

CREDIT UNION
STATEMENT OF POLICY

**DEPARTMENT OF BANKING
AND FINANCE**
2990 BRANDYWINE ROAD
SUITE 200
ATLANTA, GEORGIA 30341-5565
<http://dbf.georgia.gov>

REVISED
January 2021

*If a topic is not addressed in this Credit Union Statement of Policy, the topics in the Bank Statement of Policy will apply to credit unions unless inapplicable by statute, regulation, guidance, or other policy statements addressing those areas.

TABLE OF CONTENTS

CRITERIA FOR EXPEDITED PROCESSING	4
BRANCH OFFICE (ESTABLISH OR RELOCATE)	5
REDESIGNATION OF BRANCH AND MAIN OFFICE	7
BRANCH OFFICE CLOSING	8
EXTENSIONS OF EXISTING CREDIT UNION LOCATIONS	9
AUXILIARY SERVICES	10
NAME PERMISSION, RESERVATION, AND CHANGE	11
ADOPTION OF TRADE NAME	12

STATEMENT OF POLICY GENERAL

The policy statement 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 policy statement 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 policy statement. Applicable laws are generally found in Chapter 1 of Title 7 of the Financial Institutions Code of Georgia which can be accessed from the Georgia General Assembly’s website at www.legis.ga.gov. The Rules and Regulations of the Department are available on the Secretary of State’s website at <http://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.

EXPEDITED PROCESSING

Applications which meet the following criteria shall be accorded expedited treatment regarding the application process as indicated in this policy and in the application manual.

CRITERIA FOR EXPEDITED PROCESSING OF CREDIT UNION APPLICATIONS

1. The depository institution must be well capitalized as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator;
2. The depository institution must have received a CAMELS composite rating of "1" or "2" as a result of the most recent state or federal examination; and
3. The depository institution must not be subject to any agreements, orders, prompt corrective action directives or other enforcement or administrative agreements with the Department or its primary federal regulator or other chartering authority.

In addition, the Department may deny or remove from expedited processing any institution's application where it finds that:

- a) Safety and soundness concerns of the Department dictate a more comprehensive review;
- b) Any material adverse comment is received by the Department;
- c) Other supervisory concerns, legal issues, or policy issues come to the attention of the Department;
- d) If applicable, any acquisition of fixed assets would cause the institution to exceed the state fixed asset limitation;
or
- e) Any other good cause exists for denial or removal.

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

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 customers to conduct banking business. Mobile branches are required to maintain logs indicating the specific locations and times in which the mobile unit is operating. 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 total equity capital and reserves (excluding the allowance for loan losses) unless prior approval from the Department is granted to exceed this limit. The institution's investment in fixed assets will be reviewed for compliance with this statutory limit. If the fixed asset investment is in excess of this limit, the Department may consider corrective plans including immediately restructuring the capital accounts to comply with the 60% limit, or by the credit union providing an orderly plan for restoring the fixed asset investments to the 60% limitation within five years, either through depreciation or predetermined plans to restructure the capital accounts to comply with the 60% legal limitation, or a combination of these methods.

PROCESSING PROCEDURES

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 notification with the Department. Details regarding the content of the letter form notification 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 – <http://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 one year 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 total equity capital and reserves (excluding the allowance for loan losses) unless prior approval from the Department is granted to exceed this limit. The institution's investment in fixed assets will be reviewed for compliance with this statutory limit. If the fixed asset investment is in excess of this limit, the Department may consider corrective plans including immediately restructuring the capital accounts to comply with the 60% limit, or by the credit union providing an orderly plan for restoring the fixed asset investments to the 60% limitation within five years, either through depreciation or predetermined plans to restructure the capital accounts to comply with the 60% legal limitation, or a combination of these methods.

PROCESSING PROCEDURES

The 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.

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.

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: <http://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 customer 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.