

# STATE OF GEORGIA DEPARTMENT OF BANKING AND FINANCE



*BULLETIN... BULLETIN... BULLETIN... BULLETIN... BULLETIN...*

*NATHAN DEAL  
GOVERNOR*

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COMMISSIONER*

*SPECIAL EDITION  
IMPORTANT NOTICE  
FINAL RULEMAKING*

**June 29, 2017**

# **NOTICE OF FINAL RULEMAKING**

## **DEPARTMENT OF BANKING AND FINANCE STATE OF GEORGIA**

**Adopted June 29, 2017**

To all interested persons:

Notice is hereby given that pursuant to the provisions of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., and by the authority of O.C.G.A. §§ 7-1-61, 7-1-1012, and other cited statutes, the following attached Rules of the Department of Banking were adopted on June 29, 2017. The Rules were filed with the Secretary of State on June 29, 2017 and, pursuant to O.C.G.A. § 50-13-6, will be effective on July 19, 2017, which is twenty days following the filing of the Rules with the Secretary of State.

Prior to adopting the Rules, the proposed Rules along with a synopsis were distributed on May 25, 2017. The Department received four (4) written comments regarding the proposed Rules. The Department fully considered the comments it received and made a substantive revision to Rule 80-13-1-.02 to remove the capital formula and instead provide that the Department will determine the required capital levels on a case-by-case basis. The Department believes that the Rules as adopted encourage safety and soundness, encourage safe and fair mortgage lending, and conform to the law.

**CHAPTER 80-1-2**  
**AGENCY RELATIONSHIPS OF FINANCIAL INSTITUTIONS;**  
**BANK SERVICE CONTRACTS**

80-1-2-.05 Bank and Credit Union Service Contracts: Requirements of Providers.

**80-1-2-.05 Bank and Credit Union Service Contracts: Requirements of Providers.**

(1) Each entity that provides indirect or direct bank or financial services to a state financial institution subjects that person to examination and regulation by the department as if the person were a state financial institution, as authorized by Code Section 7-1-72.

(2) In the event that a third party has been examined by a federal agency that is a member of the Federal Financial Institutions Examination Council ("FFIEC"), or any successor entity, in the previous twenty-four (24) months and the department is provided a copy of the examination, the department shall accept the results of such examination in lieu of conducting its own examination. However, nothing contained herein, shall be construed as limiting or otherwise restricting the department from participating in such examination.

Authority: O.C.G.A. § 7-1-61.

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**CHAPTER 80-1-3**  
**BOOKS AND RECORDS**

80-1-3-.01 Minimum Requirements for Books and Records.

**80-1-3-.01 Minimum Requirements for Books and Records.**

(1) Each bank must maintain for each business day a Daily Statement properly supported by a General Ledger showing daily activity to each asset, liability, and capital account. A "business day" shall be any day during which the main office of the bank shall be open for the purpose of conducting both a paying and receiving and a lending business; provided, however, a bank may defer business conducted on Saturday until the next business day. There shall be no fewer than five "business days" in each calendar week less any legal holidays actually observed during such week and less any Saturday for which business is properly deferred. The following subsidiary ledgers must be maintained and must be balanced to the controlling amount in the General Ledger at least monthly:

(a) Investment Register — containing a record of all stocks, bonds, certificates of deposit, and other fixed maturity investments purchased showing date of transaction, proper name of the investment, interest rate, maturity date, par value, purchase price, schedule of amortization of premium or accretion of discount taken, book value, pledge status, safekeeping location, and income receipt.

(b) Liability Ledger — containing separate listings for the direct and indirect liabilities or obligations of each of the bank's borrowing customers, excluding liabilities for overdrafts, cash items, and loans repayable in regular installments due more frequently than quarterly.

(c) Installment Loan Ledger — although part of the liability ledger, a bank may elect to maintain installment loans separately from other direct loans of a borrower and not include them on the Liability Ledger above. In this event, they may be maintained in a separate ledger with payments being posted manually or electronically. The notes or payment record may be maintained in any order, e.g. alphabetical, numerical, class of loans desired by management, except that where they are not maintained alphabetically, an alphabetical cross-reference file must be maintained summarizing the notes of each borrower.

(d) Cash Items Register — a listing daily of all cash items held by a bank must be maintained which shows the maker of the item, last endorser, if any, date acquired by the bank, amount of the item, and reason held. The register may be maintained on a decentralized basis at each of the bank's operating offices. The current register shall be reviewed by the Board of Directors at least monthly. For purposes of this Rule, Cash Items shall include any item received by a bank and paid but for which reimbursement by the maker or endorser is not made before the end of the next business day following the date in which the item is received, except such items as are customarily held by the bank for settlement with its customer, whether maker or endorser on the item, not less frequently than weekly. Where the item is held beyond the regular settlement date, it shall be considered as a Cash Item within the definition of this Rule. In addition to the foregoing, Cash Items and the register thereof shall include such other items as the Board of Directors shall from time to time determine.

(e) Deposit Ledgers — separate deposit ledgers must be maintained for each General Ledger segregation of deposits and each ledger must contain a continuing itemized record of all deposits and withdrawals. Deposits will be segregated into no fewer than the following categories: Demand Deposits, Savings Deposits, Overdrawn Accounts, Open Accounts, Certificates of Deposit, Official Checks. In lieu of the requirement for a register of outstanding Certificates of Deposit and Official Checks, copies of the outstanding obligations may be maintained in numerical order.

(f) Income and Expense Registers — a detailed record of Income and Expenses must be maintained.

(g) Overdrafts — a record of all overdrawn deposit accounts shall be maintained. Such record shall contain the name of the account holder, the amount of the overdraft, and date the overdraft originated. The most current record shall 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 of less than \$1,000, other than overdrafts on the accounts of officers and directors, may be aggregated and reported in lump sum.

(h) Charged Off Assets — all charge-offs must be approved by the Loan Committee, in the case of loans, or Board of Directors and such approval recorded in the minute book. A record of all charge-offs and recoveries thereon must be maintained.

(i) A register must be maintained of all items held for safekeeping by a bank for its customers other than items maintained in a safe deposit box under the sole control of the customer. The register should describe the item fully, show the name of the owner, date received, and number of receipts given.

(j) Each bank shall maintain a reconciliation book on each of its correspondent bank accounts with other banks, and reconcilements of each account shall be made at least monthly and recorded in the reconciliation book.

(2) Where a bank has a statutory capital base of \$5,000,000 or more, review by the Board of Directors as required in paragraphs (1)(d), (1)(g), and (1)(h) above may be delegated to a specific officer or department of the bank, where such delegation is recorded in the minutes of the Board of Directors. A properly constituted Loan Committee may perform this function for the full Board of Directors regardless of the size of the bank.

Authority Ga. L. 1974, pp. 733, 849; Ga. L. 1983, Act No. 255, effective March 16, 1983.

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## **CHAPTER 80-1-5**

### **LOANS AND DISCOUNTS**

- 80-1-5-.01 Loans Generally, Interpretations and Rulings.
- 80-1-5-.02 Real Estate Loans.
- 80-1-5-.04 Participation Loans.
- 80-1-5-.11 Combination of Debt for Legal Lending Limit Purposes.
- 80-1-5-.12 Conditional Waiver of Applicability of Revised Statutory Capital Base Definition.

#### **80-1-5-.01 Loans Generally, Interpretations and Rulings.**

(1) “Indirect” loans as used in Code Section 7-1-285 shall mean loans made for the substantial benefit of a third party where repayment of the loan is dependent on activities of the third party rather than solely dependent on the resources of the borrower and subject to the provisions of Rule 80-1-5-.11.

(2) Loans extended to any Industrial Development Authority domiciled in Georgia which are dependent upon revenues obtained under an assigned lease contract naming the Authority as lessor shall be considered as loans to the lessee in calculating legal loan limitations.

(3) Loans by a bank to any wholly-owned subsidiary of the bank, which subsidiary is located within an approved office of the bank and which has agreed to abide by all laws, rules and

regulations applicable to the bank shall be exempt from the twenty-five (25) percent maximum lending limit of the bank. In addition, to the extent allowed by other applicable law and with the prior written approval of the Department, this exemption from the twenty-five (25) percent maximum lending limit may be extended to loans from a bank to a wholly owned subsidiary of an affiliated bank.

(4) In determining amounts loaned, all amounts guaranteed or insured by any instrumentality of the United States government shall be deducted to the extent of the guaranty or insurance coverage. Immediate and deferred participations on loans by an instrumentality of the United States government shall also be excluded. Where the source of repayment of a loan, i.e. lease payments, is guaranteed by an instrumentality of the United States government and such guarantee is assignable and has been assigned to the bank, such loan may be excluded to the extent of the guarantee.

(5) In determining whether or not a loan in excess of the fifteen (15) percent limitation is secured by “good collateral and other ample security,” the lack of a perfected lien, inadequate insurance, and insufficient margins between collateral value and the amount of the loan shall be prima facie evidence of inadequate security to the debt.

(6) A borrower's savings accounts or certificate of deposits in the lending bank will be regarded as collateral to a loan when they are not subject to check or withdrawal, mature on or after the loan which is secured, are under the sole control of the bank, and are properly assigned. Where, according to the terms of the deposit contract, the deposit is eligible for withdrawal before the secured loan matures, the bank must establish internal procedures to prevent release of the security without the lending bank’s prior consent. If proper procedures are in place, such deposits will be considered as collateral. Where deposit balances are properly taken as collateral to a loan, the loan may be reduced to the extent of the deposit in determining the amounts loaned for either secured or unsecured legal lending limitations, as applicable.

(7) Except as provided in this paragraph, extensions of credit in the form of insufficient funds checks held beyond the permissible return date and overdrafts shall be considered “extensions of credit” included in determining compliance with the legal limitation as it applies to the maker of the check or owner of the overdraft. Such extensions of credit shall also be subject to the requirements for prior written approval and ample collateral where the total indebtedness of the borrower exceeds fifteen (15) percent of the statutory capital base. Such extensions of credit will not be considered extensions of credit for purposes of compliance with the above legal loan limitations and requirements, provided that the extension is inadvertent, which requires that:

(a) The extension(s) do not exceed the aggregate amount of \$1,000 at any one time; and

(b) The account is not overdrawn or the insufficient funds check held for more than five (5) business days.

(8) Wherever approval of the Board of Directors or Loan Committee is required, such approval must be specific, prior, written approval of each extension of credit, except that advances made under a master note covering a specific purpose or project need not receive

specific approval where such approval was accorded the master note. Annual approval of a line of credit may be used where interest rate, repayment terms, and anticipated collateral are clearly identified and current credit information is on file. Commodity, floor-plan and discount lines of credit which are anticipated to exceed fifteen (15) percent of the statutory capital base may be approved annually to be deemed appropriate by the Board of Directors without each transaction receiving specific prior approval. For those lines that are expressly authorized by statute or regulation to exceed twenty-five (25) percent of the statutory capital base, the line must be reviewed quarterly by the Board of Directors or Loan Committee when the line is in fact in excess of twenty-five (25) percent of the statutory capital base.

(9) In determining the primary collateral basis upon which a loan is granted, that portion of the collateral having the greatest market value shall be assumed to be the primary collateral.

(10) Extensions of credit to political subdivisions of the State of Georgia authorized to levy taxes or backed by the taxing authority of another political subdivision shall qualify for exemption from the twenty-five (25) percent loan limitation under the provisions of O.C.G.A. § 7-1-285 (c)(1)(B), only where such extension of credit otherwise conforms with the provisions of Georgia Constitution, Article 9, Section 5.

(11) Where the “statutory capital base” as defined in O.C.G.A. § 7-1-4(35) is reduced by operating losses, loan losses, or for other reasons approved by the department, existing debt which was in conformity with the legal limitations at the time it originated shall not be construed to be non-conforming with new legal limitations resulting from the reduced statutory capital base.

(12) Pursuant to O.C.G.A. § 7-1-285(e), a loan or extension of credit to a leasing company for the purpose of purchasing equipment for lease shall be considered a loan to the lessee, provided that:

(a) The bank documents the basis for its reliance on the lessee as the primary source of repayment before the loan is extended to the leasing company;

(b) The loan is made without recourse to the leasing company;

(c) The bank receives a security interest in the equipment and, in the event of default, may proceed directly against the equipment and the lessee for any deficiency resulting from the sale of the equipment;

(d) The leasing company assigns all of its rights under the lease to the bank;

(e) The lessee’s lease payments are assigned and paid to the bank directly by the lessee; and

(f) The lease terms are subject to the same limitations that would apply to a bank acting as a lessor.

(13) The Department shall promulgate a form which may be used to document compliance with the requirements for approval of loans, obligations, and credit exposures in excess of 15 percent of the statutory capital base by members of the board of directors or authorized committee of the board of directors as set forth in O.C.G.A. § 7-1-285 (a.1).

(14) In determining whether the common equity tier 1 capital has increased or decreased by 5% or more for purposes of the “statutory capital base” as defined in O.C.G.A. §7-1-4(35), each bank will utilize the dollar amount reported on the applicable Consolidated Report of Condition and Income and recalculate its statutory capital base if the dollar amount increases or decreases by 5% or more during the applicable time period.

Authority: Ga. L. 1974, pp. 733, 790-97; Ga. L. 1983, Act No. 255, effective March 16, 1983.

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### **80-1-5-.02 Real Estate Loans.**

(1) A real estate loan (including a leasehold) within the meaning of Part 365 of the Federal Deposit Insurance Corporation’s rules and regulations, including 12 C.F.R. 365.1 and 365.2 and the Interagency Guidelines for Real Estate Lending Policies in Appendix A, and 12 C.F.R. 208.51 and the guidelines contained in 12 C.F.R. Part 208 in the case of Federal Reserve member banks, shall comply with the Real Estate Lending Standards of the above laws.

(2) If a loan could be made without real estate as security, a bank will not be penalized for adding real estate as collateral in an abundance of caution. A notation in the loan file must indicate this lack of reliance on the real estate and must meet general safety and soundness standards for credit risk. This does not constitute a waiver of O.C.G.A. § 7-1-285, related Department rules and regulations, or requirements of federal law, and the soundness of the loan should always be considered.

(3) Except as provided herein or otherwise according to statute, banks may not acquire directly or indirectly an ownership interest in real estate without the prior written approval of the Department. No approval is necessary for a bank to acquire an interest in real estate, where acting pursuant to policies adopted by its board, a bank agrees by written commitment to participate in the financing of the purchase, development, or improvement of such real estate, provided:

(a) The written commitment provides for termination through sale or otherwise of the bank's ownership interest upon the earlier of substantial repayment of the underlying financing or ten (10) years;

(b) The bank's ownership interest in the real estate does not exceed the lesser of

1. The equity interest of the borrower, or



2. Twenty-five percent (25%) of the appraised value of the completed project upon which the lending commitment is based;

(c) Where the bank's interest is in the form of stock in a corporation which owns the real estate, the investment in the stock shall not exceed the lesser of

1. Fifty percent (50%) of the stock of the corporation, or

2. Twenty-five percent (25%) of the appraised value of the real estate owned by the corporation which is subject to the written commitment to finance. Provided, the foregoing shall not prohibit any bank from taking an ownership position through a wholly owned subsidiary, except that the subsidiary's interest shall be limited as set forth in subsections (a) and (b) of this section;

(d) Where the financing associated with the direct investment in real estate is subject to participation with other lenders, the aggregate direct investment by all such lenders may not exceed the limitations set forth in subparagraph (ii) of this section;

(e) The bank's ownership participation as provided herein is approved by its board of directors prior to the execution of any written commitment or is otherwise consistent with a previously adopted provision of the bank's loan policies governing such participation;

(f) The bank's ownership investment involving any single borrowing entity, when aggregated with investments through any lending transaction with such borrowing entity, is otherwise subject to the provisions of this regulation and the provisions of O.C.G.A. §7-1-285 and O.C.G.A. §7-1-286, to the same extent as would be applicable if such equity investment were itself an extension of credit; and

(g) The aggregate direct or indirect investment in such real estate for all such purposes set forth herein shall not exceed the statutory capital base of the bank.

Authority: O.C.G.A. §§ 7-1-61; 7-1-286.

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#### **80-1-5-.04 Participation Loans.**

(1) That portion of a loan which is sold by the originating bank to another bank must conform to all laws and regulations applicable to that category of loan to the same extent as if the purchasing bank had itself originated the loan; i.e., collateral documentation, maturity, loan-to-collateral value ratio, maximum loan limits, etc. The purchasing bank shall obtain from the selling bank copies of all pertinent documents or a summary of sufficient information therefrom to allow that bank to conclude that all legal and regulatory requirements have been met and that the loan may be legally carried upon its books.

(2) Participation in Pools of Loans or Discount Lines:

(a) Loans contained in the pool or discount line must be physically marked or specifically identified on the selling bank's records.

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

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

(d) Where the participation purchased is in excess of fifteen (15) percent of the purchasing bank's statutory capital base, the participation must have the prior written approval of the bank's Board of Directors or Loan Committee.

(3) Where there exist agreements to repurchase or loss indemnity agreements between the selling and purchasing banks, participations shall be treated as loans to the selling bank by the purchasing bank and the amount of the participation shall be considered to be remaining on the selling bank's books for purposes of legal limitations.

(4) The portion of a loan or extension of credit sold as a participation on a nonrecourse basis shall not constitute a loan or extension of credit for purposes of O.C.G.A. § 7-1-285, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event.

Authority Ga. L. 1974, pp. 733, 791-792; Ga. L. 1983, Act No. 255, effective March 16, 1983.

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#### **80-1-5-.11 Combination of Debt for Legal Lending Limit Purposes.**

(a) General Rule. Pursuant to Code Section 7-1-285, loans or extensions of credit to one person will be attributed to another person and each person will be deemed a borrower:

(1) When proceeds of a loan or extension of credit are to be used for the direct benefit of the other person, to the extent of the proceeds so used;

(2) When a common enterprise is deemed to exist between the persons as the persons within the group are directly or indirectly related through common control including where one borrower is directly or indirectly controlled by another borrower;

(3) When there is a common use of funds between the persons; or

(4) When a person has a financial obligation on a loan or an extension of credit, to the extent of such obligation.

(b) Definitions. For purposes of this Rule, the below terms shall be defined as follows:

(1) Common control. The direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. Without limiting the foregoing, a person shall be considered to control another person if the first person:

(A) Owns, controls or holds with power to vote 25 percent or more of any class of voting securities of the other person;

(B) Controls in any manner the election of a majority of the directors, trustees, or persons performing similar functions of the other person; or

(C) Exercises a controlling influence over the management or policies over the other person as determined by the department.

(2) Common use of funds. The proceeds of a loan or an extension of credit to a borrower will be deemed to be a common use of funds and will be attributed as one loan when the proceeds, or assets purchased with the proceeds, are comingled or used to acquire property, goods, or services for the purpose of a shared common commercial objective between the borrowers.

(3) Direct benefit. The proceeds of a loan or extension of credit to a borrower will be deemed to be used for the direct benefit of another person and will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services.

(4) Obligation. A commitment that creates a liability or contingent liability for payment on a loan or extension of credit irrespective of whether the person is a borrower.

(5) Person. An individual or a corporation, limited liability company, partnership, trust, association, joint venture, sole proprietorship, unincorporated organization, or any other form of entity.

Authority: O.C.G.A. § 7-1-285.

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**Rule 80-1-5-.12 Conditional Waiver of Applicability of Revised Statutory Capital Base Definition.**

- (1) Prior to June 1, 2017, the definition of statutory capital base meant the “sum of the capital stock, paid-in capital, appropriated retained earnings, and capital debt of a bank or trust company less any amount of good will, core deposit intangibles, or other intangible assets related to the purchase, acquisition, or merger of a bank charter or accumulated deficit (negative retained earnings).” The revised definition of statutory capital base expressly provides that the Department has the authority to phase in the revised definition for those banks that will have a decreased statutory capital base.
- (2) Any bank that has a decrease in its statutory capital base as of July 1, 2017, may submit a letter form application seeking a waiver from the applicability of the revised definition. Any such request for a waiver must be received by the Department no later than August 15, 2017. The application should provide information pertinent to the request, including, but not limited to, a calculation of the statutory capital base under both formulas.
- (3) The Department shall take into consideration competitive, financial, managerial, safety and soundness, and other concerns in evaluating any waiver request. The Department is authorized to impose conditions on the grant of any request for a waiver.
- (4) All waivers, conditional or otherwise, issued pursuant to this Rule shall expire on August 31 of each year, and application for renewal of a waiver shall be made annually on or before August 1 of each year.

Authority: O.C.G.A. §§ 7-1-4; 7-1-61; 7-1-285.

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**CHAPTER 80-1-6**

**BANK FINANCIAL AND OTHER REPORTS**

80-1-6-.03 Directors' Financial Reports.

**80-1-6-.03 Directors' Financial Reports.**

Each director of a bank or trust company shall maintain on file with the chief executive officer of the bank or trust company for which he/she serves as a director a financial statement on forms prescribed by the Department. Such financial statement shall be revised annually, but in no event shall the statement on file be more than eighteen (18) months old. At the discretion of the Board of Directors of each bank or trust company, such financial statements may be maintained in sealed envelopes available for inspection only by state or federal examiners.

Authority Ga. L. 1974, p. 733; 1975, S.B. 145.

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**CHAPTER 80-1-10**  
**FIXED ASSETS AND ASSETS ACQUIRED D.P.C.**

80-1-10-.09 Assets Acquired – Debts Previously Contracted (“D.P.C.”).

**80-1-10-.09 Assets Acquired - Debts Previously Contracted (“D.P.C.”).**

(1) All assets acquired through foreclosure or in lieu of foreclosure and all "Other Real Estate" acquired in such manner or otherwise shall be initially appraised six (6) months prior to or three (3) months following the acquisition by an independent appraiser knowledgeable in the fair market value of such assets or, in the alternative, evaluated by a qualified officer of the bank in conformity with the Evaluation Content portion of the Interagency Appraisal and Evaluation Guidelines if the book value of the property is less than two (2) percent of the statutory capital base of the bank or \$250,000 whichever amount is greater. Appraisals subsequent to the initial appraisal are required if, based upon a review of the following factors, there is a reasonable basis to determine that the prior appraisal is no longer reliable as a reasonable estimate of the property's fair market value : volatility of local market; changes in terms and availability of financing; natural disasters; limited or over supply of competing properties; improvements to the subject property or competing properties; lack of maintenance of the subject or competing properties; changes in underlying economic and market assumptions, such as capitalization rates and lease terms; changes in zoning, building materials, or technology; and environmental contamination. In the event there is no basis to determine that the initial appraisal is no longer reliable, then appraisals shall be at intervals of not more than five (5) years.

(2) All requests for permission to hold assets acquired through foreclosure or in lieu of foreclosure and to hold other types of "Other Real Estate" beyond limitations imposed by statute must include a statement as to efforts made to dispose of the asset, reasons for the failure of such efforts, plans for disposal of the asset during the extended ownership period, a copy of the most recent appraisal, and a statement as to the estimated annual cost of carrying the asset and estimated annual income produced by the asset.

(3) Extension of statutory ownership periods will not be granted for income purposes.

(4) Property subject to this rule shall be initially carried on the books of the bank at the fair market value determined by independent appraisal, unless otherwise provided, less the estimated costs to sell the property (“new basis”). This valuation shall be determined as of the date the bank takes legal title to or physical possession of the property, whichever event occurs first. Subsequently, the carrying value shall be subject to write-down or write-up based upon the most recent appraisal. However, the property must be carried at the lower of the current fair market value less the estimated costs to sell the property or the new basis. The new basis may be adjusted upward in the event the bank makes any permanent capital improvements, subject to the limitations in paragraph (5), necessary to prepare the property for sale but the adjustment in the new basis shall be the lower of the increase in the fair market value of the property after the capital improvements or the amount expended to make the capital improvements. Non-capital improvements and expenses necessary to carrying and maintaining the property (taxes, legal fees, insurance, yard maintenance, etc.) shall be expenses and not added to the carrying value.

Income earned from the property, other than from conversion or sale, shall be credited to income and shall not reduce the carrying value of the property.

(5) A bank may make permanent capital improvements to property subject to this rule if the improvements are:

(a) Reasonably calculated to reduce any shortfall between the property's fair market value and the bank's investment in the property;

(b) Not made for the purpose of speculation; and

(c) Consistent with safe and sound banking practices.

(6) Appraisals obtained pursuant to this rule shall be for the purpose of determining the current fair market value of the property. Appraisals found to reflect other than current fair market value or found to have been performed by persons unfamiliar with such class of property or lacking independence (where required) from the owner of such property may be rejected by the Department and new appraisals required.

Authority: O.C.G.A. § 7-1-61.

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## CHAPTER 80-1-14

### AUDITS

80-1-14-.01 Independent Audits.

#### **80-1-14-.01 Independent Audits.**

(1) Every bank shall have an audit of its books and records performed at least annually by independent public accountants in accordance with generally accepted auditing standards. The audit must be of sufficient scope to enable the auditor to render an opinion on the financial statements of the bank or consolidated holding company. Such audit shall include a review of the bank's internal controls and such other tests and reviews of bank records as deemed appropriate by the independent auditor, including verifications of the bank's loan and deposit accounts, review of fiduciary activities (pursuant to agreed-upon procedures) accounts held in a fiduciary capacity, and adequate testing and review of the bank's information technology activities. The extent of audit work should be clearly defined in engagement letters. Such letters should discuss the scope of the audit, the objectives, resource requirements, audit timeframe, and resulting reports. Independent Public Accountants must make their audit work papers, policies, and procedures available to Department examiners for review upon request.

(2) Audit reports in which the auditor expresses an unqualified opinion shall be provided to the Department upon request. Audit reports in which the auditor expresses anything other than an unqualified opinion, including, but not limited to, a qualified opinion, an adverse opinion, or a

disclaimer of opinion, shall be provided to the Department within fifteen (15) days following receipt by the financial institution. Audit reports submitted to the Department shall be accompanied by the Letter to Management, if applicable, detailing any reportable conditions discovered during the audit engagement. Failure to obtain the required opinion audit, or the auditor's report thereof, shall be reported to the Department within fifteen (15) days of discovery.

Authority: O.C.G.A. §7-1-61.

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## **CHAPTER 80-2-1**

### **BOOKS AND RECORDS**

80-2-1-.02 Minimum Requirements for Books and Records.

#### **80-2-1-.02 Minimum Requirements for Books and Records.**

(1) In addition to the requirements otherwise set forth herein, the following subsidiary records must be maintained:

(a) Securities Register — shall contain a record of all securities, certificates of deposit, commercial paper, acceptances, and other investments bought or sold, showing date of transaction, proper name of the security, interest rate, maturity date, par value, purchase price, book value, schedule of amortization of premium and accretion of discounts, and location where the security is held.

(b) Loan Ledgers —

1. credit unions shall maintain a record of the direct and indirect liability of each member;

2. where a credit union elects to maintain installment loans separately from other direct loans of a borrower and does not include them on the Liability Ledger above, they may be maintained in a separate ledger with payments being posted directly thereto. Such ledger must reflect any and all modifications to the terms of the original note contract which may be granted from time to time, i.e., adjustments of the due date or amount of payments;

3. such record may be maintained in whatever order desired by management, i.e., alphabetical, numerical, class of loan, except where they are not maintained alphabetically, a cross-reference file must be maintained.

(c) Deposit Ledgers — credit unions must maintain separate deposit records for each general ledger segregation of deposits. Such record must contain a continuing itemized record of all deposits and withdrawals. Deposits will be segregated into no fewer than the following categories: Transaction or Share Draft Accounts, Savings Deposits, Christmas Savings, and

Member Deposit Certificates. Deposit records must be posted daily wherever the credit union offers transaction or share draft accounts; provided, a credit union may defer business conducted on Saturday for posting on the next business day. Such record may be maintained in whatever order desired by management; i.e., alphabetical, numerical, class of deposit, except where they are not maintained alphabetically, a cross-reference file must be maintained.

(d) Income and Expense Register — a detailed record of income and expenses must be maintained. Expenses are to be recorded in such detail as to clearly describe each expense; i.e., supplies, rent, salaries, etc.

(e) Cash Items Register — a daily listing must be maintained of all cash items held which shows the maker on the item, last endorser, date acquired, amount, and reason held.

(f) Charged-Off Assets — all charge-offs, including loans, 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. When a recovery is made on an asset that has been charged off, the funds are to be credited to the regular reserve and applied to the account that was charged off.

(g) Safekeeping Register — a register must be maintained of all items held for safekeeping by a credit union for its members other than items maintained in a safe deposit box under the sole control of the member. The register should describe the item fully, show the name of the owner, date received, and the number of the receipt given to the member. When the item is returned to the member, the receipt must be secured by the credit union, signed by the member stating that he has received the item that was held for safekeeping. The receipt must then be maintained with the safekeeping register.

(h) Reconciliation Records — the Supervisory 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 Supervisory 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.

(i) Overdrafts — a record of all overdrawn deposit accounts shall be maintained. Such record 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;

(2) All subsidiary records maintained in support of General Ledger accounts must be balanced back to the General Ledger control balance at least monthly. After balancing at the end of each month on all accounts segregated in the general ledger, the balances and the amounts shown in the general ledger of those accounts and the reconciliation of differences, if any, must



be recorded in the Trial Balance Log. The date and the initials of the person running the trial balance must be entered in the log.

(3) Information required to be maintained pursuant to this Rule may be in written form or available subject to access upon computer query. If available, subject to query access, a written record of such information shall be produced at least monthly.

(4) 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.

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

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**CHAPTER 80-2-4**  
**INVESTMENT OF CREDIT UNION FUNDS**

80-2-4-.02 Investment of Credit Union Funds in Fixed Assets; Requirements.

80-2-4-.04 Purchase of Real Estate for Future Expansion; Letter Notification.

**80-2-4-.02 Investment of Credit Union Funds in Fixed Assets; Requirements.**

(1) The aggregate investment by a credit union in fixed assets shall not exceed sixty (60) percent of total equity capital and reserves (excluding the allowance for loan losses) except that a greater sum may be invested with the prior approval of the Department.

(2) In the event a credit union invests in a leasehold in order to occupy the premises for the transaction of its business and the investment does not cause the credit union to exceed the fixed asset limitation set forth in paragraph (1), the credit union shall provide the Department with written notification of the investment.

(3) Letter form applications seeking approval to invest in fixed assets in an amount in excess of sixty (60) percent of total equity capital and reserves (excluding the allowance for loan losses), must provide for an orderly plan of restoring the fixed asset investment to the sixty (60) percent limitation within not more than five (5) years.

(4) Nothing herein shall be construed as permitting a credit union to acquire real estate without the prior approval of the Department or as expressly provided in Rule 80-2-4-.04.

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

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#### **80-2-4-.04 Purchase of Real Estate for Future Expansion; Letter Notification.**

(1) The purchase of real estate solely for expansion purposes may be made without the prior consent of the Department and by letter notification when:

(a) 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;

(b) The purchase of the real property does not result in the credit union exceeding the fixed asset limitation;

(c) The credit union is not subject to any special requirements whereby the Department requires prior approval for such purchases; and

(d) 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.

(2) The letter notification shall state the date of purchase, purchase price, location of the property, and why the credit union qualifies for letter notification under the provisions of this rule.

(3) The ability to hold property for future expansion shall expire five (5) 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.

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

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### **CHAPTER 80-2-8**

#### **FIELD OF MEMBERSHIP**

80-2-8-.01 Definition.

80-2-8-.04 Requirements for Residential Groups.

##### **80-2-8-.01 Definition**

The field of membership of a state-chartered credit union shall consist of those persons, groups of persons, or organizations, each bound together by its own "common bond," i.e., a specific relationship of occupation, association or interest; residence or employment within a well-defined neighborhood, community, or rural district; employment; or membership in a bona fide cooperative, educational, fraternal, professional, religious, rural or similar organization. The common bond shall be such as would tend to create a mutual interest between persons sharing the relationship and must exist outside of the credit union itself. A common bond within a field

of membership shall include persons related by blood, adoption, or marriage to or living in the same household with a person having the common bond as well as persons and surviving spouses of persons who are no longer within the common bond but who were members of the credit union in good standing when they left.

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

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#### **80-2-8-.04 Requirements for Residential Groups**

(1) A credit union shall request approval from the department to add a residential common bond group to its field of membership by an amendment to its bylaws. O.C.G.A. § 7-1-630(b) permits a common bond of a field of membership to be "residence or employment within a well -defined neighborhood, community, or rural district."

(2) Definitions for residential groups:

(a) "Well defined" shall mean able to be described in writing and delineated by geographic or political boundaries on a map.

(b) "Neighborhood" shall mean a small part of a geographic unit considered in regard to its inhabitants or distinctive characteristics. It will have unifying characteristics such as recreational, associational or social facilities or functions for residents.

(c) "Community" shall mean an area where:

(1) Residents share common political, environmental, geographical or economic characteristics that tend to create a mutual interest; or

(2) Residents share common facilities or services such as an education or transportation system, recreational or cultural facilities, government, medical services, newspaper, fire or police protection, public utilities and services or other unifying characteristics that tend to create interaction or a mutual interest.

(d) "Rural District" shall mean an area that is outside a Metropolitan Statistical Area (MSA) as those areas are established from time to time by the United States Office of Management and Budget. It should also reflect a commonality of interest which may be participation or membership in agricultural, land use, or soil conservation districts or associations.

(3) A residential group common bond request shall be accompanied by application to the department and a proposed change to the credit union's bylaws. In reviewing such application, the department shall consider:

(a) Whether the well-defined area has adequate unifying characteristics or a mutual interest such that the safety and soundness of the institution, and protection of the funds invested by members, is maintained;

(b) Consistent with Chapter 1 of Title 7, the ability of state credit unions to maintain parity and to compete fairly with their federal counterparts, and the law and rules of the National Credit Union Administration regarding community common bonds;

(c) Service by the credit union that is responsive to the needs of prospective members, to promote thrift and create a source of credit at reasonable rates;

(d) Protection for the interests of current and future members of the credit union; and

(e) The encouragement of economic progress in the state by allowing the opportunity to expand services and facilities.

(4) The applicant credit union shall have the burden to show to the department such facts and data that support the requirements and considerations in this rule and department policy.

(5) The department shall formulate detailed policies and procedures to guide credit unions in making applications for residential groups, and to give specific requirements. The financial and managerial capacity of a credit union shall be a primary consideration for the department in approving any residential group common bond. The credit union must demonstrate that the size, capability and experience of its management is adequate to meet the demands of the residential group proposed. A comprehensive strategic and ongoing business plan will be required that addresses the services to be provided, impact on the credit union's capital and resources, adequacy of fixed assets, service distribution capability, data management facilities, and ability of management to recognize, monitor and control risk.

Authority: O.C.G.A. §§ 7-1-3; 7-1-61; 7-1-70; 7-1-630; 7-1-634; 7-1-663.

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## **CHAPTER 80-2-12**

### **CREDIT UNION LOANS**

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

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

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

participation, a summary of information sufficient to conclude that all legal and regulatory requirements have been met.

- (2) A credit union that purchases a loan has the responsibility of conducting loan underwriting procedures on the loan to determine that it complies with the policies of the credit union and meets the credit union's credit standards.
- (3) The following additional requirements apply to a participation purchase in pools of loans and, those that are applicable, apply to a whole loan purchase in pools of loans:
  - (a) Loans in the pool or discount line must be specifically identifiable on the records of the selling financial institution.
  - (b) The participation agreement must call for the participant to share pro rata in losses experienced by the pool.
  - (c) The participation agreement must provide for a periodic, at least quarterly, report by the seller to the purchaser to account for settlement for losses incurred and to provide information on past due status of loans contained in the pool or discount line.
  - (d) Where the purchase exceeds the purchasing credit union's unsecured lending limit, the purchase must be accorded prior written approval from the Board or the Board-approved credit committee.
  - (e) The purchase in the pool must satisfy safety and soundness. In determining whether a participation in a pool of loans is safe and sound, the department will consider:
    1. The credit union's understanding of the selling financial institution's organization, business model, financial health, and the related risks of the participation;
    2. The credit union's due diligence in monitoring and protecting against participation risks;
    3. If contracts between the credit union and the selling financial institution grants the credit union sufficient control over the seller's actions and provides for replacing an inadequate servicer; and

4. Other factors relevant to safety and soundness.

- (4) Where agreements exist for the seller to repurchase or indemnify loss, participation and whole loan purchases shall be treated as loans to the seller by the purchasing credit union and the amount of the purchase shall be considered to be remaining on the seller's books for the purposes of the seller's loan limitations.
- (5) The purchasing credit union shall be deemed in compliance with the documentation requirements of this Rule so long as the credit union may electronically access, on demand, the required pertinent documentation required by this Rule.

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

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## **CHAPTER 80-3-1**

### **MONEY TRANSMISSION AND RELATED FINANCIAL SERVICES**

80-3-1-.07 Administrative Fines and Penalties.

#### **80-3-1-.07 Administrative Fines and Penalties.**

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

(2) All fines levied by the Department are due within thirty (30) days from the date of assessment and must be paid prior to renewal of the annual license, reapplication for a license, or any other activity requiring Departmental approval.

(3) Check Cashers. The Department establishes the following fines and penalties for violation of the law and rules governing check cashers.

(a) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain its books and records according to the requirements of O.C.G.A. § 7-1-706(a) and Rules 80-3-1-.02(2) or 80-3-1-.02(5), such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each books and records violation listed in Rules 80-3-1-.02(2) or 80-3-1-.02(5).

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

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

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

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

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

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

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

(i) Corporate Checks. Any licensee that cashes a payment instrument made payable to a corporation or other business association or cashes a payment instrument drawn by the corporation or other business association and made payable to cash without the proper written authorization as required by O.C.G.A. § 7-1-707(d) and Rule 80-3-1-.02(3) shall be subject to a fine of one thousand dollars (\$1,000) per occurrence.

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

(k) Identification Requirements for Cashing Payment Instruments. No licensee shall cash payment instruments without identification of the bearer of such check. Failure to comply with

the requirements of O.C.G.A. § 7-1-707(e) shall subject the licensee to a fine of one thousand dollars (\$1,000) per occurrence.

(l) Failure to Submit to Exam. The penalty for the refusal of a licensee to permit the Department to conduct an investigation or examination of its books, accounts, and records, shall be the revocation of its license and a five thousand dollars (\$5,000) fine.

(m) Consumer Complaints. Any licensee who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department's correspondence to such licensee, shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence. Repeated failure to properly respond, as reasonably determined by the Department, may result in the revocation or suspension of its license.

(n) Failure to Notify the Department of Change in Ownership, Change in Control, or Designation of Executive Officer. Any licensee or other person who fails to notify and obtain the Department's approval of a change in ownership, change in control, or change in executive officer of the licensee in compliance with O.C.G.A. § 7-1-705.1 and Rule 80-3-1-.02 shall be subject to a fine of one thousand dollars (\$1,000) and its license will be subject to revocation or suspension.

(o) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 ("Bank Secrecy Act") or the requirements referred to in Rules 80-3-1-.03, 80-3-1-.04, and 80-3-1-.06, such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each instance of non-compliance.

(p) Failure to Post Required License or Failure to Include Required Legend on Advertising. Any licensee that fails to post a copy of its license in prominent view of each teller window or other customer service station, or distributes advertising in this state related to the cashing of payment instruments that fails to display the phrase "LICENSED BY THE GEORGIA DEPARTMENT OF BANKING AND FINANCE" shall be subject to a fine of five hundred dollars (\$500) for each instance of non-compliance.

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

(r) Failure to Timely Update Information on the Nationwide Multistate Licensing System and Registry. Any licensee that fails to update its information on the Nationwide Multistate Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions, within ten (10) business days of the date of the event



necessitating the change, shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. In addition, the failure of a control person of a licensee to update the individual's information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions by the control person, within ten (10) business days of the date of the event necessitating the change, shall subject the licensee to a fine of one thousand dollars (\$1,000) per occurrence.

(4) Payment Instrument Sellers and Money Transmitters. The Department establishes the following fines and penalties for violation of the laws and rules governing payment instrument sellers and money transmitters.

(a) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain its books and records according to the requirements of O.C.G.A. § 7-1-689 and Rules 80-3-1-.01(4), 80-3-1-.01(6), 80-3-1-.01(7), 80-3-1-.01(9), or 80-3-1-.01(10), such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each books and records violation listed in Rule 80-3-1-.01(4), 80-3-1-.01(6), 80-3-1-.01(7), 80-3-1-.01(9), or 80-3-1-.01(10).

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

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

(d) Locations and Authorized Agents. Any licensee that does not give timely notice to the Department of new locations or agents beyond those previously reported as required in O.C.G.A. § 7-1-686(d) and Rule 80-3-1-.01(4), shall be subject to a fine of five hundred dollars (\$500) for each location or agent not reported.

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

(f) Authorized Agents. Any licensee that does not give notice of an authorized agent whose agency certificate has been revoked, suspended, cancelled, terminated, or voluntarily closed by the licensee as required by Rule 80-3-1.01(6), shall be subject to a fine of five thousand dollars (\$5,000) for each authorized agent revocation, suspension, cancellation, termination, or voluntary closure not reported in writing to the Department.

(g) Failure to Provide Receipt. In the event a licensee or its authorized agent does not provide the customer with a written receipt or other evidence of acceptance as required in Rule 80-3-1-.01(9), it shall be subject to a fine of one thousand dollars (\$1,000) per transaction where the receipt was not provided.

(h) Failure to Notify the Department of Change in Ownership, Change in Control, or Designation of Executive Officer. Any licensee or other person who fails to notify and obtain the Department's approval of a change in ownership, change in control, or change in executive officer of the licensee in compliance with O.C.G.A. § 7-1-688 and Rule 80-3-1-.01 shall be subject to a fine of one thousand dollars (\$1,000) and its license will be subject to revocation or suspension.

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

(j) Failure to Report. Any licensee who fails to provide required reports as established by the Department and file the reports with the Department or the Nationwide Multistate Licensing System and Registry within the designated time periods shall be subject to a fine of one thousand dollars (\$1,000) for each such occurrence. Repeated failure to provide timely reports as required may result in additional administrative action by the Department, including, but not limited to, license revocation.

(k) Failure to Submit to Exam. The penalty for the refusal of a licensee to permit the Department to conduct an investigation or examination of its books, accounts, and records, shall be the revocation of its license and a five thousand dollars (\$5,000) fine.

(l) Consumer Complaints. Any licensee who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department's correspondence to such licensee, shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence. Repeated failure to properly respond, as reasonably determined by the Department, may result in the revocation or suspension of its license.

(m) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 ("Bank Secrecy Act") or the requirements referred to in Ruled 80-3-1-.03, 80-3-1-.04, and 80-3-1-.06, such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each instance of non-compliance.

(n) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensed payment instrument seller or

money transmitter that fails to disclose that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee within ten (10) business days of the date of the event necessitating the disclosure, shall be subject to a fine of one thousand dollars (\$1,000). Any licensed payment instrument seller or money transmitter that fails to submit a new lawful presence affidavit from a current owner or executive officer within ten (10) business days of the owner or executive officer that executed the previous lawful presence affidavit no longer being in that position with the licensee, shall be subject to a fine of one thousand dollars (\$1,000) per day until the new affidavit is provided.

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

(p) Failure to Post Required License or Failure to Include Required Legend on Advertising. Any licensee that fails to post a copy of its license in the premises where money is transmitted or where payment instruments are issued or sold, or distributes advertising in this state related to the issuance or sale of payment instruments or money transmission that fails to display the phrase “LICENSED BY THE GEORGIA DEPARTMENT OF BANKING AND FINANCE” shall be subject to a fine of five hundred dollars (\$500) for each instance of non-compliance.

Authority: O.C.G.A. §§ 7-1-61; 7-1-694; 7-1-708.2

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## CHAPTER 80-5-1

### **SUPERVISION, EXAMINATION, REGISTRATION AND INVESTIGATION FEES, ADMINISTRATIVE LATE FEES**

80-5-1-.03 Examination, Supervision, Registration, Application and Other Fees for Financial Institutions and Nonbank Subsidiaries of Banks or Holding Companies.

#### **80-5-1-.03 Examination, Supervision, Registration, Application and Other Fees for Financial Institutions and Nonbank Subsidiaries of Banks or Holding Companies.**

(1) Examinations. That portion of annual appropriations allocable to regular examination and supervision activities shall be assessed in accordance with the following scale for depository financial institutions:

(a)

If the amount of Total Assets is:		Assessment will be:		
Over	But Not Over	This Amount	Plus	Of Excess Over
0	1,700,000	0	0.001800	* 0
1,700,000	15,000,000	3,060	0.000230	1,700,000
15,000,000	85,000,000	6,119	0.000190	15,000,000
85,000,000	185,000,000	19,419	0.000100	85,000,000
185,000,000	915,000,000	29,419	0.000095	185,000,000
915,000,000	1,825,000,000	98,769	0.000085	915,000,000
1,825,000,000	5,470,000,000	176,119	0.000072	1,825,000,000
5,470,000,000	18,240,000,000	438,559	0.000056	5,470,000,000
18,240,000,000	36,485,000,000	1,153,679	0.000050	18,240,000,000
36,485,000,000	45,000,000,000	2,065,929	0.000040	36,485,000,000
45,000,000,000	57,000,000,000	2,406,529	0.000035	45,000,000,000
57,000,000,000	92,000,000,000	2,826,529	0.000030	57,000,000,000
92,000,000,000	130,000,000,000	3,876,529	0.000025	92,000,000,000
130,000,000,000	180,000,000,000	4,826,529	0.000023	130,000,000,000
180,000,000,000		5,976,529	0.000020	180,000,000,000

\* Minimum assessment is \$350.

Note: Total Assets and resultant assessment may be rounded to the nearest dollar.

(b) All other financial institutions, including credit card banks, bankers banks, central credit unions, and related corporations not covered elsewhere in this Section, licensees under Article 4 (Payment Instrument Sellers and Money Transmitters) and 4A (Check Cashers) of Chapter 1 of Title 7, licensees and registrants under Article 13 of Chapter 1 of Title 7(Georgia Residential Mortgage Act), trust departments, and financial service providers shall pay an examination fee at the rate of \$65 per examiner-hour but not less than \$500 unless such examination is conducted in conjunction with another ongoing examination in which case there shall be no minimum charge. The above per hour charge shall be compensation for the work of Department examiners as well as any necessary, qualified outside assistance. The examination fee shall be due and payable immediately upon receipt of documentation from the Department setting forth the total amount of the fee. The \$500 minimum charge may be waived by the Commissioner or his/her designee when such charge clearly exceeds the hours spent on an examination.

(c) Notwithstanding the provisions of subsection (b) above, licensees under Article 13 of Chapter 1 of Title 7 shall pay the actual cost incurred by the Department in the conduct of an out of state examination, including personnel costs, transportation costs, meals, lodging and other incidental expenses, in addition to \$65 per examiner hour spent on the examination.

(d) The Department may discount or surcharge all examination and supervision fees herein provided to assure that anticipated revenues of the Department will fund the annual appropriation by the General Assembly.

(e) The Department may also require reimbursement for direct expenses, such as transportation costs, meals, lodging, etc. associated with out-of-state examinations or supervisory visits for any regulated entity, including money services businesses.

(2) Banking applications:

(a) Applicants for new branch offices or relocations of financial institutions shall pay an investigation fee of \$1,250 for each application. Simple re-designations of existing bank locations require only prior notification in writing. Branch Offices established under the notice procedure shall pay a fee of \$500.

(b) Applicants for approval of new bank, trust company, state savings or mutual savings bank, or savings and loan associations charters shall pay an investigation fee of \$20,000 for each application. Bank charter applications qualifying for expedited processing will be assessed an investigation fee of \$10,000. Applicants for approval of a new credit card bank or a special purpose bank shall pay an investigation fee of \$25,000. Prior to commencing business, successful applicants shall pay a supervisory and examination fee covering the preopening organizational supervision and initial operating supervision of the new institution in the amount of \$5,000.

(c) Applicants for approval for a company to become a bank holding company, other than for a de novo bank, may receive regular or expedited processing. Regular processing is \$3,500; expedited processing is \$2,500. Formation of a holding company simultaneously with formation of a de novo bank requires a regular processing fee of \$3,500, which, if applicable, is reduced by the fee for a new state charter.

(d) Applicants for a bank holding company to acquire five (5) percent or more but less than twenty-five (25) percent of the outstanding voting stock of a financial institution, or for review of a change of control shall pay an investigation fee of \$3,500 for each such application, provided, however, the Commissioner may waive or reduce such investigation fee in the case of a merger under emergency conditions as determined by the Department or in the case of interstate transactions where a comparable fee has already been paid for an earlier, related transaction among the same entities.

(e) Applicants for a bank holding company to acquire twenty-five (25) percent or more of the outstanding voting stock of a financial institution, shall pay an investigation fee of \$6,000. Expedited processing for these acquisitions is \$4,500. The fee for an intrastate and a covered interstate merger of banks or bank holding companies is \$4,500, reduced by a Department fee for a simultaneous acquisition if it has been paid. The Commissioner, however, may waive or reduce such investigation fee in the case of a merger under emergency conditions as determined by the Department or, in the case of interstate transactions where a comparable fee has already been paid for an earlier, related transaction among the same entities.

(f) Applicants for license to operate an international agency shall pay an investigation fee of \$5,000. In the event the application is denied, \$2,000 representing the applicant's initial license fee shall be refunded. International bank agencies and domestic international banking facilities shall pay an annual license or registration fee of \$2,000, on the first day of April of each year. Renewal licenses shall be issued for a twelve month period.

(g) Depository financial institutions, except credit card banks, bankers banks, and central credit unions shall pay an annual supervision fee as part of the examination fee prescribed in Rule 80-5-1-.03.

(h) All other financial institutions supervised by the Department who are not already covered by this chapter, except international agencies, shall pay an annual supervision fee of \$500, due on or before January 31 of each year.

(i) The investigation fee for conversion to a state bank is \$20,000.

(j) If a bank satisfies the banking factors set out in the Department's Statement of Policies, the fee to exercise a single trust power is \$250 and the processing is expedited to 7 days. A completed letter form application to exercise limited trust powers will be reviewed in 15 days; the fee is \$750. A bank that desires to exercise full trust powers files a regular application including a copy of the FDIC application. A complete application will be reviewed in 30 days; the fee is \$1,250.

(k) Regular applications to establish or acquire a subsidiary of a bank shall require a fee of \$500. Banks qualified to file expedited applications according to the criteria in DBF Rule 80-1-1-.10 are not subject to a fee.

(3) General rules for fees; holding companies with subsidiaries in Georgia.

(a) Each bank holding company supervised by the Department shall pay on or before September 15 an annual supervision fee of \$1,000. Each Georgia bank holding company or a holding company that owns a Georgia bank shall pay each year on or before the date the holding company supervision fee is due an additional \$500 for each Georgia non-bank subsidiary corporation of the bank holding company, excluding subsidiaries assessed pursuant to Rule 80-5-1-.03(1)(a) and subsidiaries paying an annual license or registration fee pursuant to Rule 80-5-1-.02(4), as of June 30 preceding the supervision fee due date.

(b) Applications covering more than one transaction (branch, acquisition, merger, etc.), which require the Department to separately analyze each application shall pay the applicable fee for each transaction.

(c) The annual assessment rates included in subparagraph (1)(a) above will normally be used in connection with any annual assessment of depository financial institutions having banking offices in more than one state including Georgia. The Commissioner, however, will have the discretion to deviate from the rates included in the assessment schedule and other rates and charges including application fees in order to facilitate or implement interstate efforts to regulate

and supervise multi-state banks or for parity reasons.

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

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## **CHAPTER 80-9-1**

### **CURRENCY TRANSACTION REPORTS AND SUSPICIOUS ACTIVITIES: BANKS**

80-9-1-.02 Suspicious Activities: State Financial Institutions.

#### **80-9-1-.02 Suspicious Activities: State Financial Institutions.**

(1) A state chartered financial institution filing a suspicious activity report (SAR) with a federal authority must send a copy of such report to the Department promptly after filing the SAR if:

(a) The SAR involves a director, officer, employee, or principal shareholder of the state chartered financial institution, or a known immediate family member, related interest, or an affiliate of a director, executive officer, or principal shareholder of the state chartered financial institution;

(b) The SAR indicates that a financial institution is a suspect or otherwise indicates the possibility that such financial institution violated the law; or

(c) The SAR involves an affiliate or subsidiary of the financial institution.

(2) Along with any SAR forwarded to the Department, a financial institution shall also notify the Department when law enforcement or the financial institution's insurers, including, but not limited to surety companies, have been notified of the underlying activity.

(3) Financial institutions must comply with federal requirements for detecting and reporting any suspicious activities.

Authority: O.C.G.A. §§ 7-1-61; 7-1-704.

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## **CHAPTER 80-11-3**

### **ADMINISTRATIVE FINES AND PENALTIES**

Rule 80-11-3-.01 Administrative Fines.

#### **Rule 80-11-3-.01. Administrative Fines.**

- (1) The Department establishes the following fines and penalties for violation of the Georgia Residential Mortgage Act ("GRMA") or its rules. Except as otherwise indicated, these fines and penalties apply to any person who is acting as a mortgage lender or broker and who is required to be licensed or registered under Article 13 of Chapter 1 of Title 7 ("licensee" or "registrant"). The Department, at its sole discretion, may waive or modify a fine based upon the financial resources of the person, gravity of the violation, history of previous violations, and such other facts and circumstances deemed appropriate by the department.
- (2) All fines levied by the Department are due within thirty (30) days from date of assessment and must be paid prior to renewal of the annual license or registration, reinstatement of a license or registration, or reapplication for a license or registration, or any other activity requiring Departmental approval.
- (3) Dealing with Unlicensed Persons. Any licensee or registrant or any employee of either who purchases, sells, places for processing or transfers (or performs activities which are the equivalent thereof) a mortgage loan or loan application to or from a person who is required to be but is not duly licensed under the GRMA shall be subject to a fine of one thousand dollars (\$1,000) per transaction and the licensee or registrant shall be subject to suspension or revocation. Licensees are responsible for the actions of their employees.
- (4) Permitting unlicensed persons to engage in mortgage loan originator activities. Any licensee or registrant who employs a person who does not hold a mortgage loan originator's license but engages in licensed mortgage loan originator activities as set forth in O.C.G.A. § 7-1-1000(22) shall be subject to a fine of one thousand dollars (\$1,000) per occurrence and the licensee or registrant shall be subject to suspension or revocation. Licensees are responsible for the actions of their employees.
- (5) Relocation of Office. Any mortgage broker or mortgage lender licensee who relocates their main office or any additional office and does not notify the Department within thirty (30) days of the relocation in accordance with O.C.G.A. § 7-1-1006(e) shall be subject to a fine of five hundred dollars (\$500).
- (6) Unapproved Offices. In addition to the application, fee and approval requirements of O.C.G.A. § 7-1-1006(f), any licensee who operates an unapproved branch office shall be subject to a fine of five hundred dollars (\$500) per unapproved branch office operated and their license will be subject to revocation or suspension.
- (7) Change in Ownership. Any person who acquires ten percent (10%) or more of the capital stock or a ten percent (10%) or more ownership of a mortgage broker or mortgage lender licensee without the prior approval of the Department in violation of O.C.G.A. § 7-1-1008 shall be subject to a fine of one thousand dollars (\$1,000) and their license or registration will be subject to revocation or suspension.
- (8) Doing Business Without a License or in Violation of Administrative Order. Any person who acts as a mortgage broker or mortgage lender prior to receiving a current license or registration required under O.C.G.A. Title 7, Chapter 1, Article 13, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a



fine of one thousand dollars (\$1,000) per transaction and their mortgage lender or broker application will be subject to denial or their license or registration will be subject to revocation or suspension.

- (9) Hiring a Felon. Any mortgage broker or mortgage lender licensee or registrant who hires or retains an employee who is a felon as described in O.C.G.A. § 7-1-1004(h), which employee has not complied with the remedies provided for in O.C.G.A. § 7-1-1004(h), may be fined five thousand dollars (\$5,000) per employee found to be in violation of such provision and their license or registration will be subject to revocation or suspension.
- (10) Hiring Persons Otherwise Disqualified from Conducting a Mortgage Business. Any mortgage broker or mortgage lender licensee or registrant who employs any person against whom a final cease and desist order has been issued for a violation that occurred within the preceding five (5) years, if such order was based on a violation of O.C.G.A. § 7-1-1013 or based on the conducting of a mortgage business without a required license or exemption, or whose license was revoked within five (5) years of the date such person was hired pursuant to O.C.G.A. § 7-1-1004(o) shall be subject to a fine of five thousand dollars (\$5,000) per such employee and its license or registration will be subject to revocation or suspension.
- (11) Books and Records Violations. If the Department, in the course of an examination or investigation, finds that a licensee or registrant has failed to maintain their books and records according to the requirements of O.C.G.A. § 7-1-1009 and Rule Chapter 80-11-2, such licensee or registrant may be subject to a fine of one thousand dollars (\$1,000) for each violation of a books and records requirement listed in Rule Chapter 80-11-2.
- (12) (a) Maintenance of Loan Files. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or any lender acting as a broker who fails to maintain a loan file for each mortgage loan transaction as required by Rule 80-11-2-.04 or who fails to have all required documents in such file shall be subject to a fine of one thousand dollars (\$1,000) per file not maintained or not accessible, or per file not containing required documentation.  
  
(b) Maintenance of Service Files. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage lender who fails to maintain a servicer file for each mortgage loans it services, as required by Rule 80-11-6-.04(1)(b), or who fails to have all required documents in such file shall be subject to a fine of one thousand dollars (\$1,000) per file not maintained or not accessible, or per file not containing required documentation.
- (13) Payment of \$10.00 fees and filing of fee statement. Pursuant to Rule 80-5-1-.04 and O.C.G.A. § 7-1-1011, any person who is the collecting agent at a closing of a mortgage loan transaction, is liable for payment of the \$10.00 fee to the Department. The remittance of any \$10.00 fees required to be collected after the date on which they are due shall subject the collecting agent to a late payment fee of one hundred dollars (\$100) for each due date missed. If the Department finds that the collecting agent has not, through negligence or otherwise, submitted \$10.00 fees within six months of the due

date, the collecting agent will be subject to an additional fine of twenty (20) percent of the total amount of \$10.00 fees required to be collected for the applicable period. Repeated failures to submit \$10.00 fees may be grounds for revocation of license.

- (14) Repealed. Reserved.
- (15) Failure to Timely Report Certain Events. Any person required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage lender or broker, who fails to report any of the events enumerated in O.C.G.A. § 7-1-1007(d), shall be subject to a fine of one thousand dollars (\$1,000) per act not reported in writing to the Department within 10 days of knowledge of such act.
- (16) Prohibited Acts. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or mortgage lender who violates the provisions of O.C.G.A. § 7-1-1013 shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation and his or her license shall be subject to suspension or revocation. Misrepresentations also subject the person making them to a fine. Misrepresentations include but are not limited to the following:
  - (i) inaccurate or false identification of applicant's employer;
  - (ii) significant discrepancy between applicant's stated income and actual income;
  - (iii) omission of a loan to applicant, listed on loan application, which was closed through same lender or broker;
  - (iv) false or materially overstated information regarding depository accounts;
  - (v) false or altered credit report; and
  - (vi) any fraudulent or unauthorized document used in the loan process. A fine of one thousand dollars (\$1,000) shall be assessed for any other violation of O.C.G.A. § 7-1-1013. The Department shall upon written request provide evidence of the violation.
- (17) Branch Manager Approval. Any person who is required to be licensed or registered as a mortgage broker or mortgage lender shall be subject to a fine of five hundred dollars (\$500) for operation of a branch with an unapproved branch manager and the license will be subject to revocation or suspension. No such fine shall be levied while Department approval is pending if timely application for approval is made pursuant to Rule 80-11-1-.04.
- (18) Repealed. Reserved.
- (19) Failure to Fund. O.C.G.A. § 7-1-1013(3) prohibits failure "to disburse funds in accordance with a written commitment or agreement to make a mortgage loan." If the Department finds, either through a consumer complaint or otherwise, that a lender or a broker acting as a lender has failed to disburse funds in accordance with closing documents, which include legally binding executed agreements indicating a promise to

pay and a creation of a security interest, a fine of five thousand dollars (\$5,000) per transaction may be imposed and its license or registration may be subject to revocation or suspension.

- (20) Advertising. Any person who is required to be licensed or registered as a mortgage broker or mortgage lender who violates the regulations relative to advertising contained in O.C.G.A. § 7-1-1004.3 and § 7-1-1016 or the advertising requirements of department Rule 80-11-1-.02 shall be subject to a fine of five hundred dollars (\$500) for each violation of law or rule.
- (21) Failure to Submit to Examination or Investigation. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department) shall be revocation of the license or registration and a five thousand dollars (\$5,000) fine. Refusal shall be determined according to Department examination policies and procedures, but shall require at least two attempts to schedule an examination or investigation.
- (22) Repealed. Reserved.
- (23) Background Checks. Any licensee who fails to perform proper background checks on covered employees in accordance with the provisions of O.C.G.A. § 7-1-1004(h), (i), and (k) shall be subject to a fine of one thousand dollars (\$1,000) for each employee on whom the required background check was not conducted.
- (24) Change in Officers. Any licensee who fails to notify the Department of a change in principals of the company without the proper approval of the Department in violation of O.C.G.A. § 7-1-1006(e) shall be subject to a fine of five hundred dollars (\$500).
- (25) Georgia Fair Lending Act. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or mortgage lender who violates any provision of Chapter 6A of Article 13, the Georgia Fair Lending Act, shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation and their license will be subject to revocation or suspension.
- (26) Consumer Complaints. Any licensee or registrant who fails to respond to a consumer complaint or fails to respond to the Department within the time periods specified in the Department's correspondence to such person shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence. Repeated failure to properly respond to consumer complaints may result in revocation of license.
- (27) Failure to Perform Timely Background Checks. If the ten (10) day requirement for submission of background information to the proper law enforcement authorities is not met, the employer shall be subject to a one thousand dollars (\$1,000) fine.
- (28) Failure to File Timely or Accurate Call Reports. Any licensee or registrant who fails to file a timely Call Report as required through the Nationwide Multi-State Licensing System and Registry or fails to file an accurate Call Report shall be subject to a fine of one hundred dollars (\$100) per occurrence. Repeated failure to file timely or accurate Call Reports may subject the license or registration to revocation or suspension.

- (29) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensed mortgage lender, mortgage broker, or registrant that fails to disclose that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee or registrant within ten (10) business days of the date of the event necessitating the disclosure, shall be subject to a fine of one thousand dollars (\$1,000). Any licensed mortgage broker, mortgage lender, or registrant that fails to submit a new lawful presence affidavit from a current owner or executive officer within ten (10) business days of the owner or executive officer that executed the previous lawful presence affidavit no longer being in that position with the licensee or registrant, shall be subject to a fine of one thousand dollars (\$1,000) per day until the new affidavit is provided.
- (30) Failure to Timely Update Information on the Nationwide Multi-State Licensing System and Registry. Any licensed mortgage broker, mortgage lender, or registrant that fails to update its information on the Nationwide Multi-State Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions on an application or a licensee's or registrant's NMSLR MU-1, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. In addition, the failure of a control person of a licensed mortgage broker, mortgage lender, or registrant to update the individual's information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions on the control person's NMSLR MU-2, within ten (10) business days of the date of the event necessitating the change, shall subject the licensed mortgage broker, mortgage lender, or registrant to a fine of one thousand dollars (\$1,000) per occurrence.

Authority: O.C.G.A. §§ 7-1-61; 7-1-1004.1; 7-1-1012.

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## **CHAPTER 80-11-6**

### **MORTGAGE SERVICING**

Rule 80-11-6-.01 Definitions.

Rule 80-11-6-.02 Mortgage Servicer Standards.

Rule 80-11-6-.03 Mortgage Servicer Location Requirements and Minimum Retention Periods.

Rule 80-11-6-.04 Minimum Requirements for Books and Records.

#### **Rule 80-11-6-.01 Definitions.**

- (1) As used in Chapter 80-11-6, the terms that are defined in O.C.G.A. §§ 7-1-4 and 7-1-1000 shall have the identical meaning.
- (2) As used in Chapter 80-11-6, the below terms shall be defined as follows unless the term is otherwise defined in a specific rule:
  - (a) “Complete loss mitigation application” means an application in which a servicer has received all of the information that the servicer requires from a borrower in evaluating applications for loss mitigation options available to the borrower. A servicer shall exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application.
  - (b) “Notice of error” means any written notice from the borrower that asserts an error and that includes the name of the borrower, information that enables the servicer to identify the borrower’s mortgage loan account, and the error the borrower believes has occurred. A notice on a payment coupon or other payment form supplied by the servicer need not be treated by the servicer as a notice of error.

Authority: O.C.G.A. §§ 7-1-61; 7-1-1012.

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#### **Rule 80-11-6-.02. Mortgage Servicer Standards.**

- (1) The standards set forth in this Rule apply only to persons licensed, registered, or required to be licensed or registered under Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated.
- (2) Except as set forth in paragraph (7) of this Rule, any person who services a mortgage loan (“servicer”):
  - (a) Shall act with reasonable skill, care, and diligence;
  - (b) Shall not charge fees for:
    1. Handling borrower disputes;
    2. Facilitating routine borrower collections;
    3. Arranging repayment or forbearance plans;
    4. Sending borrowers notice of nonpayment;
    5. Updating records to reinstate a mortgage loan; and
    6. Late payment in excess of the initial late payment fee, as provided by 12 C.F.R. § 1026.36(c)(2).
  - (c) Except as set forth in section (d) below, shall not commence a foreclosure process while a borrower’s complete loss mitigation application is pending (“dual-tracking”);
  - (d) Shall not conduct a foreclosure sale before evaluating the borrower’s complete loss mitigation application in the event the complete loss mitigation application is received after a foreclosure process has been commenced.
  - (e) Shall consider loss mitigation whenever possible and, at a minimum:
    1. Acknowledge receipt of a borrower’s initial loss mitigation application within

- 5 business days of receipt;
  2. Upon receipt of a borrower's initial loss mitigation application, provide name, address, and a collect call or toll-free telephone number for an employee or department of the servicer that can be contacted by the borrower regarding loss mitigation application inquiries;
  3. Upon receipt of a borrower's initial loss mitigation application, identify requirements for loss mitigation options, if available; and
  4. Evaluate a borrower's eligibility for available loss mitigation options within 30 days of receipt of loss mitigation application.
- (f) Shall have a process for borrowers to appeal loss mitigation disputes, including, but not limited to, a formal review of loss mitigation options, to personnel different than those responsible for previous evaluations or provide an option for borrowers to mediate such disputes;
- (g) Shall have an error resolution process for all borrowers, unless expressly excluded pursuant to 12 C.F.R. § 1024.35(g), which must, at a minimum:
1. Acknowledge receipt of a borrower's notice of error within 5 business days of receipt;
  2. Conduct a reasonable investigation; and
  3. Within 45 days, except where prompter compliance is required by 12 C.F.R. § 1024.35(e)(3) or alternative compliance is provided in 12 C.F.R. § 1024.35(f), provide a borrower with a written notification of: (i) the correction of error or (ii) the servicer's determination that no error occurred and the reason for such determination.
- (h) Shall apply payments to the principal and interest first, rather than the insurance, taxes, and fees of the mortgage loan, except where inconsistent with federal law;
- (i) Shall not assess on a borrower any charge or fee related to force-placed insurance, unless the servicer has a reasonable basis to believe the borrower has failed to comply with the mortgage contract's requirements to maintain insurance; and
- (j) Shall not obtain force-placed insurance for a borrower that imposes an unreasonable charge or fee related to the force-placed insurance.
- (3) If the terms of a mortgage loan require the borrower to make payments to the servicer of the mortgage loan for deposit into an escrow account to pay taxes, insurance premiums, and other charges for the residential property, the servicer shall make payments from the escrow account in a timely manner, that is, on or before the deadline to avoid a penalty, as long as the borrower's payment is not more than 30 days overdue.
- (4) Each servicer shall submit to the Nationwide Multistate Licensing System and Registry reports of condition in accordance with O.C.G.A. § 7-1-1004.1 containing information detailing the servicer's activities, including, but not limited to:
- (a) The number of mortgage loans serviced;
  - (b) Delinquency status of mortgage loans serviced;

- (c) The number of mortgage loan modifications; and
  - (d) The number of foreclosures.
- (5) Each servicer shall make the following disclosures in writing to borrowers:
- (a) At the time a servicer acquires the right to service the mortgage loan the following initial disclosures:
    - 1. Complete and current schedule of servicing fees;
    - 2. The name, address, and a collect call or toll-free telephone number for an employee or department of the servicer that can be contacted by the borrower regarding servicing; and
    - 3. A statement of the mortgage servicer standards set forth in paragraph (2) of this Rule including a description of the servicer's appeal process as required by paragraph (2)(f). However, a small servicer as set forth in 12 C.F.R. § 1026.41(e)(4)(ii) is not required to make the disclosures set forth in paragraph (2)(c), (d), (e), and (f).
  - (b) As required by federal law, including, but not limited to, 12 C.F.R. § 1024.33, upon the transfer of its right to service a mortgage loan within the period of time required by federal law, the following subsequent disclosures:
    - 1. The effective date of the transfer of servicing;
    - 2. The name, address, and a collect call or toll-free telephone number for an employee or department of the transferee servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;
    - 3. The name, address, and a collect call or toll-free telephone number for an employee or department of the transferor servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;
    - 4. The date on which the transferor servicer will cease to accept payments relating to the mortgage loan and the date on which the transferee servicer will begin to accept such payments. These dates shall either be the same or consecutive days;
    - 5. Whether the transfer will affect the terms or the continued availability of mortgage life or disability insurance, or any other type of optional insurance, and any action the borrower must take to maintain such coverage; and
    - 6. A statement that the transfer of servicing does not affect any term or condition of the mortgage loan other than terms directly related to the servicing of the loan.
- (6) If a servicer discovers a violation of these standards, the servicer:
- a. Has a duty to mitigate the harm to the borrower;
  - b. Shall maintain a record of such violation in accordance with Rule 80-11-6-.04(1)(c); and
  - c. Shall report to the department within 10 days of discovery any violation that, at the

time of discovery, has the potential to result in aggregate financial harm to the borrower(s) in excess of \$1,000.00.

- (7) Sections 2 (c), (d), (e) and (f) of this Rule shall not apply to a servicer that qualifies as a “small servicer” pursuant to 12 C.F.R. § 1026.41(e) However, nothing herein shall be deemed to excuse a “small servicer”, as defined in 12 C.F.R. § 1026.41(e), from complying with the requirements of applicable federal law including, but not limited to, 12 C.F.R. § 1041.41(j)
- (8) Failure to adhere to these standards may result in revocation of the license or registration and will subject the licensee or registrant to fines in accordance with regulations prescribed by the department, including Rule Chapter 80-11-3.

Authority: O.C.G.A. §§ 7-1-61; 7-1-1012.

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### **Rule 80-11-6-.03 Mortgage Servicer Location Requirement and Minimum Retention Period.**

- (1) Each servicer must maintain required books, accounts, and records at the principal place of business. Should a servicer wish to maintain such records elsewhere, it must notify the department in writing prior to said books, accounts, and records being maintained in any place other than the designated principal place of business. Such notification shall be submitted to the Department of Banking and Finance, 2990 Brandywine Road, Suite 200, Atlanta, Georgia 30341.
- (2) Books, accounts, and records maintained at a location other than the principal place of business shall be made available to the department within five (5) business days from the date of written request by the department and at a reasonable and convenient location acceptable to the department.
- (3) "Principal place of business" means the location designated as the main office by the licensee or registrant in the initial written application for licensure or registration or as amended thereafter in writing to the department.
- (4) All books, accounts, and records required by Rule 80-11-6-.04(1)(a) must be maintained in accordance with Rule 80-11-2-.01(4). All books, accounts, and records required by Rule 80-11-6-.04(1)(b) must be maintained for a period of five (5) years after the date a mortgage loan is discharged or servicing rights for a mortgage loan are transferred by the servicer to a transferee servicer or otherwise terminated.
- (5) Any books, accounts or records required to be maintained by Rule Chapter 80-11-6 of the Rules of the Department of Banking and Finance may be maintained in their original form, on microfiche or other electronic media, provided:
  - (a) that the records shall be made available to the department as provided in this Rule;
  - and



- (b) at the request of the department, the records shall be printed on paper for inspection or examination.
- (6) (a) The penalty for maintaining books, accounts, and records at a location other than the principal place of business without written notification to the department may be suspension of the license or registration, other appropriate administrative action or fine.
- (b) The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the department) shall be revocation of the license or registration.

Authority: O.C.G.A. §§ 7-1-61; 7-1-1012.

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#### **Rule 80-11-6-.04 Minimum Requirements for Books and Records.**

- (1) Each servicer must maintain the following books, accounts, and records:
  - (a) Copies of all documents required by Rule Chapter 80-11-3;
  - (b) Servicer file for each mortgage loan that it services. The servicer file must contain the following:
    - 1. the name of each borrower;
    - 2. copies of all contracts, deeds, assignments, letters, notes, and memos regarding the borrower;
    - 3. documents related to assignment, sale, or transfer of mortgage loan servicing;
    - 4. copies of all disclosures or notices provided to the borrower by the servicer as required by law, including Rules 80-11-1-.01 and 80-11-6-.02;
    - 5. copies of all written requests for information received from the borrower and the servicer's response to such requests as required by law;
    - 6. full payment history that identifies and itemizes payments made by or on behalf of the borrower, all fees and charges assessed under the mortgage loan transaction, and escrow account activity;
    - 7. a copy of any bankruptcy plan approved in a proceeding filed by the borrower or a co-owner of the property subject to the mortgage loan;
    - 8. a communications log, which documents all verbal communication with the borrower or the borrower's representative;
    - 9. a record of all efforts by the servicer to comply with the duties required under Rule 80-11-6-.02(2)(d), including all information utilized in the servicer's determination regarding loss mitigation proposals offered to the borrower;
    - 10. a copy of all notices sent to the borrower related to any foreclosure proceeding filed against the encumbered property; and
    - 11. records regarding the final disposition of the mortgage loan including a copy

of any collateral release document, records of servicing transfers, charge-off information, or REO disposition.

(c) A list of all servicer's violations, if any, of the mortgage servicer standards set forth in Rule 80-11-6-.02.

(2) Failure to maintain the books, accounts, and records required under paragraph (1) above may result in suspension of the license or registration or other appropriate administrative action and will subject the licensee or registrant to fines in accordance with regulations prescribed by the department.

Authority: O.C.G.A. §§ 7-1-61; 7-1-1012.

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## CHAPTER 80-13-1

### TRUST COMPANIES

80-13-1-.01	Definitions.
80-13-1-.02	Minimum Capital Requirements for Trust Companies.
80-13-1-.03	Trust Company Independent Audits.
80-13-1-.04	The Internal Auditor of a Trust Company.
80-13-1-.05	Audit Committee.
80-13-1-.06	Insurance Coverage for Trust Companies.
80-13-1-.07	Review of Fiduciary Accounts.
80-13-1-.08	Custody of Fiduciary Assets.
80-13-1-.09	Receivership of Trust Company.
80-13-1-.10	Collective Investment Funds.
80-13-1-.11	Permissible Investments and Limitations for Trust Companies.
80-13-1-.12	Self-dealing and Conflicts of Interest.

#### **80-13-1-.01 Definitions.**

(1) As used in Chapters 80-13-1, the terms that are defined in O.C.G.A. § 7-1-4 shall have the identical meaning.

(2) As used in Chapters 80-13-1, the below terms shall be defined as follows unless the term is otherwise defined in a specific rule:

(a) “External auditor” means an outside compensated, Certified Public Accountant (CPA) that is independent or works for an entity that is independent of the institution being audited.

(b) “Fiduciary account” means an account administered by a trust company when it is acting in a fiduciary capacity including, but not limited to, a trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, receiver, custodian under a uniform gifts to minor act, investment advisor if the trust company receives a fee for the investment advice, any capacity in which the trust company possess investment discretion on behalf of another, or any other similar capacity designated as such by the Department.

(c) “Independent” means an auditor must be personally and financially independent from the trust company’s employees, members of the board of directors, and members of their immediate families.

(d) “Investment discretion” means, with respect to an account, the sole or shared authority (whether or not that authority is exercised) to determine what securities or other assets to purchase or sell on behalf of the account.

Authority: O.C.G.A. § 7-1-61.

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### **80-13-1-.02 Minimum Capital Requirements for Trust Companies.**

(1) Pursuant to O.C.G.A. § 7-1-317, a trust company must maintain, at a minimum, \$3 million in capital. The Department will evaluate the factors set forth in O.C.G.A. § 7-1-317 in analyzing a trust company’s capital adequacy and may determine that the capital required is greater than \$3 million.

(2) The amount of the initial capital requirement maintained by a trust company shall be established by the Department in writing prior to the trust company beginning business. Further, any revision to the capital requirement maintained by a trust company shall be established in writing by the Department prior to the trust company implementing the revised capital ratio. It shall be in the Commissioner’s sole discretion to determine the capital ratio required to be maintained by each trust company.

(3) A trust company with less than the minimum capital requirement:

(a) Is operating with inadequate capital and, therefore, has inadequate financial resources. Thus, at the discretion of the Department, such trust company may be deemed to be operating in an unsafe or unsound or unauthorized manner and subject to the Department’s enforcement powers.

(b) Must file a written capital restoration plan with the Department within thirty (30) days of the date that the trust company knows or should have known that the trust company is operating with an inadequate capital structure, unless the Department notifies the trust company in writing that the plan is to be filed within a different period.

### **80-13-1-.03 Trust Company Independent Audits**

- (1) Every trust company shall have an opinion audit of its books and records performed at least annually by a licensed external auditor in accordance with generally accepted auditing standards and procedures. The audit must be of sufficient scope to enable the auditor to render an opinion on the financial statements of the trust company, consolidated holding company, or parent company. Such audit shall include a review of the trust company's internal controls, fiduciary activities (pursuant to agreed-upon procedures), fiduciary accounts, affirmative verifications of investments and deposits made by the trust company, adequate testing and review of the trust company's information technology activities, and such other tests and reviews of trust company records as deemed appropriate by the external auditor. The extent of the audit work should be clearly defined in engagement letters. Such letters should discuss the scope of the audit, the objectives, resource requirements, audit timeframe, and resulting reports. External auditors must make their audit work papers, policies, and procedures available to Department examiners for review upon request.
- (2) The external auditor should be generally familiar with the statutes, rules, and regulations under which the trust company being audited operates, and with its charter and bylaw provisions. The annual audit should incorporate the necessary procedures to satisfy the auditor that there is compliance with the applicable requirements that might materially affect the trust company's financial position or operation.
- (3) Audit reports in which the auditor expresses an unqualified opinion shall be provided to the Department upon request. Audit reports in which the auditor expresses anything other than an unqualified opinion, including, but not limited to, a qualified opinion, an adverse opinion, or a disclaimer of opinion, shall be provided to the Department within fifteen (15) days following receipt by the financial institution. Audit reports submitted to the Department shall be accompanied by the Letter to Management, if applicable, detailing any reportable conditions discovered during the audit engagement. Failure to obtain the required opinion audit, or the auditor's report thereof, shall be reported to the Department within fifteen (15) days of discovery.

### **80-13-1-.04 The Internal Auditor of a Trust Company.**

- (1) Internal Audit System. An institution should have an internal audit system that is appropriate to the size of the institution and the nature and scope of its activities. The internal audit system should consist of qualified persons. The internal audit system shall provide for:

- (a) Adequate monitoring of the system of internal controls through an internal audit function;
  - (b) Adequate testing and review of information systems;
  - (c) Adequate documentation of tests and findings and any corrective actions;
  - (d) Verification and review of management actions to address material weaknesses; and
  - (e) Review by the institution's audit committee or board of directors of the effectiveness of the internal audit systems.
- (2) The Board of Directors of every trust company shall name an internal auditor. If the trust company names an employee as the internal auditor, then the internal auditor must not audit his/her department.
- (3) The internal auditor shall:
- (a) Report a summary of audit activities to the Board of Directors at least annually;
  - (b) Implement the trust company's internal audit program; and
  - (c) Monitor the implementation of corrective action with respect to audit exceptions, including but not limited to internal control exceptions, discovered by the internal audit program or reported by the independent auditor.
- (4) A trust company can designate an external auditor as its internal auditor. In the event an external auditor is designated as the internal auditor, then the Board of Directors or the audit committee must appoint an internal liaison among the officers of the trust company that will be responsible for coordinating the internal audit function with the external auditor and overseeing compliance with the internal audit requirements.

Authority: O.C.G.A. § 7-1-61.

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### **80-13-1-.05 Audit Committee.**

A trust company shall have an audit committee. The audit committee must consist of a committee of the trust company's directors or directors of an affiliate of the trust company. However, in either case, the committee:

- (a) Must not include any officers of the trust company or an affiliate who participate significantly in the administration of the trust company's fiduciary activities; and
- (b) Must consist of a majority of members who are not also members of any committee to which the board of directors has delegated power to manage and control the fiduciary activities of the trust company.

Authority: O.C.G.A. § 7-1-61.

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### **80-13-1-.06 Insurance Coverage for Trust Companies.**

(1) Every trust company shall obtain the following:

(a) Fidelity insurance coverage, such as a fidelity bond, to provide protection and indemnity against theft, defalcation, or other similar actions by officers and employees of the trust company as well as agents and independent contractors of the trust company, related to fiduciary accounts, customer funds, and assets of the trust company.

(b) Data breach insurance coverage to provide protection and indemnity against the release of nonpublic confidential information in the legal care, custody or control of the trust company to an untrusted or unauthorized environment or other similar action by the trust company as well as agents and independent contractors of the trust company.

(c) Fiduciary liability insurance coverage or its equivalent to provide protection and indemnity against errors or omissions or breach of fiduciary duties by officers and employees of the trust company as well as agents and independent contractors of the trust company, related to fiduciary accounts and customer funds. Further, every trust company shall require agents and independent contractors of the trust company that have access to fiduciary accounts or customer funds to obtain fiduciary liability insurance coverage or its equivalent to provide protection and indemnity against errors or omissions or breach of fiduciary duties.

(2) The required insurance coverage or its equivalent shall contain a provision that coverage will not be canceled, or not renewed, or allowed to lapse for any reason until at least sixty (60) days prior written notice has been given by the insurer to the Department. A certificate of insurance or similar documentation showing such insurance coverage or its equivalent to be in force shall be provided to the Department prior to the trust company engaging in any fiduciary activities. The insurance coverage or its equivalent shall be obtained from an insurance company licensed to do business in Georgia that continuously maintains an A.M. Best Company rating of at least A: VII or an equivalent rating from an insurance rating agency approved in advance by the department in writing. Such insurance coverage or its equivalent shall continuously remain in full force and effect subject to Department approved revisions to the amount of coverage.

(3) The amount of the initial insurance coverage or its equivalent obtained by the trust company, as well as any subsequent amendments to the amount, shall be approved by the Department in writing prior to the trust company obtaining the insurance coverage or revising the amount of coverage. It shall be in the Commissioner's sole discretion to determine the amount of required insurance coverage or its equivalent.

(4) In order for the Department to make the determination in Paragraph 3 of this Rule related to the appropriate amount of insurance coverage or its equivalent, a trust company, upon request by the Department, shall provide the Department with a written justification setting forth the trust company's rationale for the appropriate and necessary amount of insurance coverage. Such justification for the different required insurance coverage shall set forth in detail the following:

(a) For fidelity coverage, the safeguards or protections which will be employed to ensure the continuing sound operation of the trust company, which shall include, but not be limited to, an evaluation of potential exposures under various stress scenarios that include intentional and

unintentional failures in the trust company's control environment and the sufficiency of the proposed fidelity coverage to mitigate such exposures. In addition, the trust company's justification for the proposed proper amount of fidelity coverage or its equivalent shall evaluate the potential costs to the trust company as a result of a breach.

(b) For data breach coverage, the safeguards or protections which will be employed to mitigate the risks of an intentional or unintentional release of the data in the trust company's possession or in the possession of agents and independent contractors of the trust company, which shall include, but not be limited to, an evaluation of potential exposures under various stress scenarios that include intentional and unintentional releases of data in the trust company's control environment and the sufficiency of the proposed data breach insurance coverage to mitigate such exposures. In addition, the trust company's justification for the proposed proper amount of data breach insurance coverage shall evaluate the potential costs to the trust company as a result of a breach, which shall include, but not be limited to, forensic costs, legal fees, first party and third party liabilities, notification requirements, remediation costs, restoration costs, and business impact.

(c) For fiduciary liability insurance coverage, the safeguards or protections which will be employed to mitigate the risks of intentional or unintentional errors or omissions or breach of fiduciary duties related to fiduciary accounts and customer funds by officers and employees of the trust company, which shall include, but not be limited to, an evaluation of potential exposures under various stress scenarios that include intentional and unintentional breaches of fiduciary duties and the sufficiency of the proposed fiduciary liability insurance coverage or its equivalent to mitigate such exposures. In addition, the trust company's justification for the proposed proper amount of fiduciary liability insurance coverage or its equivalent shall evaluate the potential costs to the trust company as a result of a breach.

Authority: O.C.G.A. § 7-1-61.

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### **80-13-1-.07 Review of Fiduciary Accounts.**

(1) Before accepting a fiduciary account, a trust company shall review the prospective account to determine whether it can properly administer the account.

(2) Upon the acceptance of a fiduciary account for which a trust company has investment discretion, the trust company shall conduct a prompt review of all assets of the account to evaluate whether they are appropriate for the account.

(3) At least once during every calendar year, a trust company shall conduct a review of all assets of each fiduciary account for which the bank has investment discretion to evaluate whether they are appropriate, individually and collectively, for the account.

Authority: O.C.G.A. § 7-1-61.

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### **80-13-1-.08 Custody of Fiduciary Assets.**

(1) A trust company shall place assets of fiduciary accounts in the joint custody or control of not fewer than two of the fiduciary officers or employees designated for that purpose by the Board of Directors. A trust company may maintain the investments of a fiduciary account off-premise, if consistent with applicable law and if the trust company maintains adequate safeguards and controls.

(2) A trust company shall keep the assets of fiduciary accounts separate from the assets of the trust company. A trust company shall keep the assets of each fiduciary account separate from all other accounts or shall identify the investments as the property of a particular account, except as provided in 12 CFR § 9.18 for collective investment funds.

Authority: O.C.G.A. § 7-1-61.

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### **80-13-1-.09 Receivership of Trust Company.**

If the Department is appointed receiver of a trust company or appoints a receiver of a trust company, the receiver shall promptly close or transfer to a substitute fiduciary all fiduciary accounts in accordance with Department instructions or the orders of the court having jurisdiction.

Authority: O.C.G.A. § 7-1-61.

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### **80-13-1-.10 Collective Investment Funds.**

A trust company administering a collective investment fund authorized under O.C.G.A. § 7-1-313 shall comply with the following requirements:

(1) The trust company shall develop, and the Board of Directors must approve, a collective investment fund plan that must contain appropriate provisions, not inconsistent with this part, regarding the manner in which the trust company will operate the fund, including provisions relating to:

- (a) Investment powers and policies with respect to the fund;
- (b) Allocation of income, profits, and losses;
- (c) Fees and expenses that will be charged to the fund and to participating accounts;
- (d) Terms and conditions governing the admission and withdrawal of participating accounts;
- (e) Audits of participating accounts;



- (f) Basis and method of valuing assets in the fund;
- (g) Expected frequency for income distribution to participating accounts;
- (h) Minimum frequency for valuation of fund assets;
- (i) Amount of time following a valuation date during which the valuation must be made;
- (j) Bases upon which the trust company may terminate the fund; and
- (k) Any other matters necessary to define clearly the rights of participating accounts.

(2) A trust company administering a collective investment fund shall have exclusive management thereof, except as a prudent person might delegate responsibilities to others.

(2.1) Each participating account in a collective investment fund must have a proportionate interest in all the fund's assets.

(3) (a) A trust company administering a collective investment fund shall determine the value of the fund's readily marketable assets at least once every three months. A trust company shall determine the value of the fund's assets that are not readily marketable at least once a year.

(b) Except for short-term investment funds ("STIFs"), a trust company shall value each fund asset at mark-to-market value as of the date set for valuation, unless the trust company cannot readily ascertain mark-to-market value, in which case the trust company shall use a fair value determined in good faith. STIFs shall be valued as set forth in 12 C.F.R. § 9.18.

(4)(a) At least once during each 12-month period, a trust company administering a collective investment fund shall arrange for an audit of the collective investment fund by auditors responsible to both the audit committee and the Board of Directors of the trust company.

(b) At least once during each 12-month period, a trust company administering a collective investment fund shall prepare a financial report of the fund based on the audit required by paragraph (4)(a) of this section. The report must disclose the fund's fees and expenses in a manner consistent with applicable law in the state in which the trust company maintains the fund. This report must contain a list of investments in the fund showing the cost and current market value of each investment, and a statement covering the period after the previous report showing the following (organized by type of investment):

1. A summary of purchases (with costs);
2. A summary of sales (with profit or loss and any other investment changes);
3. Income and disbursements; and
4. An appropriate notation of any investments in default.

(c) A trust company may include in the financial report a description of the fund's value on previous dates, as well as its income and disbursements during previous accounting periods. A trust company may not publish in the financial report any predictions or representations as to future performance.

(d) A trust company administering a collective investment fund shall provide a copy of the financial report, or shall provide notice that a copy of the report is available upon request without charge, to each person who ordinarily would receive a regular periodic accounting with respect to each participating account. The trust company may provide a copy of the financial report to prospective customers. In addition, the trust company may provide a copy of the report upon request to any person for a reasonable charge.

(5) A trust company administering a collective investment fund may charge a reasonable fund management fee only if:

(a) The fee is permitted under applicable law (and complies with fee disclosure requirements, if any) in the state in which the trust company maintains the fund; and

(b) The amount of the fee does not exceed an amount commensurate with the value of legitimate services of tangible benefit to the participating fiduciary accounts that would not have been provided to the accounts were they not invested in the fund.

(6) A trust company administering a collective investment fund may charge reasonable expenses incurred in operating the collective investment fund, to the extent not prohibited by applicable law in the state in which the trust company maintains the fund. However, a trust company shall absorb the expenses of establishing or reorganizing a collective investment fund.

(7) The Department will not deem a trust company's mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund to be a violation of this rule if, promptly after the discovery of the mistake, the trust company takes whatever action is practicable under the circumstances to remedy the mistake.

Authority: O.C.G.A. § 7-1-61.

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### **80-13-1-.11 Permissible Investments and Limitations for Trust Companies**

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

(1) Debt Obligations.

(a) Obligations of the United States Government or Agencies of the United States Government. The following may be held without limitation:

1. Securities issued by the United States government or an agency of the United States government;
2. Securities guaranteed as to principal and interest by the United States government or an agency of the United States government;
3. Securities issued under the U.S. Treasury's Separate Trading of Registered Interest and Principal (STRIP's) program, which are offered in book entry form and which are direct obligations of the U.S. Government, as authorized by Subtitle III, Chapter 31 of Title 31 U.S.C.; and
4. Securities which are pre-refunded, with the redemption proceeds invested in securities issued by the United States Government or an Agency of the United States Government.

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

The following may be held without limitation:

1. General obligations of any state or territorial government of the United States or any agency of such governments;
2. Securities guaranteed as to principal and interest by such state or territorial governments or any agency thereof; and
3. Securities which are pre-refunded, with the redemption proceeds invested in securities issued by state or territorial governments or agencies thereof.

(c) Obligations of other Political Subdivisions.

1. The general obligations of a single obligor domiciled within the United States which is authorized to levy taxes may be held in an amount up to twenty-five (25) percent of a trust company's equity capital, as defined by GAAP. This percentage limitation shall not apply where the equity capital is at least \$10,000,000.
2. Securities which are secured by a pledge or assignment of tax receipts sufficient to pay the principal and interest of such securities as they become due may be held in an amount up to twenty-five (25) percent of the trust company's equity capital, as defined by GAAP. This percentage limitation shall not apply where the equity capital is at least \$10,000,000.
3. Revenue obligations of a political subdivision authorized to establish utility fees, public transportation usage fees or public use fees where such levies or fees are pledged to and are sufficient to pay the principal and interest of the securities as they become due may be held in an amount up to twenty-five (25) percent of a trust company's equity capital, as defined by GAAP. This percentage limitation shall not apply where the equity capital is at least \$10,000,000.
4. In those instances where the repayment of revenue obligations is dependent upon rentals or other fees payable to a political subdivision by a non-governmental unit, such as in the case of industrial revenue bonds, the obligor shall be deemed to be the non-governmental unit responsible for the payment of such rentals or other fees and any guarantor of such payments. Investment in such securities is limited to fifteen (15) percent of the trust company's equity capital, as defined by GAAP.
5. Securities issued by political subdivisions rated in the four highest rating categories by a nationally recognized rating service and not otherwise authorized under (c)(1)-(4) of this section may be held in an amount up to fifteen (15) percent of a trust company's equity capital, as defined by GAAP.

(d) Corporate Debt Securities.

Corporate debt securities may be purchased which are:

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

2. Readily salable in an established market with reasonable promptness at a price which corresponds to its fair value;
3. Denominated in U.S. dollars; and
4. With respect to trust companies having equity capital, as defined by GAAP, of less than \$20,000,000, such securities must mature within 15 years.

A bank's investment in corporate debt securities is limited to fifteen (15) percent of the trust company's equity capital, as defined by GAAP, per obligor. A trust company's aggregate investment in corporate debt securities shall not exceed one hundred (100) percent of the trust company's equity capital, as defined by GAAP.

#### (2) Equity Securities.

The total investment in equity and investment of any one issuer, obligor, or maker held by a trust company for its own account shall not exceed an amount equal to 15 percent of the trust company's equity capital, as defined by GAAP.

#### (3) Investment Funds.

A trust company for its own account may invest up to fifteen (15) percent of its equity capital, as defined by GAAP, in securities of, or other interests in, any open-end or closed-end management type investment fund or investment trust which is registered under the Investment Company Act of 1940, subject to the following additional conditions.

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

(b) The investment fund or trust shall not:

1. Except to the extent authorized in subparagraph (1)(a)3. of this rule, acquire or hold investments in the form of stripped or detached interest obligations;
2. Engage in the purchase or sale of interest rate futures contracts;
3. Purchase securities on margin, make short sales of securities or maintain a short position; or
4. Otherwise engage in futures, forwards or options transactions, except that forward commitments may be entered into for the express purpose of acquiring securities on a when-issued basis.

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

1. Thirty (30) percent of the trust company's equity capital, as defined by GAAP, per fund/trust family or sponsor; and
2. Sixty (60) percent of the trust company's equity capital, as defined by GAAP, for all funds combined.

(d) An aggregate limitation of one hundred twenty (120) percent of the trust company's equity capital, as defined by GAAP, shall be allowed for all funds combined if the funds or trusts:

1. Are managed so as to maintain the fund or trust shares at a constant net asset value;
2. Are no-load; and
3. Are rated in the highest rating category by a nationally recognized rating service.

#### (4) Asset-Backed Securities.

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

- (a) Governmentally sponsored programs which are fully collateralized by obligations fully guaranteed as to principal and interest by a governmental entity to the same extent as direct obligations of the governmental entity which is the guarantor;
- (b) Private programs which are fully collateralized by obligations fully guaranteed as to principal and interest by a governmental entity to the same extent as direct obligations of the governmental entity which is the guarantor; or
- (c) Other private programs in amounts which do not exceed fifteen (15) percent of the trust company's equity capital, as defined by GAAP, for each issuer, provided the issue:
  - 1. Is in registered form;
  - 2. Is collateralized by assets which could be owned directly by the trust company; and
  - 3. Is rated in the top three rating bands by a recognized national rating service.
- (d) Aggregate investment in private program issues by all issuers shall not exceed fifty (50) percent of the trust company's equity capital, as defined by GAAP, unless approved by the department.

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

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

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

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

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

(7) All Other Securities.

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

(8) In the event a trust company's investment in securities no longer conforms to this rule but conformed when the investment was originally made, the trust company shall provide written notification to the Department regarding the nonconforming investment within 30 days of discovering the nonconforming investment or 120 days of the investment becoming

nonconforming, whichever event occurs first. In the event a trust company wishes to hold the nonconforming investment, the trust company must submit a letter form application to the Department describing the efforts the trust company will undertake to bring the nonconforming investment into conformity and the anticipated time it will take to bring the investment into conformity. Upon review of the application, the Department may request additional information if it determines such additional information is necessary in order to fully and completely evaluate the application. After completion of its review, the Department shall either approve, conditionally or otherwise, or deny such application in writing.

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

Authority: O.C.G.A. § 7-1-61.

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### **80-13-1-.12 Self-dealing and Conflicts of Interest.**

(1) Unless authorized by applicable law, a trust company may not invest funds of a fiduciary account for which a trust company has investment discretion in the stock or obligations of, or in assets acquired from: the trust company or any of its directors, officers, or employees; affiliates of the trust company or any of their directors, officers, or employees; or individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the trust company. Notwithstanding the above, a trust company may invest such stock or obligations as part of an index pursuant to an index or model portfolio strategy unless the index was formed or otherwise created or is managed by the trust company.

(2) (a) A trust company may not lend, sell, or otherwise transfer assets of a fiduciary account for which a trust company has investment discretion to the trust company or any of its directors, officers, or employees, or to affiliates of the trust company or any of their directors, officers, or employees, or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the trust company, unless:

1. The transaction is authorized by applicable law;
2. Legal counsel advises the trust company in writing that the trust company has incurred, in its fiduciary capacity, a contingent or potential liability, in which case the trust company, upon the sale or transfer of assets, shall reimburse the fiduciary account in cash at the greater of book or market value of the assets;
3. As provided in 12 CFR § 9.18(b)(8)(iii) for defaulted investments; or
4. Required in writing by the Department.

(b) Notwithstanding the above provisions of this section, a trust company may not lend to any of

its directors, officers, or employees any funds held in trust, except with respect to employee benefit plans in accordance with the exemptions found in section 408 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1108).

(3) A trust company may make a loan to a fiduciary account and may hold a security interest in assets of the account if the transaction is fair to the account and is not prohibited by applicable law.

(4) A trust company may sell assets between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

(5) A trust company may make a loan between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

Authority: O.C.G.A. § 7-1-61.