlined in the Applications Manual.

If applicable, an applicant will be advised of the reasons for disapproval. Requests for consideration of a denied application will not be accepted. A new application may be filed at any time if it contains substantively new or additional information. A supplemental filing fee will be required.

## CHANGE IN CONTROL: 25% AND GREATER OWNERSHIP; OR 10% AND GREATER OWNERSHIP IF NO OTHER PERSON OWNS A GREATER PERCENTAGE

The Department evaluates change in control pursuant to O.C.G.A. §§ 7-1-605 through 7-1-608, O.C.G.A. §§ 7-1-620 through 626, and applicable rules in Chapter 80-6-1 for bank holding companies; O.C.G.A. §§ 7-1-230 through 7-1-236 for banks and bank holding companies; and Rule 80-1-1-.08(4) for banks.

Person(s) seeking control of a bank or bank holding company should refer to O.C.G.A. § 7-1-230 where "control" is defined as the power directly or indirectly to direct the management or policies of a financial institution or to vote 25 percent or more of any class of voting securities of a financial institution. In addition, such person(s) should refer to "presumption of control," which means the person directly or indirectly owns, controls, or has the power to vote more than 10 percent but less than 25 percent of any class of voting securities if no other person will own, control, or hold the power to vote a greater percentage of that class of voting securities immediately after that transaction. Further, a "person" means an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, or unincorporated organization. O.C.G.A. § 7-1-231 addresses person(s) acting directly or indirectly or through concert with other person(s) to acquire control or the presumption of control requiring Department approval. O.C.G.A. § 7-1-232(a) defines "financial institution" to include any bank holding company as defined in O.C.G.A. § 7-1-605.

An existing holding company seeking control of a bank or bank holding company should refer to O.C.G.A. § 7-1-605 where "control" is defined as a company directly or indirectly or acting through one or more persons owning, controlling, or having the power to vote 25 percent or more of any class of voting securities of the bank or company; or the company controlling in any manner the election of a majority of the directors of the bank or company; or the company directly or indirectly owning, controlling, or having power to vote more than 10 percent but less than 25 percent of any class of voting securities of the bank or company if no other company or person will own, control, or hold the power to vote a greater percentage of that class of voting securities immediately after the transaction. There is a presumption that any company which directly or indirectly owns, controls, or has the power to vote less than 5 percent of any class of voting securities of a given bank or company does not have control over that bank or company. "Company" means any corporation, limited liability company, partnership, business trust, association, commercial entity, or any other trust.

### EVALUATION FACTORS

**Evaluation Factors for Person(s) as Defined in O.C.G.A. § 7-1-230**

The Department may disapprove a proposed acquisition for reasons including, but not limited to, the proposed acquisition would result in a monopoly or would attempt to monopolize the business of banking in any part of the State; the proposed acquisition would lessen competition or tend to create a monopoly to any section of the State or would in any other manner be a restraint of trade not outweighed by meeting the convenience and needs of the community to be served; the financial condition of any acquiring person might jeopardize the financial stability of the financial institution or prejudice the interests of the depositors of the financial institution; the competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the best interest of the depositors of the bank or in the interest of the public to permit the acquisition; and

any acquiring person does not furnish the Department all of the required information in connection with the application.

In addition, any person(s) making application for change in control must provide information relating to personal history and business background for a period of at least the past five years with a description of any material legal proceedings in which the party is involved, financial information prepared in accordance with generally accepted accounting principles, complete terms and conditions of the proposed acquisition, including the source of funds, and complete details of any borrowings made in connection with the acquisition by any of the parties involved. Also, the application must detail any plans or proposals which the acquiring party may have to liquidate the bank or sell its assets or to merge it with any company or, to change in any other way its business or corporate structure or its management. If any person or firm has been employed to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, a description of the terms of this arrangement along with all copies of any invitations, tenders, or advertisements for a tender offer to stockholders must be submitted in conjunction with the application. The Department may also make a specific request in connection with a particular notice for additional information.

**Evaluation Factors for Holding Company as Defined in O.C.G.A. § 7-1-605**

CONDITION OF THE APPLICANTS. The resultant holding company's general condition should be satisfactory. Anticipated significant or serious problems with the resultant holding company will preclude approval. The resultant holding company should not have an undue amount of criticized assets (particularly in relation to capital), serious or frequent violations of law, inadequate liquidity, adverse operating trends, poor internal controls, or other significant problems.

CAPITAL AND EARNINGS. Capital, earnings, and retention of earnings should be sufficient to support the current level of operations as well as any proposed expansion.

CHARACTER AND FITNESS OF MANAGEMENT. Management should have demonstrated the ability to supervise a sound banking operation. This determination will relate to the overall condition of the bank and holding company, and management's ability to recognize and correct deficiencies.

COMPETITIVE EFFECTS. Anticompetitive conditions resulting from an acquisition involving a dominant holding company in a market and any other holding company in the same market could be determined to have a substantially adverse competitive effect. When substantially adverse competitive effects exist, they must be clearly outweighed by the benefits of the acquisition and comply with O.C.G.A. § 7-1-606(b)(1). If substantially adverse competitive effects are not clearly outweighed by the public benefit and brought into compliance, the acquisition will be disapproved. The factors demonstrating a public benefit which may outweigh the anticompetitive effects of an acquisition potentially include the elimination of an undercapitalized, weak, or stagnant bank or holding company, thereby strengthening the banking system; the achievement of economies of scale, including a better matching of source and need of funds, thereby providing the basis for improved customer service and holding company earnings; and the extension of services not available from the acquiring financial institution and for which there is a need.

## PROCESSING PROCEDURES

Individual person(s) and bank holding companies should follow the application procedures outlined in the Applications Manual.

If applicable, an applicant will be advised of the reasons for disapproval. Requests for consideration of a denied application will not be accepted. A new application may be filed at any time if it contains substantively new or additional information. A supplemental filing fee will be required.

## BANK HOLDING COMPANY FORMATIONS

The Department evaluates formations pursuant to O.C.G.A. §§ 7-1-605 through 7-1-608 and the applicable rules in Chapter 80-6-1. Upon compliance with the applicable formation requirements of Title 7 and other applicable laws and regulations, a bank holding company may be formed. The entity must also follow procedures and meet the criteria of the Federal Reserve Bank to become a bank holding company.

The proposed name of the holding company will be considered in accordance with the Statement of Policy for "Name Permission, Reservation, and Change."

### EVALUATION FACTORS

CONDITION OF THE APPLICANT. The resultant holding company's general condition should be satisfactory. Anticipated significant or serious problems with the resultant holding company will preclude approval. The resultant holding company should not have an undue amount of criticized assets (particularly in relation to capital), serious or frequent violations of law, inadequate liquidity, adverse operating trends, poor internal controls, or other significant problems.

CAPITAL AND EARNINGS. Capital, earnings, and retention of earnings should be sufficient to support the current level of operations as well as any proposed expansion.

CHARACTER AND FITNESS OF MANAGEMENT. Management should have demonstrated the ability to supervise a sound banking operation. This determination will relate to the overall condition of the bank and holding company and management's ability to recognize and correct deficiencies.

### PROCESSING PROCEDURES

Applicants should file a letter form application with the Department. Details regarding the content of the letter form notification can be found in the Applications Manual. Applicants desiring expedited processing for the formation of a one-bank holding company for an existing bank with no publication requirement must meet the qualifying criteria.

Approval of an application 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.

If applicable, an applicant will be advised of the reasons for disapproval. Requests for reconsideration of a denied application will not be accepted. A new application may be filed at any time if it contains substantively new or additional information. A supplemental filing fee will be required.

## NAME PERMISSION, RESERVATION, AND CHANGE

The Department evaluates the use of the words "bank," "banker," "banking," "banking company," "trust", "trust company," or any variation thereof pursuant to O.C.G.A. § 7-1-243. Generally, before the Secretary of State allows an entity to incorporate or register a name containing such restricted word(s), the entity will be required to obtain written permission from the Department to use such word(s). Only name permission applications complying with the requirements of O.C.G.A. §§ 7-1-243 and 7-1-130 will be approved.

The Department evaluates name reservations and changes pursuant to O.C.G.A. § 7-1-131. The Department has exclusive jurisdiction over name reservations of corporate names for state financial institutions. The Department must conclude that the proposed name complies with O.C.G.A. § 7-1-130. Name reservations are valid for a period of six months.

### EVALUATION FACTORS

O.C.G.A. § 7-1-243 generally prohibits an entity engaging in lending money, underwriting or selling securities, acting as a financial planner, financial service provider, investment or trust adviser, or acting as a loan broker from using the words "bank," "trust," and/or any variation thereof in its name. An entity engaged/proposing to engage in such activities may not "embed" a restricted word in its name.

The Department considers the words "bank," "trust," and/or any variation thereof to be widely recognized as being used by or associated with financial institutions. Therefore, to avoid confusion among the general public, the Department strongly discourages the ambiguous use of such words. If an entity desires to use a restricted word in its name, the name must be distinct from financial institutions and clearly indicate the business activity/proposed business activity of the entity. Name permission requests must contain a statement explaining why the entity wants to use such restricted word(s) in its name.

O.C.G.A. § 7-1-130 prohibits the name of a financial institution from containing the words "Government," "Official," "Federal," "National," or "United States" or any abbreviation of such words. Additionally, the name of the financial institution must be distinguishable from the corporate name of another financial institution conducting a banking business in this state as reflected in the records of the Department and shall not contain any word which may lead to the conclusion that the financial institution is authorized to perform any act or conduct any business which it is unauthorized or forbidden to perform by law, its articles, or otherwise. The Department may approve a name for a bank holding company that is not distinguishable on the records of the Secretary of State from the name of a deposit taking financial institution wholly-owned by that bank holding company. If such bank holding company subsequently sells the bank with a similar name, the bank holding company may retain its name only if the subject bank's name is no longer in use.

When considering a name permission, reservation, or change request, the Department does not perform a trademark review. Such trademark review should be performed by the applicant's legal counsel. It should be noted that the usage of a name which is similar to the name of a financial institution could represent potential legal risk to the applicant.

# PROCESSING PROCEDURES

## NAME PERMISSION APPLICATIONS

Entities seeking the Department's permission to use a name containing restricted words should file the online application located on the Department's website at: https://dbf.georgia.gov/webform/request-permission-use-bank-credit-union-trust-or-similar-words-name. Sufficient documentation supporting the name request should be included within the application.

## NAME RESERVATION AND CHANGE APPLICATIONS

Entities seeking a name reservation or change should submit a letter form application. The application should state whether the request is for a new financial institution and include the intended county for the main office, or for a change in the name of an existing financial institution.

Name permissions, reservations, and changes will be acted upon within ten days of receipt of the application unless there are concerns about conformity with the statutory requirements. If approval is granted, a letter will be sent to the applicant. The Department will transmit a copy of the approval letter to the Secretary of State's office for name reservations and name changes. Applicants receiving a name permission approval from the Department should follow the procedures outlined by the Secretary of State's office for submission of the Department's approval letter.

## ADOPTION OF TRADE NAME

The Department evaluates the use of trade names pursuant to O.C.G.A. § 7-1-130. Trade names must be registered with the appropriate Superior Court Clerk. O.C.G.A. § 10-1-490. The Federal bank regulatory agencies have developed the Interagency Statement on Branch Names which should be reviewed prior to adopting a trade name.

### EVALUATION FACTORS

O.C.G.A. § 7-1-130 prohibits the name of a financial institution from: a) containing certain words ("Government," "Official," "Federal," "National," or "United States"), b) being indistinguishable from the corporate name of another financial institution, or c) containing any word that would lead to the conclusion that the financial institution is authorized to conduct business which it is unauthorized to perform by law. Notwithstanding these limitations, a financial institution may use a name of another financial institution already transacting business with the consent of the latter institution, provided that the names are distinguishable in the records of the Secretary of State. The Department performs the trade name notification review for any Georgia financial institution and for a foreign corporation seeking to do business as a bank in Georgia in the same manner as it does corporate name permissions. Use of similar names could lead to customer confusion and potential liability on the part of the bank attempting to use the trade name. Additionally, financial institutions need to take reasonable steps to ensure that customers will not incorrectly assume that the trade name entity(ies) is a separate institution from the financial institution, or that deposits in different facilities are separately insured.

The Department requires that the legal, corporate name of the bank be disclosed on all legal documents, including but not limited to, certificates of deposit, signature cards, loan agreements, account statements, checks, drafts, and other similar documents. In the absence of such clear disclosure, the customer may already have deposits in the bank and could potentially exceed the applicable deposit insurance limitation unknowingly. Additionally, signs, advertising, and similar materials should also disclose, clearly and conspicuously, that the trade name entities are a unit of the legal, corporate name of the financial institution. Officers and employees should be trained in minimizing any possible customer confusion with respect to deposit insurance. Bank staff at an office, facility, or branch operating under a trade name should inquire of customers, prior to opening new accounts, whether they have deposits at the institution's other offices, facilities, and branches.

### PROCESSING PROCEDURES

Banks seeking use of a trade name should submit a letter form notification as detailed in the Applications Manual. The Department will review its records for name duplication in an effort to ascertain that it is distinguishable from any other financial institution name on the records of the Department. If the Department determines that the trade name does not meet the requirements of O.C.G.A. § 7-1-130, communication will be provided to the bank within ten days from receipt of the notification; otherwise, the Department will acknowledge receipt of the notification within ten days. This acknowledgement will not constitute a guaranty that the applicant entity is free from any liability for use of the trade name. There are numerous cases interpreting use of trade names and the entity is encouraged to review this issue with legal counsel. This notification procedure is separate and distinct from the application procedure for permission, reservation, and change of corporate names.

## SUBSIDIARIES

The Department evaluates subsidiaries pursuant to O.C.G.A. §§ 7-1-261 and 7-1-606 and Rules 80-1-1-.08, 80-1-10.-05, and 80-6-1-.09. The Department considers an application for creating or acquiring a banking subsidiary to be primarily a business decision of the applicant. Proposed subsidiary activities are required to be financial in nature or incidental to financial activities, consistent with powers granted to financial institutions pursuant to Georgia law and Department regulations, and not a prohibited activity. If the proposed activity triggers a licensing, registration, or notification requirement with another regulatory or government agency, the bank should ensure that these requirements are fully complied with prior to the subsidiary conducting the proposed activity. A subsidiary application will be assessed by the Department utilizing the Evaluation Factors detailed below.

### EVALUATION FACTORS

CONDITION. The applicant's general condition should be satisfactory. Significant or serious problems will normally preclude approval. A bank should not have an undue amount of criticized assets (particularly in relation to capital), serious or frequent violations of law, inadequate liquidity, adverse operating trends, poor internal controls, or other significant problems. In addition, the condition of the subsidiary to be acquired (if applicable) will be considered. The acquiring bank should have the capacity to correct any deficiencies of the acquired business without undue strain on management or financial resources of the bank.

CAPITAL AND EARNINGS. Capital, earnings, and retention of earnings should be sufficient to support the current level of operations as well as the proposed expansion. In determining the applicant's capacity to support the proposed subsidiary, the estimated cost of establishing or acquiring the proposed subsidiary and the volume and scope of anticipated business will be considered.

CHARACTER AND FITNESS OF MANAGEMENT. Management should have demonstrated the ability to supervise a sound banking operation. This determination will generally relate to the condition of the bank and management's ability to recognize and correct deficiencies. Depth and continuity of management are also relevant factors considering the bank’s capacity to supervise proposed activities.

INSIDER INTERESTS. Any financial arrangement or transaction involving the subsidiary and the bank or holding company’s directors, officers, major shareholders, or their associates or interests should be exercised with caution. If insider transactions exist, they must be fair, approved by the full Board with abstention of the insider, fully disclosed in the application, reasonable, and compare to similar arrangements that could have been made with unrelated parties.

FIXED ASSET LIMITATIONS. Rule 80-1-10-.01 limits the amount of investment in fixed assets by a bank to a maximum of 60% of the bank's Statutory Capital Base, unless prior approval from the Department is granted to exceed this limit. The institution's investment in fixed assets will be reviewed for compliance with this statutory limit. If the fixed asset investment is in excess of this limit, the Department may consider corrective plans including immediately restructuring the capital accounts to comply with the 60% limit, or by the bank providing an orderly plan for restoring the fixed asset investments to the 60% limitation within five years, either through depreciation or predetermined plans to restructure the capital accounts to comply with the 60% limitation, or a combination of these methods.

The Federal regulatory agencies also have limitations on the investment in bank subsidiaries, including limitations under Section 23A of the Federal Reserve Act. Banks should ensure that any proposed subsidiaries will be compliant with federal laws, regulations, and guidance.

## PROCESSING PROCEDURES

The bank should file a letter form application with the Department describing the subsidiary activity, how it relates to the business of banking and finance, and what protections will be in place to deal with any associated risks. Additional requirements for both expedited and regular processing can be found in the Department's Applications Manual.

The Department customarily performs an off-site review of subsidiary applications; however, if the Department determines that an on-site investigation is necessary, the applicant shall pay for the cost of such investigation.

If applicable, applicants will be advised of the reasons for disapproval. Requests for reconsideration of denied applications will not be accepted. A new application may be filed at any time if it contains substantively new or additional information. A supplemental filing fee will be required if expedited processing is not applicable.

## SUBSIDIARY ACTIVITIES

Pursuant to Georgia law, subsidiaries are authorized to engage in all powers necessary, convenient, or incidental to carry out the purpose for which the bank or subsidiary is organized. These powers include, but are not limited to a) sale of securities, annuities, and other investment products upon the order of and for the account of its customers, subject to applicable federal or state securities requirements; b) sale of insurance subject to state insurance laws, regulations, and licensing requirements, applicable federal law, and departmental regulations and policies; c) sale or lease of excess computer capacity; d) expansion of customer services through the use of technology; e) conducting a safe deposit business; f) holding real estate; g) acting as a financial planner or investment advisor; h) offering a full range of investment products; i) promoting and facilitating international trade or commerce; and j) other such activities determined by the Department to be financial in nature or incident or complimentary to such financial activities and consistent with the objectives of Georgia law and the Department's regulations.

Notwithstanding the general breadth of the incidental powers, subsidiaries are precluded from engaging in certain financial activities. For example, a subsidiary cannot: a) sell title insurance (O.C.G.A. § 33-3-23(d)); b) underwrite insurance unless it is credit life insurance or credit accident and sickness insurance (O.C.G.A. § 33-3-23(b), Rule 120-2-76-.01 and 120-2-76-.02); or c) engage in real estate brokerage services pursuant to the Department's Declaratory Ruling.

Further, depending on the nature of the proposed underlying activity, the bank or bank holding company may have to obtain approval from the appropriate federal regulator prior to the subsidiary engaging in the proposed underlying activity.

## FIDUCIARY POWERS

The Department evaluates applications for fiduciary powers pursuant to O.C.G.A. §§ 7-1-242, 7-1-310, and 7-1-394 as well as Rule 80-1-1-.08.

Fiduciary applications are defined as follows:

- **Single Trust Power** - Used if the institution is applying to exercise one specific function, such as guardian of the estate of a minor.
- **Limited Trust Powers** - Used by institutions wishing to exercise a few specific functions, such as guardian of the estate of a minor, agent for employee benefit accounts, or other capacities not requiring extensive expertise.
- **Full Trust Powers** - Used by institutions who want to exercise full trust powers.

As provided in O.C.G.A. § 7-1-310, any bank which does not exercise trust powers, whether or not such powers have been incorporated into its articles, may, **with the written consent of the Department**, contract with any bank or trust company exercising trust powers to provide for the latter bank or trust company to offer trust services through the branches and offices of the former bank or trust company.

An application for fiduciary powers will be assessed by the Department utilizing the Evaluation Factors detailed below.

**NOTE**: In order to exercise any trust powers the applicant must be empowered to act as a bank **"and trust company"** in the Articles of Incorporation. If not, an Amendment of the Articles of Incorporation will be necessary.

### EVALUATION FACTORS

CONDITION. The applicant's general condition should be satisfactory. Significant or serious problems will normally preclude approval. A bank should not have an undue amount of criticized assets (particularly in relation to capital), serious or frequent violations of law, inadequate liquidity, adverse operating trends, poor internal controls, or other significant problems.

CAPITAL AND EARNINGS. Capital, earnings, and retention of earnings should be sufficient to support the current level of operations as well as the proposed application for fiduciary powers. In determining the applicant's capacity to support the proposed fiduciary powers, the estimated cost of establishing the proposed activity and the volume and scope of anticipated business will be considered.

MARKET FACTORS. Ability to profitably implement fiduciary activities and the existence of sufficient fiduciary business will be evaluated. The applicant should demonstrate that the population and general economy of the market possess characteristics indicating a need for fiduciary services. Composition of the population within the market is an important indicator of the potential support for a trust department. Population characteristics such as income, wealth, age, educational level, occupation, and stability will be considered. In determining need, consideration should be given to the present fiduciary services available in the market. If fiduciary services are being offered, consideration will be given to the volume and character of the present trust business, together with the demand for additional services. Further, consideration will be given to any fiduciary services performed outside the market for customers in the applicant's service area which, because of convenience, might be brought to the applicant.

CHARACTER AND FITNESS OF MANAGEMENT. Management should have demonstrated the ability to supervise a sound banking operation. This determination will generally relate to the condition of the bank and management's ability to recognize and correct deficiencies. Depth and continuity of management are also relevant factors considering the bank's capacity to expand into fiduciary activities.

TRUST PERSONNEL. The proposed head of trust activities should have demonstrated abilities and experience in fiduciary services commensurate with the proposed responsibilities. Directors and officers who will serve on trust committees should possess experience and knowledge in the trust and investment fields. Competent investment and legal counsel should be available to advise on matters related to fiduciary activities.

## PROCESSING PROCEDURES

Applicants should file a letter form application with the Department. Details regarding the content of the letter form application are in the Applications Manual. No publication of the application is required. Expedited processing is available for a single trust power. The applicant must commence offering trust services within 12 months of approval unless the Department grants a requested extension in writing.

If applicable, applicants will be advised of the reasons for disapproval. Requests for reconsideration of denied applications will not be accepted. A new application may be filed at any time if it contains substantively new or additional information. A supplemental filing fee will be required.

### Power to Act as a Fiduciary for Tax-Advantaged Savings Medical and Retirement Accounts

The Department encourages a banking structure that promotes products and service to benefit consumers. The benefits of offering tax-advantaged savings accounts to the bank's customers promote or encourage individuals to establish saving plans to meet future medical expenses or to plan for retirement income. There may be certain advantages to putting money into these accounts, including favorable tax treatment.

Banks not exercising trust powers may act as trustee or custodian of Individual Retirement Accounts established pursuant to the Employee Retirement Income Security Act of 1974 (26 U.S.C. 408); Self-Employed Retirement Plans established pursuant to the Self-Employed Individuals Retirement Act of 1962 (26 U.S.C.401); Roth Individual Retirement Accounts and Coverdell Education Savings Accounts established pursuant to the Taxpayer Relief Act of 1997 (26 U.S.C. 408A and 530 respectively); Health Savings Accounts established pursuant to the Medicare Prescription Drug Improvement and Modernization Act of 2003 (26 U.S.C. 223); and other similar accounts without the prior written approval of the Department provided:

- The duties of the trustee or custodian are essentially custodial or ministerial in nature.
- The trustee or custodian is required to invest the funds from the above tax-advantaged savings plan, as authorized under the Internal Revenue Code only in its own time or savings deposits or other interest-bearing deposit accounts.
- Only cash contributions may be accepted into the account and that investment option shall be limited to investments in its own bank deposit accounts.

A bank should adopt written policies and procedures and enter into written account agreements which incorporate the trust instrument or custodial agreement governing the account. The bank as trustee or custodian must adopt procedures to comply with all reporting requirements under the Internal Revenue

Code for a tax-advantaged savings plan. Model Internal Revenue Service (IRS) forms are available on the IRS website, www.irs.gov , and the U.S. Treasury website, https://www.treas.gov/offices/public-affairs/hsa/forms/, and may be used provided they are in compliance with the policies of the Department regarding the duties and responsibilities of the trustee or custodian and account investments. The forms should be reviewed by the bank's legal counsel prior to use.

## DEBT CANCELLATION CONTRACTS AND DEBT SUSPENSION AGREEMENTS

The Department evaluates Debt Cancellation Contracts ("DCC") or Debt Suspension Agreements ("DSA") pursuant to Rule 80-1-2-.09. Typically, DCCs and DSAs 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. 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. The Commissioner has determined that DCCs and DSAs constitute activities that are financial in nature and that state financial institutions may conduct these activities in accordance with this policy and Department rules. Georgia law provides in O.C.G.A. § 7-1-261(11) that banks have powers to carry on banking activities that are determined by the Commissioner to be financial in nature or complementary to such financial activities.

The Office of Commissioner of Insurance and Fire Safety ("Office of Insurance") has agreed that these products are not insurance and that financial institutions may underwrite, market, and sell them with no approval or license from the Office of Insurance. Should an institution wish to transfer the risk to a third-party insurer, that insurer of course must be licensed. Since national banks and federal credit unions are able to provide these products, the Department issues this DCC and DSA policy directive in order to achieve parity. The Department has developed requirements for disclosures and certain prohibited practices detailed within this policy section. Financial institutions are expected to comply with the requirements in Rule 80-1-2-.09 and this policy section.

Financial institutions that desire to offer DCC or DSA products should notify the Department in writing that they intend to offer such products. If a financial institution intends to underwrite any part of the DCC or DSA, Department approval is required. The Department will evaluate the application utilizing the Evaluation Factors below. No underwriting will be permitted until such approval is granted.

### EVALUATION FACTORS

The number of financial institutions intending to underwrite and take on the risk of a DCC or DSA product is likely limited; however, some institutions may choose to take on a segment of the risk of these products and partner with an insurance company to "reinsure" the excess risk. A financial institution intending to underwrite and take on the risk of a DCC or DSA product requires Department approval and must demonstrate management capabilities, resources, and capacity to manage such risks, including analysis of the following factors:

- Management expertise should be demonstrated, based on education and experience, in the areas of product design, underwriting, actuarial analysis, claims processing, risk reserving, and accounting practices to support the ability to provide these functions in-house.
- An explanation of the risk management techniques that the financial institution will undertake including product design criteria, underwriting procedures, limitations and conditions on DCC or DSA products, and other risk mitigation procedures to limit risk exposure to the financial institution.
- A proper and well-documented analysis of risk of the products being proposed, including the risks posed by catastrophic events that could result in unusually high claims to the financial institution.
- The financial institution should outline proposed practices for properly reserving for risks related to these products based on industry practices and Generally Accepted Accounting Principles (GAAP).

- An analysis determining that the financial institution has the proper financial capacity, cash flow performance, and capital adequacy to sustain continued operations in the event of an unusually high claims event.

## PROCESSING PROCEDURES

Banks intending to offer either (1) DCC or DSA products where the financial institution is not underwriting the product or (2) DCC or DSA products where third-party service providers will underwrite the products or will administer any part of the program shall provide a letter form **notification** to the Department. Banks intending to underwrite any part of the DCC or DSA shall submit a letter form **application** to the Department. Additional requirements for letter form notifications and applications can be found in the Applications Manual.

If applicable, an applicant will be advised of the reasons for disapproval. Requests for reconsideration of a denied application will not be accepted. A new application may be filed at any time if it contains substantively new or additional information.

## SAFETY AND SOUNDNESS CONSIDERATIONS

The Department's goal in monitoring the safety and soundness considerations of DCC and DSA products in the supervision and examination process is to make certain that the financial institution has properly analyzed the risk in their DCC and DSA product offerings, established adequate controls and safeguards to limit and mitigate this risk, and provided for adequate staffing to properly administer the program. Financial institutions shall properly account for this activity, including appropriate recognition and financial reporting of income, expenses, assets and liabilities, and losses and claims associated with these products. Financial institutions shall properly consider the ability, experience, and financial stability of any vendors or servicers utilized in the offering of these products.

The safety and soundness expectations of the Department shall consider the amount of risk that the financial institution is directly taking. Depending on this level of risk, it may be appropriate, subject to the requirements of GAAP, to establish an identifiable loss reserve for these products. If such a reserve is determined not to be required under GAAP, the financial institution shall otherwise establish risk management and control procedures to quantify the risk inherent in these products and demonstrate that the financial institution is properly managing and controlling this risk.

## OTHER CONSIDERATIONS

It is important for financial institutions to have the flexibility to design products that can be offered to provide a needed service to customers at a reasonable price. In designing DCC or DSA products, it should be made clear to consumers any limitations, conditions, or exclusions on product coverage, including the ability of the financial institution to unilaterally modify a DCC or DSA product. This contract should be signed by the borrower and acknowledge their understanding of these product features. In drafting the agreement, the bank should take into considerations the prohibited practices and applicable required disclosures listed below.

## PROHIBITED PRACTICES

As discussed above, there are certain practices which must be avoided so that these products are not harmful or misleading to consumers. These practices, unless otherwise noted below, apply to banks and

bank subsidiaries. Failure to maintain these practices shall be considered an unsafe and unsound practice, in addition to being potentially misleading to the consumer and would subject the financial institution to an administrative action as appropriate. These practices include the following:

1. Anti-Tying Provisions

A financial institution shall not extend credit or modify the terms of credit conditioned upon the purchase of a DCC or DSA product. It shall not be indicated in any representations either orally or in writing that the credit granting process is contingent or dependent upon the borrower's decision to purchase such a product.

2. Misleading practices and disclosures

A financial institution shall not engage in any practice or make any disclosures in advertising, marketing, or consumer disclosures that are misleading or which could otherwise cause a reasonable person to reach an erroneous belief regarding the information contained in this material.

3. Unilateral Modification of DCC and DSA Contracts

A financial institution may not offer DCC or DSA products that contain terms giving the financial institution the right to unilaterally modify the contract unless:

a. The modification is favorable to the customer and is made without additional charge to the customer; or
b. The customer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes into effect.

4. Prohibition on Single Fee Coverage

Financial institutions are likewise prohibited from using a single premium or fee product for DCC or DSA coverage or in otherwise rolling the cost of this fee or premium into the balance of the loan on residential mortgage loans, unless it can be demonstrated to the Department that there are statutory, regulatory, or data processing issues that would prevent use of a monthly payment product.

A financial institution may offer a customer the option of paying the fee for a DCC or DSA product in a single payment (for loans other than residential mortgage loans) provided that the financial institution also offers the customer a bona fide option of paying the fee for that contract in monthly or other periodic payments. If the financial institution offers the customer the option of financing the single payment by adding the balance to the amount the customer is borrowing, the financial institution must also disclose to the customer the time period during which the customer may cancel the agreement and receive a refund.

5. Refunds in the event of termination of the agreement or prepayment of the loan

If a DCC or DSA is terminated, prepaid, or otherwise cancelled prior to the maturity of the loan contact, the financial institution shall refund to the customer any unearned fees paid for the contract unless the contract provides otherwise. A financial institution may offer a customer a contract that does not provide for a refund only if the financial institution also offers that customer a bona fide option to purchase a comparable contract that provides an equitable refund feature.

An equitable refund feature is a refund that is at least as favorable to the consumer as the actuarial method. The actuarial method is a method of allocating payments made on a debt between the amount financed and the finance charge where a payment is applied first to the accumulated finance charge and any remainder subtracted from or any deficiency added to the unpaid balance of the amount financed.

In no event shall refunds be permitted under DCC or DSA agreements using the Rule of 78's or any other method less favorable to the consumer than the actuarial method.

## DISCLOSURES

Short Form Disclosures

The financial institution shall provide the following Short Form disclosures orally at the time the financial institution first solicits the purchase of a DCC or DSA product, and during telephone and electronic solicitations as outlined below:

1) Disclosure that the decision to buy a DCC or DSA is optional, and this decision will not affect the customer's application or terms of any existing or proposed loan (Anti-tying Provisions).
2) Disclosure of a single payment feature, if applicable (prohibited for residential mortgage loans and subject to other limitations above).
3) Disclosure if the financial institution uses a single payment feature without a refund feature (subject to the alternative product requirements outlined above).
4) Disclosure of the terms of refund if DCC or DSA fees are paid in a single payment and the program has an equitable refund feature.
5) An indication that additional disclosures are required and will be provided to the customer before being required to pay for a DCC or DSA product.
6) An indication that there may be eligibility requirements, limitations, or exclusions under the DCC or DSA contract, the details of which will be provided in the long form disclosures.

Long Form Disclosures

The financial institution shall make long form disclosures in writing before the customer completes the purchase of the contract. If the initial solicitation occurs in person, then the financial institution shall provide the long form disclosures in writing at that time.

The financial institution shall make the following long form disclosures:

1) Disclosure that the decision to buy a DCC or DSA is optional, and this decision will not affect the customer's application or terms of any existing or proposed loan (Anti-tying Provisions).
2) Explanation of the features of a DSA, as opposed to a DCC, and that a DSA suspends and does not cancel the customer's obligation to pay the associated debt.
3) Disclosure of the amount of the fees for the DCC or DSA product.
4) Disclosure of a single payment feature, if applicable (prohibited for residential mortgage loans and subject to other limitations above).
5) Disclosure if the financial institution uses a single payment feature without a refund feature (subject to the alternative product requirements outlined above).
6) Disclosure of the terms of refund if DCC or DSA fees are paid in a single payment and the program has an equitable refund feature.
7) Disclosures on whether the use of a credit line would be restricted or impacted by the activation of the DCC or DSA contract.
8) A description of the termination provisions, if applicable, of a DCC or DSA product.
9) Disclosures related to any eligibility requirements, limitations, or exclusions under the DCC or DSA contract.

These disclosures may be made electronically in a manner consistent with the requirements of applicable federal and state laws regarding digital signatures including 15 U.S.C. 7001 et. seq. and O.C.G.A. §10-12-2 et. seq.

Disclosures in marketing materials and in telephone and electronic solicitations

The Department shall permit disclosures in marketing materials, statement inserts, and direct mail solicitations to provide short form disclosures providing that long form disclosures, as outlined above, are provided to the consumer in writing within three business days after the customer contacts the financial institution to respond to a solicitation.

In the case of telephone or other electronic solicitations, the customer shall be provided with a long form disclosure document in writing within three days of a solicitation where the customer has responded positively to the solicitation.

The limited initial disclosures that must be provided to the customer orally or in written form must, at a minimum, include all items included in the short form disclosures as outlined above. As indicated above, full disclosures must be provided to the customer in writing within three business days of the solicitation.

Disclosures in marketing materials and other marketing solicitations must be conspicuous, clear and readily understandable, and provided in a meaningful format.

Affirmative election to purchase and ability to rescind a transaction

The customer shall be required to affirmatively elect to purchase a DCC or DSA product. This election shall be in writing except as noted below and may be included in the loan documentation or in a separate document. The acknowledgement and election language must be conspicuous, simple, direct, and readily understandable and designed to call attention to their significance.

Election to purchase for phone solicitations

In the case of telephone solicitations, the customer's affirmative election to purchase may be obtained orally, provided:

- That the financial institution maintains documentation that that the customer affirmatively elected to purchase the product.
- That the required disclosures are provided to the customer within three business days of the solicitation.
- That a written authorization form to be signed by the customer is also mailed to the customer within three business days of the solicitation. The financial institution shall maintain documentation that it made reasonable efforts to obtain these signed documents from the customer.
- That in the case of telephone solicitations, the financial institution permits the customer to cancel the contract without penalty within 30 days after the disclosure and written authorization form has been mailed to the customer.

Election to purchase based on written mail inserts or other limited disclosure marketing material

In the case of written mail inserts, or "take one" solicitations, the financial institution is not required to provide short form disclosures, provided full compliance with long form disclosures is achieved. If a DCC or DSA contract is solicited by written materials that do not contain all long form disclosures required above, then the financial institution shall mail an acknowledgement of receipt form of the disclosures to the customer within three business days, beginning on the first business day after the customer contacts the financial institution or otherwise responds to the solicitation.

The financial institution shall maintain the following documentation regarding election to purchase the product sold through written mail inserts or "take one" solicitations:

- Documentation to show the financial institution provided disclosures and an acknowledgement of receipt of these disclosures to the customer.
- Documentation maintained to show the financial institution made reasonable efforts to obtain the written acknowledgement of receipt form from the customer.
- The customer shall have the ability to cancel the purchase of the contract without penalty within 30 days after the financial institution has mailed the disclosures and the acknowledgement of receipt form to the customer.

If the full disclosures are provided to the customer at the time of election, the customer shall not, unless otherwise provided in the written contract or otherwise required by law, have the ability to rescind the contract after the date of election.

These affirmative elections and acknowledgements may be made electronically consistent with the requirements of applicable federal and state laws for digital signatures, including 15 U.S.C. 7001 et. seq. and O.C.G.A. §10-12-2 et. seq.

## PROVISIONS RELATED TO GAP COVERAGE OFFERED BY FINANCIAL INSTITUTIONS

Gap coverage products are DCC or DSA products that protect a borrower regarding any deficiency between the outstanding loan amount and the value of collateral (normally automobiles) if there is an early termination of the loan contract where there is insufficient collateral value to pay off the loan.

This product is difficult to calculate on a monthly payment basis, due to the accelerated depreciation in value of collateral early in the life of the contract and the variable nature of the net exposure under the contract over the life of the loan. After reviewing these issues carefully, the Department has determined that the requirement to offer a monthly payment alternative along with single premium coverage will be modified regarding Gap coverage.

Financial institutions offering Gap coverage DCC or DSA products are permitted to provide such coverage solely on a single premium basis. Gap coverage DCC or DSA products are subject to all other requirements of this policy, including the requirement that an option be provided to the consumer for a refundable premium or fee in the event of an early termination of the loan. Other DCC or DSA products such as those providing life or disability coverage are unaffected by this determination and remain subject to the provisions of this policy directive on DCCs and DSAs.

## THIRD-PARTY SERVICERS

Historically, the majority of financial institutions have chosen to utilize a third-party servicer arrangement in order to provide expertise in product design, claims administration, underwriting, and risk management of DCC and DSA products. Most financial institutions utilize risk management procedures to transfer most, and in some cases all, underwriting risk through a third-party arrangement. Financial institutions that utilize third party servicers for the design and operation of a DCC or DSA program are responsible for meeting the requirements contained in Department Rule 80-1-2-.06. The financial institution shall be responsible for performing analysis and maintaining adequate documentation to include the following:

1. The experience of the third-party servicer in the areas that are being contracted with the financial institution. It would be anticipated that an insurance company that is operating in the State of Georgia and is otherwise regulated by the Office of Insurance, would have sufficient experience to provide expertise regarding DCC or DSA products. Companies or other entities that are not insurance companies would need to demonstrate their expertise in the areas contracted for service. Any company providing insurance must be licensed by the Office of Insurance in Georgia. It should be reasonably expected that such servicers will have experience in risk underwriting, claims administration, re-insurance, and other areas, depending on the services that are to be provided to the financial institution.

2. The financial stability of the third-party servicer shall be demonstrated and documented. This could be supported by analysis of financial, operating, or cash flow statements; analysis of capital and reserves; and the use of external company ratings performed by valid external rating agencies. Any third-party servicer that is capitally insolvent or which is reflecting a net operating loss should receive additional analysis and support demonstrating that the third-party servicer has adequate financial stability to service the financial institution and sufficient capitalization and cash flow to remain a going concern.

3. A copy of any written contacts between the financial institution and the third-party servicer, detailing the services to be provided by the servicer.

4. A schedule of fees and assessments that will be charged by the third-party servicer to the financial institution.

5. Any reports, printouts, schedules, or programs that will be provided by the third-party servicer to permit management, auditors, examiners, and other interested parties to monitor the services provided.

Adequate and complete documentation regarding the above due diligence should be maintained within the financial institution for review by auditors and examiners. The financial institution should periodically (at least annually) review and update this information, particularly regarding the financial stability of the third-party servicer.

Additionally, in accordance with Rule 80-1-2-.06, the third-party servicer must agree in the contract with the serviced bank to make its books and records available for examination by the Department. The Department shall have the authority to periodically review the internal routine and controls of the third-party servicer to ascertain that the operations are being conducted in a sound manner in keeping with financial institution industry practices and GAAP per O.C.G.A. §7-1-72.