



**Department of  
Banking and Finance**

**CREDIT UNION  
STATEMENT OF POLICY**

**Revised January 2025**

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## GENERAL

The State of Policy of the Department of Banking and Finance (“Department”) is intended to provide the public and the credit union 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](http://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 credit unions are subject to the dual supervision of the Department and the NCUA, and applicants should consult the NCUA to determine if concurrent application for approval by the State, as well as the NCUA, is required. Forms and instructions utilized by the NCUA as well as their policy pronouncements must be obtained from the NCUA 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.

## CREDIT UNION CHARTERS

The Department evaluates credit union charter applications pursuant to O.C.G.A. § 7-1-632 and Rules 80-2-13-.01 through 80-2-13-.04. 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 credit unions that none can grow to a size sufficient to offer a full range of needed services. In chartering credit unions, the Department will admit only those qualified applicants that can be economically supported and profitably operated.

From time to time, specialized forms of financial institution 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 credit union for speculative purposes or resale to undisclosed acquirers is not permitted.

Georgia law requires NCUA insurance for all state credit union charters, therefore applicants need to refer to the NCUA resources for “New State-Charter Applicants and Federal Share Insurance.” A new credit union 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 credit union.

ADEQUACY OF CAPITAL STRUCTURE. The ability of a credit union to accumulate capital funds for future growth is important to the chartering process. The minimum initial capital required for a new credit union must be sufficient to provide a net worth 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. Refer also to the “Department’s Guidance on Capital Adequacy and Considerations.”

FUTURE EARNINGS PROSPECTS. Projections of income and expenses of the proposed credit union 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 credit union by the end of the third year.

GENERAL CHARACTER OF MANAGEMENT. Subscribers, proposed directors, and executive 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 subscribers and directors of the proposed credit union 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 financial institution board experience. Executive officers should have demonstrated abilities and experience commensurate with the position for which proposed. The initial management group, which includes directors and executive 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.

All proposed directors and executive officers 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. Upon request of the Department, 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 shall be required to make similar filings and be approved by the Department prior to their taking office.

Any insider contracts and transactions with the proposed institution must be made on non-preferential terms, submitted to the Department for review, and fully disclosed. 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 credit union proposes to locate is an important consideration in determining the credit union's probable success. Essential to the concept of economic opportunity is that there does or will exist a volume of business for which the new credit union can realistically compete. Also important is a determination of the portion of that business the new credit union could acquire and whether that portion is sufficient to generate a profit. Where the de novo credit union 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 credit union would be replacing a competitor in the market.

Evidence of economic 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.

#### Location

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

#### Population

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

#### 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 credit union. Location and services offered are indicative of

the competitive climate of the market. Other financial institutions such as savings and loan associations, banks, finance companies, mortgage companies, and insurance companies may be considered competing institutions to the extent their services parallel those of the new credit union.

CONSISTENCY OF CORPORATE POWERS. Normally a proposed credit union is chartered for the purpose of performing all powers that a credit union is allowed under the law. If the credit union has the word "Trust" in their name or anticipates exercising trust powers in the future, it must be chartered as a "credit union and trust company" in the Articles of Incorporation. No credit union 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 management and directors); representatives of the organizing group (such as attorneys or consultants); and applicable professional staff of the NCUA. 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 and directors; and details of the capitalization plan.

Since all credit unions in the State of Georgia must have federal deposit insurance coverage, simultaneous submission of "NCUA Form 9600 Application for Insurance" to both the NCUA and Department is required. Additional Department-only application requirements are detailed in the Department's Applications Manual. The Department and NCUA will make all efforts to 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 determination from the decision to grant or deny deposit insurance; therefore, each regulatory agency must make separate decisions.

The proposed name of the new credit union will be evaluated in accordance with the Statement of Policy for "Name Permission, Reservation, and Change." For all credit union charter applications 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 NCUA. 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.

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 subscribers, directors, and executive officers, 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 credit union are to be assumed by the subscribers. If a charter is issued, expenses determined to be reasonable by the Department may be

reimbursed by the credit union 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 credit union 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. § 7-1-665 and Rules 80-2-4-.08 and 80-2-4-.09. 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 credit union 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 credit union 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 80-2-4-.09. An application to establish or relocate a branch office will be assessed by the Department utilizing the Evaluation Factors detailed below.

Pursuant to Rule 80-2-11-.02, credit unions may provide unlimited credit union services through mobile banking units that do not have a single, permanent site and use a vehicle that travels to various locations to enable members to conduct banking business. Mobile branches are required to maintain logs indicating the specific locations and times in which the mobile unit is operating. Credit unions are required to publish the mobile unit schedule on their website. If a credit union 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.

### EVALUATION FACTORS

CONDITION OF THE APPLICANT. The applicant's general condition should be satisfactory. Significant or serious problems will normally preclude approval. A credit union 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 credit union operation. This determination will generally relate to the overall condition of the credit union and management's ability to recognize and correct deficiencies. Depth and continuity of management are also relevant factors in considering the credit union's capacity to expand through the establishment of branch offices.

INSIDER INTERESTS. Any financial arrangement or transaction involving the branch office and credit union directors, officers, 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 80-2-4-.02 limits the amount of investment in fixed assets by a credit union to a maximum of 60% of the credit union's net worth 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 for restoring the fixed asset investments to the 60% limitation within five years.

### PROCESSING PROCEDURES

If the applicant meets the expedited processing for credit union branch applications, expedited processing will be followed. 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 credit union 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 credit union 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 credit union'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. § 7-1-665 and Rule 80-2-4-.09. 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 credit union intends on closing the former main office as part of a redesignation, then the closing procedures for a credit union location must be followed. If the main office is being relocated, the credit union'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 credit union 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 credit union directors, officers, 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 80-2-4-.02 limits the amount of investment in fixed assets by a credit union to a maximum of 60% of the credit union's net worth 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 for restoring the fixed asset investments to the 60% limitation within five years.

### **PROCESSING PROCEDURES**

The credit union 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 credit union, 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.

### **PROCESSING PROCEDURES**

Pursuant to O.C.G.A. § 7-1-110.1 and Rule 80-5-2-.03, closing of a credit union location requires the credit union to post notice of the closing at such location at least 30 days in advance of the intended closure. The credit union must also disclose the closure on its website at least 30 days in advance of the intended closure. Such notice shall be posted for at least 30 consecutive days. Within two days of posting the notices, the credit union 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 credit union 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 credit union must inform the Department in writing within 15 days of the closing.

### **EMERGENCY BRANCH OR MAIN OFFICE CLOSING**

Credit union 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. Credit unions 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 members, 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, credit unions should make every effort to reopen as quickly as possible to address the needs of their members.

## **EXTENSIONS OF EXISTING CREDIT UNION LOCATIONS**

The Department evaluates extensions of existing credit union locations pursuant to O.C.G.A. § 7-1-664 and Rules 80-2-11-.01 and 80-2-11-.05. An approved credit union 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 credit union and used as a credit union location, or if it is within 200 yards of such credit union location. Credit union services may be performed at the extension.

### **PROCESSING PROCEDURES**

As defined in Rule 80-2-11-.05, no notification is necessary for an ATM, cash dispensing machine, point-of-sale terminal, or night depository. Refer to O.C.G.A. § 7-1-664 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 credit union and used as a credit union location as defined by O.C.G.A. § 7-1-664(c)(5) require notification. All other extensions require an application. Refer to the Credit Union 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 and real estate leasing pursuant to O.C.G.A. § 7-1-650(8) and Chapter 80-2-4.

If qualifications detailed in Rule 80-2-4-.04 are met, a credit union may purchase real estate solely for expansion purposes using a letter notification. Although credit unions are authorized in limited cases to purchase or hold property for future expansion by notification to the Department, credit unions 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 the credit union 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 80-2-4-.05, an application is required for a credit union 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 credit union 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 credit union directors, officers, 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 80-2-4-.02 limits the amount of investment in fixed assets by a credit union to a maximum of 60% of the credit union's net worth 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 for restoring the fixed asset investments to the 60% limitation within five years.

### **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 credit union premises within five years of the date of purchase; the purchase of the real property does not result in the credit union exceeding the fixed asset limitation; and the credit union 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 credit union 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 credit union premises prior to that time. Credit unions holding property beyond

the five-year period must divest themselves of the property through sale unless the time limitation is extended by the Department.

CREDIT UNION AS A LESSOR OF REAL ESTATE. Under certain circumstances and with the prior approval of the Department, a credit union may become a lessor of real property. A credit union that desires to be a lessor of real property under the conditions in Rule 80-2-4-.05 must submit a letter form application to the Department. The credit union 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 credit union 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.

## **AUXILIARY SERVICES**

The Department evaluates auxiliary services pursuant to O.C.G.A. § 7-1-241 and the applicable rules in Chapter 80-2-11. Auxiliary services include account service representatives and school savings and banking education programs. An application to establish 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 credit union 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 credit union directors, officers, 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**

**ACCOUNT SERVICE REPRESENTATIVES.** Credit unions 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 80-2-11-.03. 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 CREDIT UNIONING EDUCATION PROGRAMS.** As provided in Rule 80-2-11-.04, credit unions 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 credit union would otherwise be authorized to have a branch as outlined in O.C.G.A. § 7-1-665. 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 pursuant to O.C.G.A. § 7-1-668. Approval of a charter conversion must be consistent with the basic objective of maintaining a sound financial institution system. An application to convert should not be motivated by supervisory pressures from other regulatory authorities. The proposed name of the converting credit union will be evaluated in accordance with the Statement of Policy for “Name Permission, Reservation, and Change.”

Pursuant to O.C.G.A. § 7-1-668, converting credit unions may keep existing members at the time of conversion but after conversion, eligibility for membership in the converted credit union must comply with state law. Any common bond, including new employee or association groups, not already approved in either of the former federal credit union or converted state charter field of membership, will have to be submitted via normal application process. If there are other areas of noncompliance with state law, the credit union must provide the Department with a plan to bring those areas into compliance with Georgia law within a reasonable period, to be determined by the Department.

### EVALUATION FACTORS

CONDITION OF THE APPLICANT. The applicant's general condition should be satisfactory. Significant or serious problems may preclude approval. A credit union 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 credit union and management's ability to recognize and correct deficiencies.

### PROCESSING PROCEDURES

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

To the extent considered necessary, 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.

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.

## MERGERS

The Department evaluates mergers pursuant to O.C.G.A. § 7-1-667. 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 requirements of O.C.G.A. § 7-1-667 and other applicable laws and regulations, including any branching and minimum age laws and regulations, one or more financial institutions may merge or consolidate. 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.

Mergers between credit unions serving the same or different geographic common bond(s) are permissible, subject to safety and soundness and statutory requirements. A credit union must meet the safety and soundness criteria for a merger and must demonstrate that it can reasonably serve the members of the current credit union and the members of the credit union being merged. So long as the surviving credit union's Board of Directors provides with the application of merger a resolution approving the addition of any fields of membership as a result of the merger, the field of membership for the continuing credit union will be comprised of the combination of the fields of membership of the two credit unions. A Georgia state-chartered credit union that is designated as the survivor of a merger with a federal credit union may retain all the federal credit union's community bonds as geographic common bonds after the merger becomes effective. The merged credit union may keep existing members of both credit unions at the time of merger but after merger, eligibility for membership in the continuing credit union must comply with state law. Any common bond, including new employee or association groups, not already approved in either of the surviving or merging credit unions will have to be submitted via normal application process.

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."

### 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 credit union 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 probable positive effects of the merger. 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 non-Georgia state-chartered credit union merging into a state credit union, the Department may conduct an examination into the condition of the non-Georgia state-chartered institution to the extent deemed necessary. The cost of such examination shall be charged to the applicant in addition to the normal merger fee.

All mergers require a letter form application with the Department. Details regarding the content on the letter form application can be found in the Department's 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. A supplemental filing fee will be required.

## NAME PERMISSION, RESERVATION, AND CHANGE

The Department evaluates the use of the word “credit union,” or any other similar name pursuant to O.C.G.A. § 7-1-243(a.1). Generally, before the Secretary of State allows an entity to incorporate or register a name containing such restricted word, the entity will be required to obtain written permission from the Department to use such word. 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.

### EVALUATION FACTORS

O.C.G.A. § 7-1-243 generally prohibits an entity engaging in lending money, or accepting shares or deposits or acting as a loan broker from using the word “credit union” 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 word “credit union” 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 the name of a wholly owned credit union subsidiary that is not distinguishable on the records of the Secretary of State from the name of the parent credit union. If such credit union subsequently sells, in whole or in part, the wholly owned subsidiary, the subsidiary may retain its name only if the credit union’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

Credit unions 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 with the application.

## NAME RESERVATION AND CHANGE APPLICATIONS

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

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.

### **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 credit union in Georgia in the same manner as it does corporate name permissions. Use of similar names could lead to confusion and potential liability on the part of the credit union attempting to use the trade name. Additionally, credit unions need to take reasonable steps to ensure that members will not incorrectly assume that the trade name entity(ies) is a separate institution from the credit union, or that deposits in different facilities are separately insured.

The Department requires that the legal, corporate name of the credit union 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 member may already have deposits in the credit union 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 credit union. Officers and employees should be trained in minimizing any possible member confusion with respect to deposit insurance. Credit union staff at an office, facility, or branch operating under a trade name should inquire of members, prior to opening new accounts, whether they have deposits at the credit union’s other offices, facilities, and branches.

### **PROCESSING PROCEDURES**

Credit unions seeking use of a trade name should submit a letter form notification as described by 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 credit union 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 credit union 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.

## **FIELD OF MEMBERSHIP EXPANSION**

The Department evaluates field of membership (FOM) expansion applications pursuant to O.C.G.A. § 7-1-630(b) and Rules 80-2-8-.01 through 80-2-8-.04. A credit union, upon obtaining approval from the Department, may amend its bylaws to change its FOM by adding additional groups of persons that have a common bond that meets the requirements of O.C.G.A. §7-1-630(b). A FOM may consist of more than one common bond and can include both geographic and non-geographic common bonds. Applications for non-geographic common bonds will be evaluated to assess conformance with existing laws and regulations. FOM expansion applications based on residence and employment (geographic common bond) will be evaluated as detailed below. Amendment of bylaws is also required with a FOM expansion.

### GEOGRAPHIC COMMON BOND FIELD OF MEMBERSHIP

Each geographic common bond application that meets the statutory requirement of residence or employment within a well-defined neighborhood, community, or rural district, must demonstrate satisfaction of statutory requirements and safety and soundness criteria.

#### Criteria for a Well-Defined Area

A geographic common bond is based on residence or employment in a well-defined neighborhood, community, or rural district. Unlike the federal definition, which includes individuals who live, worship, work, or attend school in such an area, the Georgia definition is limited to residence or employment within a well-defined neighborhood.

The criteria for a neighborhood, community, or rural district is that it must be well-defined, in accordance with O.C.G.A. § 7-1-630(b). The boundaries of a neighborhood, community, or rural district may be defined by streets and roads but may also be bounded by other delineations including boundaries of a municipality (such as the city limits) or other boundaries that reasonably demonstrate the end of one neighborhood or community and the beginning of another (such as a county).

#### Safety and Soundness Criteria that Apply to Requests for a Geographic Common Bond

Credit unions are subject to safety and soundness criteria based on financial and managerial capacity of the credit union to serve the proposed common bond. The Department will not approve FOM expansion applications, particularly for more populous geographic areas, unless these criteria can be clearly demonstrated. The Department reviews proposed changes to a FOM in accordance with the requirements for amended credit union bylaws set forth in O.C.G.A. § 7-1-634.

The following criteria shall guide the Department in evaluating financial and managerial capacity to support a request for a geographic common bond:

1. An overall regulatory Composite rating of “1” or “2” and a risk rating of “low” or “moderate” in all applicable categories assigned at the most recent examination.
2. Any credit union receiving a CAMELS component rating of “3” in any component area and a risk rating of “low” or “moderate” in all categories at the most recent examination shall be considered only after review of the following additional factors:
  - a. The underlying reasons for ratings outside the criteria in item 1 above;
  - b. The overall condition of the credit union and ability to support expanded activities;
  - c. Management’s progress and commitment to improve such ratings; and
  - d. Prospects for improving performance and ratings in the near term.

3. It is strongly recommended that credit unions with a Composite rating of “3”, not apply for any geographic common bond until the overall condition of the credit union is restored to a satisfactory level. Absent extreme mitigating circumstances, the Department will not approve a geographic common bond addition for such credit union.
4. A credit union receiving a CAMELS component rating in any category more severe than a “3” or having a risk rating of “high” in any category in the most recent examination will not be approved for a geographic common bond.
5. At the time of the application, the Department should have confidence that the credit union has an adequate level and depth of management to meet the requirements of the geographic common bond proposed.
6. At the time of the application, the Department should have confidence that the credit union has sufficient information technology resources and capacity to serve the proposed geographic common bond.
7. At the time of the application, the Department should have confidence in management’s ability to recognize, monitor, and control the following risks:
  - i. Credit Risk – the risk of default on expected repayments of loans or investments and policies and procedures for collections;
  - ii. Interest Rate Risk – the risk that changes in market interest rates will negatively impact the income statement or balance sheet of the credit union;
  - iii. Liquidity Risk – the risk of an inability to fund the repayment of deposits and borrowings or meet lending obligations from available liquid assets;
  - iv. Transaction Risk – the risk of fraud or operational problems in transaction processing that results in an inability to deliver products, remain competitive, and properly manage information and data;
  - v. Compliance Risk – the risk of violations and non-compliance with applicable laws and regulations resulting in fines, penalties, or damages;
  - vi. Strategic Risk – the risk of adverse business decisions through management actions or inactions that impact the competitiveness, and viability of the credit union; and
  - vii. Reputation Risk – the risk of negative public opinion or perception leading to a loss of confidence and/or severance of business relationships.
8. A key component of the safety and soundness requirement for a geographic common bond shall be the submission of a letter form application that addresses the following:
  - a. The manner in which the credit union intends to service the targeted neighborhood, community, or rural district;
  - b. The financial services that will be provided to the targeted neighborhood, community, or rural district;
  - c. A projection of the expected growth into the target market over a three-year period, to include consideration of the market’s current financial service providers;
  - d. The impact of the proposed addition on credit union capital, property, equipment (including technology resources), and personnel resources; and

- e. The adequacy and sufficiency of fixed assets and data processing facilities to serve the proposed geographic common bond including sufficient resources to meet the expected growth levels.
9. The Department may require the applicant to submit revised loan and collection policies and procedures that recognize the additional complexities of serving a geographic common bond.
10. The Department may require the applicant to submit adequate policies related to liquidity and asset/liability management that recognize the additional complexities that could result from expanded lending and deposit taking activities.
11. The Department may require an income statement budget and pro forma balance sheet reflecting realistic financial, capital, and operating goals inclusive of growth expectations of the geographic common bond expansion.

The Department shall determine whether a credit union has adequately documented and supported an application for a geographic common bond by reviewing the submitted letter form application; determining whether the credit union has the management and operational resources to support the proposed addition; and confirming that the credit union adequately serves the existing credit union membership.

#### Multiple Geographic Common Bonds

It is the Department's expectation that the credit union is serving the geographic area that has already been approved. In applying for an additional geographic common bond, the credit union shall demonstrate that the existing geographic common bonds are adequately served, that the credit union has available management and operational infrastructure to properly serve the proposed group, that the credit union meets all safety and soundness criteria, and the credit union is not subject to any other criteria which would make the requested expansion unsound. While it is not mandatory that the credit union have an established branch in close proximity of the requested well-defined area, the credit union should detail in the application how such well-defined area will be served, through physical branches, shared branches, telephone, mail, ATM, or electronic means. In all cases the requested expansion should be consistent with the objectives contained in O.C.G.A. § 7-1-3.

#### Status of Underserved Areas Based on Parity with Federal Charters

State law does not provide for the ability to expand the FOM of a credit union based solely on the area being underserved, as is currently the case with federal charters.

However, residing or working within a geographic area that has a common lack of access to financial services may be an indicator of a common bond. Such geographic area likely would have other economic commonalities. Credit unions are encouraged to look at these areas and explore their connections to determine whether sufficient evidence of mutuality exists to add such areas, thereby providing needed financial services to underserved areas.

#### Application Submission, Review, and Approval Process

The Department utilizes letter form applications by credit unions that are well managed and in sound financial condition to amend their bylaws for geographic common bond requests. The letter form application submitted by the credit union shall, at a minimum, address the requirements listed in provision 8 of the "Safety and Soundness Criteria that Apply to Requests for Geographic Common Bond" section above. Additional information may be required by the Department based on an analysis of the application.

Payment of the applicable fee for each geographic common bond shall also be submitted as required in Rule 80-5-1-.06(a). The Department's review of the letter form application will also consider any known, pending matters that may have a material adverse impact on the credit union's status as well managed and in a sound financial condition. Refer to the Applications Manual for further details.

## SUBSIDIARIES

The Department evaluates subsidiaries pursuant to O.C.G.A. § 7-1-650(6) and Rules 80-2-4-.03, 80-2-9-.01, and 80-2-13-.01. The Department considers an application for creating or acquiring a 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 credit union should ensure that these requirements are fully complied with prior to the subsidiary conducting the proposed activity.

Pursuant to Department Rule 80-2-9-.01(c)(8), a credit union must obtain prior approval to invest in an existing credit union service organization (CUSO) with an exception outlined in Rule 80-2-9-.01(7) permitting a credit union to invest in a CUSO without Department approval if ownership is less than 10 percent of the aggregate CUSO ownership and the investment is less than 10 percent of the credit union's net worth.

Further, pursuant to Rule 80-2-4-.03, a credit union must also obtain prior approval for a CUSO being formed where a Georgia state-chartered credit union is one of the original or only investor(s). As detailed in Rule 80-2-4-.03(3), if more than one Georgia state-chartered credit union has an ownership interest in a subsidiary, the Georgia state-chartered credit union that has the largest percentage ownership in the subsidiary must submit the application to the Department. In the event the largest credit union percentage ownership in the subsidiary is held by multiple credit unions, then only one Georgia state-chartered credit union is required to submit an application to the Department. However, Rule 80-4-2-.03(4) permits a credit union to invest in a CUSO without Department approval if ownership is less than 10 percent of the aggregate CUSO ownership and the investment is less than 10 percent of the credit union's net worth. If the investment exceeds either level, the credit union must obtain prior approval from the Department before investing in the CUSO. If the credit union with the largest ownership percentage does not have to obtain approval from the Department, the credit union that has ownership percentage that triggers approval thresholds must obtain prior approval from the Department before investing in the CUSO. All CUSO and subsidiary investments must be a permissible investment under O.C.G.A. § 7-1-650 or Rule 80-2-9-.01. An application for the formation of a subsidiary 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 credit union 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 credit union should have the capacity to correct any deficiencies of the acquired business without undue strain on management or financial resources of the credit union.

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 financial institution operation. This determination will generally relate to the condition of the credit union and management's ability to recognize and correct deficiencies. Depth and continuity of management are also relevant factors considering the credit union's capacity to supervise proposed activities.

INSIDER INTERESTS. Any financial arrangement or transaction involving the subsidiary and the credit union's directors, officers, 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 80-2-4-.02 limits the amount of investment in fixed assets by a credit union to a maximum of 60% of the credit union's net worth 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 for restoring the fixed asset investments to the 60% limitation within five years.

### PROCESSING PROCEDURES

The credit union 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, a credit union can have a subsidiary or affiliate that exercises powers that are express or incidental to the credit union's authority with the approval of the Department. These powers include, but are not limited to, a) offering third-party payment services; b) holding real estate; c) acting as a financial planner or investment adviser; d) offering a full range of investment products; and e) 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, the credit union must comply with applicable NCUA regulations governing the proposed underlying activity and the level of investment. Credit unions should ensure that any proposed subsidiaries will be compliant with federal laws, rules, and guidance.

## 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 80-2-13-.01(3).

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.

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 credit union **"and trust company"** in the Articles of Incorporation. If not, an Amendment of the Articles of Incorporation will be necessary.

Trust companies and financial institutions exercising trust powers in the state of Georgia that are not chartered by the Georgia Department of Banking and Finance are **not** required to file any application, registration, 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. Further, certain filings may be required with the Georgia Secretary of State. The relevant code sections are O.C.G.A. §§ 53-12-2(4) and 53-12-320 et seq.

### EVALUATION FACTORS

**CONDITION.** The applicant's general condition should be satisfactory. Significant or serious problems will normally preclude approval. A credit union 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 members 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 credit union and management's ability to recognize and correct deficiencies. Depth and continuity of management are also relevant factors considering the credit union'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 notification 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 the 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 members. The benefits of offering tax-advantaged savings accounts to the credit union's members 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.

Credit unions 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 credit union deposit accounts.

A credit union must adopt written policies and procedures and enter into written account agreements which incorporate the trust instrument or custodial agreement governing the account. The credit union 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](http://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 credit union'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 80-2-7-.04. 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. § 7-1-650(6) that credit unions 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 80-2-7-.04 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

Credit unions 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. Credit unions 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, 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.

## 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 credit union to have the flexibility to design products that can be offered to provide a needed service to members at a reasonable price. In designing DCC or DSA products, it should be made clear to members 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 credit union 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 members. These practices, unless otherwise noted below, apply to credit unions and credit union 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 is 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 member and is made without additional charge to the member;  
or
- b. The member 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 credit union may offer a member 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 credit union also offers the member a bona fide option of paying the fee for that contract in monthly or other periodic payments. If the credit union offers the member the option of financing the single payment by adding the balance to the amount the member is borrowing, the credit union must also disclose to the member the time period during which the member 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 contract, the credit union shall refund to the member any unearned fees paid for the contract unless the contract provides otherwise. A credit union may offer a member a contract that does not provide for a refund only if the credit union also offers that member 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 member'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 member 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 credit union shall make long form disclosures in writing before the member 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 member'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 member'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 member contacts the credit union to respond to a solicitation.

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

The limited initial disclosures that must be provided to the member 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 member 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 member 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 member's affirmative election to purchase may be obtained orally, provided:

- That the credit union maintains documentation that that the member affirmatively elected to purchase the product.
- That the required disclosures are provided to the member within three business days of the solicitation.
- That a written authorization form to be signed by the member is also mailed to the member 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 member.
- That in the case of telephone solicitations, the credit union permits the member to cancel the contract without penalty within 30 days after the disclosure and written authorization form has been mailed to the member.

#### 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 credit union shall mail an acknowledgement of receipt form of the disclosures to the member within three business days, beginning on the first business day after the member contacts the credit union 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 credit union provided disclosures and an acknowledgement of receipt of these disclosures to the member.
- Documentation maintained to show the credit union made reasonable efforts to obtain the written acknowledgement of receipt form from the member.

- The member shall have the ability to cancel the purchase of the contract without penalty within 30 days after the credit union has mailed the disclosures and the acknowledgement of receipt form to the member.

If the full disclosures are provided to the member at the time of election, the member 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 in a manner 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 80-2-7-.01. The credit union 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 capially 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 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 80-2-7-.01, the third-party servicer must agree in the contract with the serviced financial institution 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 conducted in a sound manner in keeping with financial institution industry practices and GAAP per O.C.G.A. §7-1-72.