



DBF GUIDANCE FOR GEORGIA STATE-CHARTERED BANKS, BANK HOLDING COMPANIES, CREDIT UNIONS, AND TRUST COMPANIES

TO: Supervision Staff

CC: Banks and Credit Unions

FROM: Melissa Sneed
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SUBJECT: FINANCIAL INSTITUTION CHARTER CONVERSION INVESTIGATIONS

DATE: January 22, 2020

Department financial institution charter conversions vary between national banks, federal credit unions, and federal thrifts that wish to convert to a Georgia state charter. Procedures are somewhat similar to those for a de novo charter, with the difference being that the applicant institution will normally have a proven operating history.

Charter conversions represent a collaborative effort among Department employees in the Supervision Division. The Department's Statement of Policies charter conversion section notes that an institution desiring to change charters should contact the Supervision Division for appropriate forms and instructions. Before the application has been filed with the Supervision Division, a meeting is held in the Administrative Office. The Supervisory Manager and members of senior staff, Deputy Commissioner for Supervision, Senior Deputy Commissioner, and the Commissioner if available, normally represent the Department and meet with the applicant's chief executive officer, senior officers, and board members. Part of the purpose for this meeting is to gauge the seriousness of the applicant and the reasons for their wanting a charter change. For example, the Department would likely discourage a charter change if the applicant has serious safety and soundness concerns and is under an administrative action with the Office of the Comptroller of the Currency (OCC) or National Credit Union Administration (NCUA). After the meeting, the applicant may file an application with the Supervision Division.

After the application has been accepted by the Supervisory Manager, the appropriate district office is contacted to conduct a Report of Investigation (Report). The investigation should be

coordinated with the federal regulatory agencies as appropriate. Technically, this Report is not an examination, but normal examination procedures and report pages will be used where possible. The investigation may be risk-focused with the District Director approving the examination scope memo prepared by the Examiner-In-Charge (EIC) to adequately address the areas of risk in instances where there is no significant change proposed in the applicant's business plan with the conversion to a state-chartered financial institution. A review of applicant's holding company and institution-level subsidiaries should be performed to determine the actual condition and compliance with state laws prior to conversion. Reference should be made to Official Code of Georgia Annotated (O.C.G.A.) §§ 7-1-555 and 7-1-668, which addresses the activities of entities prior to conversion. If the institution conducts activities or holds assets which are not permissible for a state-chartered institution, recommendations should be made as to whether or not such activities or assets should be approved, denied, or phased out. The specific provisions of state law, as well as the powers of national banks or credit unions, should be considered along with an assessment of safety and soundness issues which accompany the recommendations.

The District Director may consult with the Director for Supervision as deemed appropriate on the scope of the investigation. Review of the most recent regulatory report of examination, external and internal audit reports, and proposed business plan should be performed and may be relied upon in the decision to risk-focus the investigation in establishing the scope of the examination procedures performed. Some modification of the examination process may be necessary due to the structure of the applicant, especially in the case of a federally chartered thrift. The examination software program should be used, but ratios may not be available for download because the institution will not be state-chartered at the time of the investigation. Therefore, applicant and peer Call Report ratios will have to be manually entered in the Report. All banks and credit unions have a Call Report available through the FFIEC.gov website.

The Supervisory Manager will obtain the prior examination from either the OCC or NCUA, for the benefit of those examiners conducting the conversion investigation. The examination data such as examiner findings and asset quality ratios can be obtained from these federal examinations and may provide pertinent information that is not publicly available.

Prior to the investigation, a request for information which resembles a traditional bank or credit union request for information should be sent to the institution. It is understood that additional information may be requested, such as the financial institution's response to the prior regulatory examination. Conversely, the request for information may be shortened in consideration of appropriate risk-scoping activities.

The examination process should specifically identify areas of noncompliance with Georgia-specific state law. At the end of the onsite portion of the investigation, the EIC will have an exit meeting with representatives of the institution, which includes executive management and an invitation to directors through executive management.

The Report should include a list of subsidiaries, if any, of the financial institution or parent holding company. Also, the Report should include compliance with existing administrative

actions, and management's response for plans of corrective actions to deficiencies that were discussed during the examination process. Additionally, the EIC should make a recommendation to approve the conversion, subject to appropriate conditions, or disapprove the conversion.

The district's final Report should be transmitted to the Supervisory Manager. Report scanning and finalization will be handled at the Administrative Office. After reviewing the Report, the Supervisory Manager will make a recommendation to Department senior management for approval, subject to conditions, or disapproval. Supervision staff from the Administrative Office's will conduct the final review of the Report, also noting approval, subject to conditions, or disapproval.

At the Department's discretion, either the open section of the Report or certain pages containing recommendations will be transmitted to the applicant, along with a cover letter and any administrative action. Board meetings to discuss the Report are not typical and will be at the District Director's discretion.

The Department's Statement of Policies and Applications Manual provides further guidance regarding the charter conversion process. These two documents can be accessed on the Department's public website. If additional information is not requested during the application process, a final decision should be provided to the applicant institution within 60 days of acceptance of the charter conversion application.

Attached to this Memorandum is a listing of certain Georgia laws and Department Rules which federally chartered institutions are most likely unfamiliar and with which these institutions currently do not have to comply.

OVERVIEW OF GEORGIA LAW FOR INSTITUTIONS CONSIDERING CONVERSION TO A GEORGIA STATE BANK CHARTER

The information below is intended to provide general direction to management of institutions considering conversion to a **Georgia state-chartered bank**. For more precise information, refer to the O.C.G.A. and the Rules of the Department.

Georgia Law provides for lending limits, limitations on investments on fixed assets, and certain other limits, to be based on the bank's Statutory Capital Base. The definition of Statutory Capital Base differs from the "Total Capital" definition in federal law. The definition of Statutory Capital Base is designed to be fixed, and not to fluctuate day to day, so that lending limits do not change unless there is a change in the bank's capital structure, other than net income. The definition of Statutory Capital Base is contained in O.C.G.A. § 7-1-4(35) and consists of Common Equity Tier 1 Capital plus the allowance for loan and lease losses.

Lending Limit

O.C.G.A. § 7-1-285 establishes limits on loans to one person or corporation. In general, state banks are limited to aggregate loans to one person or corporation of 15% of Statutory Capital Base for unsecured debt and 25% of Statutory Capital Base for loans that are secured by "good collateral or other ample security." If aggregate debt exceeds 15% of Statutory Capital Base, then all loans and obligations must be fully secured, not just the portion that exceeds the 15% limit. (There are certain types of loans exempt from the 15% and 25% limitations: these are described in detail within the code section and Rule 80-1-5). Additionally, loans that exceed 15% of Statutory Capital Base must be approved in advance by the Board of Directors or a committee authorized to act for it.

The aggregate lending limits described above include both direct and indirect debt at the time of issuance of a binding commitment. In estimating loans to any individual person, all amounts loaned to firms and partnerships which that person controls or owns 25% or more should be included. All debts with a guarantee, to the extent of the guarantee amount, will also be included in the aggregate debt for legal lending limit purposes. The law provides that the Department will combine liabilities of a group of one or more persons or corporations or both when borrowers within the group are related through common control, when there is a common use of funds, or when a person has a financial obligation resulting from contracted debt. The Department is available to assist with any questions regarding amounts to be included for aggregate debt limits.

For purposes of O.C.G.A. § 7-1-285, "good collateral or other ample security" may include real estate that is properly supported by an independent appraisal. Rule 80-1-5-.01 states that in determining whether or not a loan in excess of the 15% limitation is secured by good collateral or other ample security, the lack of a perfected lien, inadequate insurance, or insufficient margins between collateral value and the amount of the loan shall be prima facie evidence of inadequate security to the debt. Therefore, certain loans that management intended to be fully secured loans,

may be considered unsecured. As a reminder, overdrafts, which are typically unsecured, are considered loans for the purpose of legal lending limit.

Fixed Assets Limitation

Rule 80-1-10-.01(2) limits the amount of investment in fixed assets by a bank to a maximum of 60% of the Statutory Capital Base, unless prior approval from the Department is granted to exceed this limit. The institution's investment in fixed assets should be reviewed for compliance with this statutory limit. If the fixed assets investment is in excess of this limit, this situation may be corrected either by immediately restructuring the capital accounts to increase the 60% limit, or by applying to the Department to exceed the limitation described above. The application should be in letter form and must provide for an orderly plan for restoring the fixed asset investment to the 60% limitation within five years, either through depreciation, sale, or predetermined plans to restructure the capital accounts to increase the 60% legal limitation, or a combination of these methods.

Other Real Estate

O.C.G.A. § 7-1-263 states, in part, that a bank or trust company may acquire and hold property for the purpose of avoiding loss subject to a determination by a majority vote of its Directors at least once each year as to the advisability of retaining any such property, provided that no such property may be held for more than five years without the prior written approval of the Department. Rule 80-1-10-.09 states, in part, all assets acquired through foreclosure should be appraised within (6) six months prior or (3) months after acquisition and subsequent appraisals should be at intervals not to exceed 5 years. An independent appraiser should perform the appraisal, unless the book value of the property does not exceed \$250,000 for residential property or \$500,000 for commercial property, or 2% of the bank's Statutory Capital Base, whichever amount is greater; then a qualified, independent bank officer can perform the appraisal/evaluation in accordance with the Interagency Appraisals and Evaluation Guidelines.

Payday Loans

Payday loans are prohibited in Georgia.

Oath of Directors

O.C.G.A § 7-1-484 states, in part, that each Director, before assuming office, shall take an oath or affirmation that he/she will diligently and honestly perform his/her duties in the administration of the affairs of the bank or trust company, that he/she will not permit a willful violation of law by the bank or trust company, and that he/she meets the eligibility requirements of this chapter and of the articles and bylaws. A copy of the oath shall be signed by each Director and shall be placed into the minutes of the meetings of the directors. No Director shall be authorized to participate in the affairs of the Board or receive any compensation for service as a Director until the oath has been executed by such Director. A form for the completion of the oaths is available on the Department's public website.

Term and Meetings of Directors

O.C.G.A. § 7-1-482(b) states, in part, that each Director shall be elected by the shareholders for a term of one year or for staggered terms as provided in O.C.G.A. § 14-2-806 and shall serve until he/she resigns, is removed, or becomes disqualified or until his successor shall have been duly elected and qualified. The institution's bylaws should be reviewed to determine the length of the term for the institution's Directors. That term shall meet the requirements of either O.C.G.A. § 7-1-482 or O.C.G.A. § 14-2-806. A copy of the Department's "Standard Bylaws for Banks" is available on the Department's public website.

The board of directors should hold at least one meeting in each of ten different months unless an alternative schedule is approved in writing by the Department. In no case should the board meet less frequently than once each calendar quarter as defined in O.C.G.A. 7-1-483(a).

Directors' Committees

The board of directors may designate three or more directors to constitute a committee, which shall have and exercise the authority of the board as defined in O.C.G.A. 7-1-483(b)(2).

Directors Financial Statements

Rule 80-1-6-.03 requires each director to maintain a financial statement on file with the chief executive officer of the bank. The financial statement shall be revised annually, but in no event shall the statement on file be more than eighteen months old. At the discretion of the board of directors of each bank, such financial statements may be maintained in sealed envelopes available for inspection only by state and federal examiners.

Management

O.C.G.A. § 7-1-488 requires each bank to have a president, a secretary, and such other officers as the directors deem desirable. An individual may hold more than one office, except that the individual must not be both president and secretary. Also, the Department must be notified immediately of a change in president, chief executive officer, or director as required by Rule 80-1-6-.01.

Dividends

Banks may declare and the bank may pay cash dividends out of retained earnings on its outstanding stock without Department approval under the following conditions:

1. Total classified assets at the most recent examination do not exceed 80% of Tier 1 Capital plus the Allowance for Loan Losses as reflected at such examination.

2. The aggregate amount of dividends declared or anticipated to be declared in a calendar year does not exceed 50% of the net profits after taxes but before dividends for the previous calendar year. A Subchapter S-Corporation may pay an additional amount of dividends without Department approval equivalent to fifty (50) percent of the income taxes which the bank would have had to pay as a Subchapter C-Corporation.
3. The ratio of Tier 1 Capital to Adjusted Total Assets shall not be less than six (6) percent.

Refer to O.C.G.A. § 7-1-460 and Rule 80-1-12-.01 for further discussion related to dividend requirements. In the case of negative retained earnings, a return of capital follows a different process, and requires the approval of both state and federal regulators.

Annual Audit

O.C.G.A. § 7-1-487 states, in part, that the board of directors shall at least once each year have made by an independent certified public accountant an audit of the books and affairs of the bank. A signed copy of the audit report shall be submitted to the board for approval or rejection and kept in the files of the bank. The minutes of the board of directors should indicate that the audit was submitted to the board of directors, and the minutes should specify that the audit was either accepted or rejected. The audit and the accompanying engagement letter is subject to review by the examiners. Rule 80-1-14-.01 requires audits to be provided to the Department when an auditor expresses anything other than an unqualified opinion. The auditor's workpapers must be made available upon request of the Department.

Internal Audit

The internal audit should be commensurate with the size and complexity of the bank and provide for effective oversight elements as detailed in Rule 80-1-14-.02. The board should name an internal auditor or designate an audit liaison for third parties. The board or designated committee will approve the internal audit scope in consideration of internal audit industry standards. Required actions of the internal auditor/audit liaison are also detailed in the Rule.

Cash Items Register, Overdrafts, and Charged Off Assets

Rule 80-1-3-.01(1)(d) requires the bank's cash item register to show the maker of the item, last endorser, if any, date acquired by the bank, amount of the item, and reason held. The board of directors is required to review the current register at least monthly.

Rule 80-1-3-01(1)(g) requires the most current record of overdrafts to be approved by the board of directors or Loan Committee at least monthly, and such approval shall be recorded in the minutes of the meeting at which the action was taken. Overdrafts less than \$1,000, other than overdrafts on the accounts of officers and directors, may be aggregated and reported.

Rule 80-1-3-.01 (1)(h) requires that charge-offs must be approved by the Loan Committee, in the case of loans, or board of directors and such approval shall be recorded in the minute book.

Rule 80-1-3-.01(2) states that where a bank has Statutory Capital Base of \$5,000,000 or more, the review by the board of directors for cash items, overdrafts, and charged-off assets may be delegated to a specific officer or department of the bank, provided such delegation is recorded in the minutes of the board of directors. A properly constituted Loan Committee, as described above in the section entitled “Directors Committees”, may perform this function for the full board of directors regardless of the size of the bank.

Public Funds

O.C.G.A. § 45-8-12 states that deposits of a public body must be secured by a surety bond, or in lieu of a surety bond, by a pledge of securities or deposit insurance. The market value of securities pledged must equal 110% of the value of the deposit after the deduction of the amount of deposit insurance. The institution's public deposits should be reviewed to ensure that each individual public depositor is secured by sufficient bond, pledge, or deposit insurance. In addition, O.C.G.A. § 45-8-13 allows that a bank may deposit with the state treasurer to secure public funds on deposit in state depositories (the pooling method).

Dormant Accounts

Rule 80-1-8-.01 of the Department authorizes the amount and length of time that service charges are permitted for certain deposit accounts. Generally, this Rule states that demand deposits with no activity by the signatory on the account of not less than 12 months, time deposits in similar circumstances of not less than five years, and official checks in similar circumstances of not less than two years are considered to be in dormancy status. Service charges on these accounts are authorized but cannot exceed \$5 per month for 12 months.

Other

Many of the forms and applications that state-chartered banks frequently require can be accessed via the Department's web site at <http://dbf.georgia.gov>.

OVERVIEW OF GEORGIA LAW FOR INSTITUTIONS CONSIDERING CONVERSION TO A GEORGIA STATE CREDIT UNION CHARTER

The information below is intended to provide general direction to management of institutions considering conversion to a **Georgia state-chartered credit union**. For more precise information, refer to the O.C.G.A. and the Rules of the Department.

Georgia Law provides for bylaws (including field of membership), lending limits, limitations on investments on fixed assets, and certain other limits.

Bylaws

O.C.G.A. § 7-1-630 requires the adoption of bylaws. The Department provides a template of standard bylaws that may be used, which is available the public website. Existing members are grandfathered into membership; however, upon conversion, the field of membership must conform to that field of membership that was approved as a condition of the charter. Additions to the field of membership may be requested in conformity with the requirements of the Rule 80-2-8. Generally, each credit union may have different types of fields of membership including segmented employee groups, associations, and geographic common bonds.

Member Fees

O.C.G.A § 7-1-651 details eligibility for membership. Additionally, this section sets the minimum par value for membership shares at no less than \$1.

Lending Limits

O.C.G.A. § 7-1-658(d) provides limits for both secured and unsecured loans. The statute provides that no credit union shall be authorized to lend to any individual borrower on an unsecured loan more than 1 percent of the first \$100,000.00 of its deposits and shares plus one-fourth of 1 percent of its deposits and shares over \$100,000.00. No credit union shall be authorized to lend to any individual borrower on a secured loan more than 10 percent of the first \$100,000.00 of its deposits and shares plus 4 percent of the next \$1 million of its deposits and shares plus 2 percent of its deposits and shares over \$1.1 million. Deposits and shares reflected in the statement of condition on the last calendar day of the preceding quarter, to the nearest \$100,000.00, shall be used to establish loan limits for the subsequent calendar quarter, provided that where a credit union has less than \$1 million in total shares and deposits, the nearest \$1,000.00 shall be used to establish these limits. Any credit union may make loans up to \$200.00 regardless of the amount of its shares and deposits. The amount loaned to any one borrower on an unsecured basis when added to the amount loaned to any one borrower on a secured basis shall not exceed the limitation set forth in this subsection for secured loans, such limitation being the maximum loan limit of the credit union. As a reminder, overdrafts, which are typically unsecured, are considered to be loans for the purpose of the legal lending limit.

Rule 80-2-12-.01(4)(b) states that the lack of a perfected lien, inadequate insurance, or insufficient margins between collateral value and the amount of the loan shall be prima facie evidence of inadequate security to the debt. Therefore, certain loans that management intended to be fully secured loans, may be considered unsecured.

The aggregate lending limits described above include both direct and indirect debt. In estimating loans to any individual person, the Department shall consider the liabilities of separate persons, corporations and entities to be combined for lending limit purposes, when there is no evidence of a separate source of repayment, there is an apparent lack of ability to service the obligation from the operations of the separate person or corporation without relying on a related source of repayment, or where the separate entities make common use or are dependent upon funds of the group. "Related" shall mean connected by corporate or business structure or by common use or dependence upon funds, facilities, or personnel.

Fixed Assets Limitation

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 loss), unless prior approval from the Department is granted to exceed this limit. The approval process includes a letter form application. The application must provide for an orderly plan for restoring the fixed asset investment to comply with the 60% limitation within five years.

Rule 80-2-4-.04 states that the purchase of real estate solely for expansion purposes may be made without the prior consent of the Department and by letter notification when the real property is to be utilized solely as the premises of a credit union or its wholly owned subsidiary 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; the credit union is not subject to any special requirements whereby the Department requires prior approval for such purchases; and if a director, officer, or committee member is a party to the transaction, a certification is provided stating that all requirements of O.C.G.A. § 7-1-656 and the provisions of any applicable federal requirement have been satisfied. However, the establishment of future branches remains subject to Department approval in accordance with O.C.G.A. § 7-1-665.

Other Real Estate

O.C.G.A. § 7-1-650 states, in part, that a credit union shall have the power to hold real estate acquired by foreclosures, deeds in lieu, and real estate which has ceased to be used primarily as credit union premises, subject to a determination by a majority vote of its directors at least once each year as to the advisability of retaining any such property and provided that no such property is held for more than five years without the prior written approval of the Department.

Rule 80-2-12-.04 states, in part, all assets acquired through foreclosure should be appraised within (6) six months prior or (3) months after acquisition and subsequent appraisals should be at intervals not to exceed 5 years. An independent appraiser should perform the appraisal, unless

the book value of the property does not exceed \$250,000 for residential property or \$500,000 for commercial property, or 2% of the credit union's net worth and allowance for loan and lease losses, whichever amount is greater; then a qualified, independent bank officer can perform the appraisal/evaluation in accordance with the Interagency Appraisals and Evaluation Guidelines.

Oath of Directors

O.C.G.A § 7-1-655(f) requires all members of the board and all officers and committee members shall be sworn to perform faithfully the duties of their several offices in accordance with this chapter and the bylaws or as otherwise lawfully established. The oaths shall be subscribed in writing and a copy thereof shall be retained in the minutes of the meetings of the board. A form for the completion of the oaths is available on the Department's public website.

Term and Meetings of Directors

O.C.G.A § 7-1-655 states that at each annual meeting the board shall be elected for a one-year term. Additionally, a credit union may in its bylaws provide for staggered elections for members of the board of directors; but in that event the bylaws shall provide that as nearly as possible one-third of the board shall be elected at each annual meeting. A copy of the Department's "Credit Union Standard Form Bylaws" is available on the Department's public website.

Directors' Committees

O.C.G.A § 7-1-655(c) states, in part, that the board of directors shall appoint an audit committee and credit committee at its first meeting after the annual membership meeting. No member of the audit committee may serve as a member of the credit committee or as an officer, unless the board of directors functions as the credit committee (as authorized in O.C.G.A § 7-1-658(f)). O.C.G.A § 7-1-656(b)(2) states that unless the bylaws state otherwise, the board of directors may designate three or more of its number to constitute a credit committee, audit committee, or other committees which, to the extent provided in a resolution, shall have and exercise the authority of the board of directors with regard to the business of a credit union.

Management

O.C.G.A § 7-1-655(k) requires that the Department be notified immediately if there is a change in president or chief executive officer.

Director Fees

Director fees are not prohibited in Georgia.

Loans

Loans to Insiders

O.C.G.A. § 7-1-658(c) requires that loans made to officers, directors, and committee members of the credit union must be made under the same general terms and conditions as other members of the credit union. Each officer, director, committee member, or employee is precluded from participating in the approval any loan in which he or she has a direct or indirect financial interest. The approval of all loans to officers, directors, and committee members of the credit union must be reported to the board of directors at its next meeting.

Participation Loans and Whole Loans

Rule 80-2-12-.03 allows credit unions to participate in loans or purchase whole loans. Underwriting and administration requirements are outlined in this Rule. Certain terms of the agreement are prescribed, such as, the agreement for a participation in a loan pool must call for the participant to share pro rata in losses. Moreover, where agreements exist for the seller to repurchase or indemnify loss, participation and whole loan purchases shall be treated as loans to the seller by the purchasing credit union and the amount of the purchase shall be considered to be remaining on the seller's books for the purposes of the seller's loan limitations.

Real Estate Loans

Rule 80-2-12-.02(4) requires that nonamortized commercial real estate loans shall not exceed 75% of the fair market value of the property pledged and no loans or renewals may be made or held for a period in excess of 5 years after which time sufficient principal payments must be made on a regular basis to amortize the loan.

Payday Loans

Payday loans are prohibited in Georgia.

Books and Records

Financial Statement Availability to Members

Rule 80-2-1-.01(2) requires each credit union to prepare a monthly financial statement meeting certain criteria and post a notice in certain locations and on the credit unions' website to notify members that they can request to examine the financial statements, provide directions to where this information can be viewed, and communicate who to contact regarding this request.

Recordkeeping

Rule 80-2-1-.02 sets forth minimum requirements for books and records. Notably, charged-off assets must be approved by the board of directors and such approvals recorded in the minute book. A permanent record of all charge-offs and recoveries thereon must be maintained. Additionally, overdrafts records shall contain the name of the account holder, the amount of the overdraft, and the date the overdraft originated. The most current record shall be approved by the Credit Committee or, in lieu thereof, by the board of directors of the credit union at least

monthly, and such approval shall be recorded in the minutes of the meeting at which the action was taken. Overdrafts of less than \$1,000, other than overdrafts on the accounts of officers and directors, may be aggregated and reported in lump sum. Where a credit union has net worth of \$5,000,000 or more, review by the board of directors may be delegated to a specific officer or department of the credit union where such delegation is recorded in the minutes of the board of directors. A properly constituted member of the board of directors may perform this function for the full Board of Directors regardless of the size of the credit union.

The audit committee shall reconcile correspondent account statements monthly or shall verify for accuracy reconcilements made by others. A copy of each reconciliation shall be filed in chronological order and kept as a record. The audit committee may delegate this responsibility to an internal auditor provided such person has no authority to sign on the account or to initiate or post entries to the general ledger. Where a credit union has net worth of \$5,000,000 or more, review by the Board of Directors as required in paragraphs (1)(f) and (1)(i) above, may be delegated to a specific officer or department of the credit union where such delegation is recorded in the minutes of the Board of Directors. A properly constituted member of the Board of Directors may perform this function for the full Board of Directors regardless of the size of the credit union.

Dividends

Generally, credit unions may declare and may pay cash dividends on member shares without Department approval as long as interest due on certificates of deposit have been paid or credited in full and the dividend conforms to requirements of the bylaws, if any. However, Rule 80-2-3-.04 requires that a credit union proposing to pay dividends and interest in excess of 90% of its "net earnings available for distribution" for the preceding fiscal year may do so without the prior written approval of the department; provided that such dividends and interest do not exceed 100% of the estimated "net earnings available for distribution" for the period for which such dividends and interest are paid. Guidance for requesting approval is contained in the Rule.

Annual Audit

Rule 80-2-6-.01 requires the audit committee to have an annual audit of the credit union performed. The annual audit must be performed by a licensed independent accountant or firm of accountants; however, if the credit union has assets of less than \$15 million, the audit committee may elect to have the annual audit conducted by the internal auditors of any sponsoring group, concern, or association of credit unions approved by the Department in writing. An audit of a credit union by an independent accountant or firm of such accountants or the internal auditors of any sponsoring group, concern, or association of credit unions shall be made in accordance with generally accepted auditing standards as set forth in pronouncements of the American Institute of Certified Public Accountants. All audit reports expressing anything than an unqualified opinion shall be provided to the Department within 15 days following receipt by the credit union. The engagement letter should clearly define the extent of the audit work including, the scope of the audit, the objectives, the resource requirements, and the audit timeframes, as well as the methods used by the auditor to handle and protect member information. No less than annually, the audit

committee shall make or cause to be made an inspection of the assets and liabilities, loan and deposit accounts, information technology, and physical cash count of the credit union.

Internal Audit

The internal audit should be commensurate with the size and complexity of the credit union and provide for effective oversight elements as detailed in Rule 80-2-6-.05. The board should name an internal auditor or designate an audit liaison for third parties. The board or designated committee will approve the internal audit scope in consideration of internal audit industry standards. Required actions of the internal auditor/audit liaison are also detailed in the Rule.

Ability to Hold Shares

Nonmembers are not allowed access to checking accounts. If consistent with O.C.G.A. 7-1-650(2) and permitted by the bylaws, nonmembers may hold passbook savings.

Dormant Accounts

Rule 80-1-8-.01 of the Department, made applicable to credit unions by Rule 80-2-3-.06, authorizes the amount and length of time that service charges are permitted for certain deposit accounts. Generally, this Rule states that demand deposits with no activity by the signatory on the account of not less than 12 months, time deposits in similar circumstances of not less than five years, and official checks in similar circumstances of not less than two years are considered to be in dormancy status. Service charges on these accounts are authorized but cannot exceed \$5 per month for 12 months.

Other

Many of the forms and applications that state-chartered credit unions frequently require can be accessed via the Department's web site at <http://dbf.georgia.gov>.