

# STATE OF GEORGIA DEPARTMENT OF BANKING AND FINANCE



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

*NATHAN DEAL  
GOVERNOR*

*KEVIN B. HAGLER  
COMMISSIONER*

*SPECIAL EDITION  
IMPORTANT NOTICE  
FINAL RULEMAKING*

**June 10, 2014**

# **NOTICE OF FINAL RULEMAKING**

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

**Adopted June 10, 2014**

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, 7-1-688, 7-1-704, 7-1-1012 and other cited statutes, the following attached Rules of the Department of Banking were adopted on June 10, 2014. The Rules were filed with the Secretary of State on June 10, 2014 and, pursuant to O.C.G.A. § 50-13-6, will be effective on June 30, 2014, 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 9, 2014. The Department received four (4) written comments regarding the proposed Rules. The Department fully considered the comments it received and made the following substantive revision:

- Rule 80-11-5-.01 was revised to extend the period of time to correct a deficient mortgage loan originator application from five (5) calendar days to five (5) business days.

The Department believes that the Rules as adopted encourage safety and soundness, encourage safe and fair mortgage lending, and conform to the law.

# FINAL RULES

## CHAPTER 80-1-1

### APPLICATIONS, REGISTRATIONS, AND NOTIFICATIONS

#### TABLE OF CONTENTS

80-1-1-.01 Applications, Registrations and Notifications, Generally.

#### **80-1-1-.01 Applications, Registrations and Notifications, Generally.**

(1) Proposed activities in Georgia by financial institutions, whether they are in-state or out-of-state banks or holding companies, may require a form application, a letter application, a form registration, or merely a letter notification to the Department. Certain qualifying institutions may be eligible to shorten the form of application, and may benefit from an expedited processing time including shortened or consolidated notice periods. Such criteria for banks is provided at Department of Banking and Finance Rule 80-1-1-.10, and Rule 80-6-1-.13. Criteria for bank holding companies may be found at Rule 80-6-1-.16. Requirements for all banking institutions to conduct certain other activities have been streamlined to coordinate with federal requirements.

(2) Where forms are required, they may be obtained from the Department or most may be viewed or downloaded at the Department's Internet website.

(3) Other Applications. Within these Rules: Chapter 80-2-1 covers Credit Union activities; Chapter 80-3-1 covers Money Transmitters, Payment Instrument Sellers, and Check Cashers; Chapter 80-6-1 covers Holding Companies; and Chapter 80-11-1 covers Mortgage Lenders and Brokers.

(4) The Department has made available on its Internet website an Applications Manual and a Statement of Policies with details of the procedures required for most activities of regulated institutions in Georgia. Interested persons should consult the Department's Statement of Policies, Rules, and applicable law which form the basis for Department decisions. Hard copies of both are available by written request for a nominal fee. The regulations provide an overview, the Applications Manual and Statement of Policies provide detailed instructions.

(5) Fees are provided in DBF Rule Chapter 80-5-1.

(6) References in these Rules to "Code Section", "O.C.G.A.", "Title", "Code of Georgia", and "Section" are to the Official Code of Georgia Annotated.

Authority O.C.G.A. Sec. 7-1-61.

---

## CHAPTER 80-1-4

### INVESTMENT SECURITIES

#### TABLE OF CONTENTS

80-1-4-.01 Permissible Investments and Limitations.

#### **80-1-4-.01 Permissible Investments and Limitations.**

Subject to such further restrictions and approvals as its board of directors may set forth in its investment policy, a bank may purchase, sell, and hold securities, as set forth in 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 bank's statutory capital base. This percentage limitation shall not apply where the statutory capital base 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 bank's statutory capital base. This percentage limitation shall not apply where the statutory capital base 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 bank's statutory capital base. This percentage limitation shall not apply where the statutory capital base 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 bank's statutory capital base.

5. Securities issued by political subdivisions rated in the four highest rating categories by a nationally recognized rating service may be held in an amount up to fifteen (15) percent of a bank's statutory capital base.

(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 banks having a statutory capital 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 bank's statutory capital base per obligor. A bank's aggregate investment in corporate debt securities shall not exceed one hundred (100) percent of the bank's statutory capital base.

(e) Debt Securities Taken in Conformity with Lending Policies.

Debt obligations shall not be considered investments within the meaning of this regulation where they:

1. Are taken in conformity with the bank's lending policies;
2. Are included in determining the outstanding credit for purposes of ascertaining compliance with the bank's secured and unsecured loan limitations in Code Section 7-1-285; and
3. With respect only to banks having a statutory capital base of less than \$20,000,000, mature within 15 years, and are treated by the bank in all other respects as loans.

The debt obligations that qualify for this exception must be combined with other investment securities or other obligations to the same entity. This aggregation must not exceed the twenty-five (25) percent limitation on obligations to any one person in Code Section 7-1-285.

(2) Equity Securities.

Except as allowed by Code Section 7-1-288 or in this regulation, a bank may not engage in any transaction with respect to shares of stock or other capital securities of any corporation.

(3) Investment Funds.

A state chartered bank may invest up to fifteen (15) percent of its statutory capital base 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 banks or 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 bank's statutory capital base per fund/trust family or sponsor; and

2. Sixty (60) percent of the bank's statutory capital base for all funds combined.

(d) An aggregate limitation of one hundred twenty (120) percent of the bank's statutory capital base 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 bank 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 bank's statutory capital base for each issuer, provided the issue:

1. Is in registered form;
2. Is collateralized by assets which could be owned directly by the bank; 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 bank's statutory capital base 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 banks demonstrating technical expertise and policies sufficient to promote safe and sound use of such investments as part of prudent investment strategies.

(7) Trust Preferred Securities.

Trust preferred securities, generally, may be defined as issues of cumulative preferred securities, containing characteristics of both debt and equity securities, where the issuer is normally a business trust formed by a corporate issuer. The corporate issuer issues debt to the trust in the form of deeply subordinated debentures. The securities represent undivided beneficial interests in the assets of the issuer trust, and distributions by the issuer trust are guaranteed by the corporate issuer to the extent of available funds of the issuer trust. The trust preferred securities may or may not be rated, but in any event must be scrutinized under the suitability analysis in this rule as if they were a loan being underwritten by the purchasing bank. Trust preferred securities are authorized investments for a state bank subject to the terms and conditions contained in this paragraph 7. A bank's investment in a closed or open-end investment fund, consisting of trust preferred securities, shall be subject to the terms and conditions contained in Rule 80-1-4-.01, paragraph 3. entitled "Investment Funds". A security backed by trust preferred securities shall be deemed an asset-backed security and shall be subject to the terms and conditions contained in Rule 80-1-4-.01, paragraph 4. entitled "Asset-Backed Securities".

(a) The bank's investment in each corporate issuer of trust preferred securities, that is, in each entity that controls an issuer trust (other than in a fiduciary capacity), shall not exceed fifteen (15) percent of the bank's statutory capital base.

(b) The bank's aggregate investment in trust preferred securities shall not exceed the bank's policy limits or one hundred (100) percent of the bank's statutory capital base, whichever is less.

(c) The issuance of the trust preferred securities shall be registered under the Securities Act of 1933, as amended, shall be eligible for resale pursuant to Securities and Exchange Commission Rule 144A, or the securities shall be capable of being sold with reasonable promptness at a price which corresponds to their fair value. As to this requirement, if an issuance is not registered, eligible for resale, or readily marketable, it must meet a suitability analysis test as provided in (e) of this rule;

(d) The securities shall be of investment quality or the credit equivalent of investment quality. Credit equivalency shall be determined by the methods in subparagraph (e) of this rule. Investment quality means that a rating in one of the four highest categories has been assigned to the securities by a nationally recognized rating service and, as such, are not predominantly speculative in nature;

(e) Before the purchase of any trust preferred securities, the investing bank shall perform a due diligence suitability analysis to determine whether the trust preferred securities are suitable for purchase relative to the bank's tolerance for credit risk, asset liability position, sensitivity to



market risk, and its liquidity exposure. Such analysis shall include, at a minimum, the following:

1. A complete credit analysis, including cash flow projections, sufficient to determine that the issuer is creditworthy and thus has the ability to meet the debt repayment schedule;

2. A credit underwriting analysis sufficient to determine that the securities meet the credit underwriting criteria set forth by the bank's lending policies;

3. A marketability analysis, sufficient to determine whether or not the securities may be sold with reasonable promptness at a price corresponding to their fair value;

4. The documentation of the suitability analysis shall be in written form and maintained in the bank's files;

5. A periodic update of the suitability analysis shall be performed by the bank at least as frequently as annually during the term of the investment; and

(f) The bank shall obtain and monitor the securities' market values on an ongoing basis.

(g) The bank's written policies and procedures shall adequately address the various risks inherent in these securities including credit risk, price or market risk, interest rate risk, and liquidity risk.

(h) The bank shall notify the department in writing of any investment in trust preferred securities where the issuer is not a bank or bank holding company as defined in Code Section 7-1-605.

(8) All Other Securities.

A bank 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 statutory capital base of the purchasing bank 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 bank's statutory capital base.

(9) In the event a bank's investment in securities no longer conforms to this rule but conformed when the investment was originally made, the bank 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 bank wishes to hold the nonconforming investment, the bank must submit a letter form application to the Department describing the efforts the bank 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.

(10) A bank 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.

---

## CHAPTER 80-1-10

### FIXED ASSETS AND ASSETS ACQUIRED D.P.C.

#### TABLE OF CONTENTS

80-1-10-.01 Limitation on Fixed Asset Investment; Excessive Investments.

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

#### **80-1-10-.01 Limitation on Fixed Asset Investment; Excessive Investments.**

(1) Banks may purchase, hold, and convey real estate only such as shall be necessary for the convenient transaction of its business and recreational use of its employees, except that real estate commonly referred to as Other Real Estate and as defined herein may be held for not longer than five (5) years unless the time limitation is extended by the Department of Banking and Finance.

(2) The aggregate investment by a bank in real estate, bank premises, and furniture and fixtures, stock in any real estate holding subsidiary, and leasehold as defined herein shall not exceed sixty (60) percent of the bank's statutory capital base; except that a greater sum may be invested with the prior approval of the Department of Banking and Finance.

(3) Applications for approval to invest in fixed assets an amount in excess of the limitations set forth in paragraph (2) shall be in letter form and must provide for an orderly plan for restoring the fixed asset investment to the sixty (60) percent limitation within not more than five (5) years through one of the following means:

(a) Regular annual depreciation charges consistent with current Federal Income Tax regulations, or

(b) Predetermined plans for restructuring the capital accounts to increase the sixty (60) percent legal limitation, or

(c) Any combination of the methods set forth in (a) and (b) above.

(4) In the event a bank is initially in compliance with the limitations set forth in paragraph (2) but the investment in fixed assets ultimately exceeds the fixed asset investment limitation of sixty (60) percent solely as a result of a decline in the bank's statutory capital base, the Department

shall not deem the bank to be in violation of paragraph (2); provided, however, nothing herein shall be construed as permitting a bank to invest additional sums in fixed assets in excess of sixty (60) percent of the bank's statutory capital base without the prior written approval of the Department.

Authority Ga. L. 1974, pp. 733, 789.

---

### **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 appraised annually commencing within one (1) year from acquisition by an independent appraiser knowledgeable in the fair market value of such assets or by a qualified officer of the bank if the book value of the property is less than two (2) percent of the statutory capital base of the bank. In the case of real property, an appraisal is required if there has been an obvious and material change in market conditions or physical aspects of the property that threaten the value of the property. In the event no such event has occurred then, in the case of real property, 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 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) 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.

---

## **CHAPTER 80-2-4**

### **INVESTMENT OF CREDIT UNION FUNDS**

#### **TABLE OF CONTENTS**

80-2-4-.03 Investment of Credit Union Funds in Subsidiaries.

#### **80-2-4-.03 Investment of Credit Union Funds in Subsidiaries.**

(1) Unless otherwise precluded by law or regulations, a credit union may acquire and hold for its own account shares of stock or interest in a subsidiary corporation or limited liability company engaged in the following functions or activities that do not pose undue risk to the safety and soundness of the credit union and that are consistent with the objectives of O.C.G.A. § 7-1-3. The functions or activities that the credit union subsidiary is authorized to conduct include, but are not limited to:

- (a) offering third-party payment services as provided in O.C.G.A. § 7-1-670;
- (b) holding real estate;
- (c) acting as a financial planner or investment adviser;
- (d) offering a full range of investment products;
- (e) exercising powers incidental to financial activities as provided in O.C.G.A. § 7-1-650;

and

(f) exercising powers granted by Department rules or powers determined by the Commissioner to be financial in nature or incidental to the provision of financial services.

(2) O.C.G.A. § 7-1-650(6) contemplates that a credit union can create a separate subsidiary to exercise powers that are express or incidental to the credit union's authority with the approval of the Department. Subject to certain investment limitations for credit unions, the subsidiary can conduct such powers as may be financial in nature or incidental or complimentary to the provision of financial services. Prior to the subsidiary engaging in any functions or activities that a credit union is authorized to engage, the credit union must submit a letter form application to the Department describing the proposed activity, detailing the activity's relationship to the business of the credit union, and setting forth the provisions that will be implemented in order to mitigate any related risks. 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.

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

---

## CHAPTER 80-2-5

### FIDELITY BOND COVERAGE

#### TABLE OF CONTENTS

80-2-5-.01 Minimum Requirements for Fidelity Bond Coverage.

#### **80-2-5-.01 Minimum Requirements for Fidelity Bond Coverage.**

(1) The Board of Directors of each credit union shall review the bond coverage annually in order to ascertain its adequacy in relation to the exposure and to any minimum requirements that may be fixed from time to time by the Commissioner.

(2) All fidelity bonds must provide for faithful-performance-of-duty coverage for any officer or employee while performing any of the duties of the treasurer as prescribed in the credit union's bylaws, applicable statutes, and rules and regulations of the Department.

(3) It shall be the duty of the Board of Directors of the credit union to provide adequate fidelity bond coverage.

(4) The Commissioner may require additional coverage for any credit union when, in his opinion, the fidelity bonds in force are insufficient to provide adequate fidelity coverage, and it shall be the duty of the Board of Directors of the credit union to obtain such additional coverage within thirty (30) days after the date of written notice from the Commissioner of the requirement to obtain such additional coverage.

Authority O.C.G.A. Secs. 7-1-61, 7-1-663.

---

## CHAPTER 80-2-9

### INVESTMENT SECURITIES

#### TABLE OF CONTENTS

80-2-9-.01 Investment Securities.

#### **80-2-9-.01 Investment Securities.**

(1) Subject to such further restrictions and limitations as its board of directors may set forth in this investment policy, a credit union may purchase, sell and hold securities:

(a) Without limitation if such securities are:

1. The general obligations of the United States Government or any agency or instrumentality thereof;
2. Guaranteed as to principal and interest by the United States Government or any agency or instrumentality thereof; or
3. Separate Trading of Registered Interest and Principal of Securities which are offered exclusively in book entry form, are direct obligations of the United States, and are issued under Chapter 31, Title 13 USC.

(b) Up to twenty-five (25) percent of the shares and deposits of the credit union if the securities are the general obligations of the State of Georgia or any of its counties, school districts, or municipalities;

(c) Up to fifteen (15) percent of the retained earnings of the credit union if the securities are:

1. General and direct obligations of any state other than Georgia or counties, municipalities, or other political subdivisions of such states authorized to levy taxes;
2. Secured by the pledge or assignment of tax receipts sufficient to pay the principal and interest of such securities as they become due;
3. The 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; and
4. The securities are the securities of, or other interests in, any open-end or closed-end management type investment fund or investment trust which:

(i) Is registered under the Investment Company Act of 1940,

(ii) Expressly requires that any changes in the investment objectives, fundamental operating policies, and limitations of the fund or trust must receive prior approval by a majority of the shareholders authorized to vote on such matters,

(iii) Limits the investment portfolio of such investment fund or investment trust to:

(I) Obligations otherwise authorized under subparagraphs (1)(a)1., (1)(a)2., and (1)(a)3. of this Rule;

(II) Commercial paper and repurchase agreements, which are fully collateralized by securities authorized in subparagraph (1)(a)1., (1)(a)2., and (1)(a)3. of this Rule, and where the fund or trust takes delivery of such collateral either directly or through an authorized custodian; or

(III) Certificates of deposit issued by financial institutions insured by an instrumentality of the

United States government, and;

(iv) Does not:

(I) Except to the extent authorized in subparagraph (1)(a)3. of this Rule, acquire investments in the form of stripped or detached interest obligations associated with any security which otherwise constitutes a permissible investment under the provisions of this Rule;

(II) Engage in the purchase or sale of interest rate futures contracts;

(III) Purchase securities on margin, make short sales of securities or maintain a short position; or

(IV) Otherwise engage in futures, forwards or options transactions, except, however, that forward commitments may be entered into for the express purpose of acquiring securities on a when-issued basis.

5. Bankers Acceptances and Subordinated Securities issued by financial institutions domiciled in Georgia; or by financial institutions affiliated with a financial institution domiciled in Georgia;

6. Commercial paper issued by corporations domiciled within the United States which is rated in the highest rating category by a nationally recognized rating service; or

7. Such other securities as the Department may approve and subject to such limitations as the Department may specify upon a finding that the securities are marketable under ordinary circumstances, with reasonable promptness, at a fair value. Securities issued by political subdivisions which are rated in the three highest rating categories by a nationally recognized rating service shall be deemed approved for investment up to fifteen (15) percent of the credit union's retained earnings.

8. Credit unions may invest in such other investment securities as may be authorized for federally chartered credit unions subject to the prior approval of the Department.

9. In the case of a central credit union, the Department may approve investments of the type described in subparagraph (1)(c) of this rule which may exceed the fifteen (15) percent limitation. Prior approval is required, and may be subject to certain conditions of approval.

(d) Aggregate limitations for all investments pursuant to subparagraph (1)(c)4. of this Rule shall not exceed:

1. Thirty (30) percent of the credit union's retained earnings per fund/trust family or sponsor, and

2. Sixty (60) percent of the credit union's retained earnings; however, an additional aggregate limitation of one-hundred-twenty (120) percent of the credit union's retained earnings shall be allowed if the funds or trusts:

(i) Are managed so as to maintain the fund or trust shares at a constant net asset value,

(ii) Are no-load, and

(iii) Are rated in the highest rating category by either Moody's Investors Service or Standard and Poor's Corporation.

(2) In lieu of the limitation on investments issued by any single obligor as set forth in subparagraph (1)(c) of this Rule, credit unions having shares and deposits of \$ 1,000,000 or less, may elect to purchase such obligations which in the aggregate do not exceed ten (10) percent of the credit union's shares and deposits provided the obligations of any single issuer do not exceed the greater of \$ 10,000 or one (1) percent of the credit union's shares and deposits.

(3) With the exception of revenue obligations listed in subparagraph (1)(c)3. of this Rule, where the repayment of revenue obligations is dependent upon rentals or other fees payable to a political subdivision by a non-governmental unit, the obligor for the purpose of applying legal limitations shall be the non-governmental unit responsible for the payment of such rentals or other fees and any guarantor of such payments.

(4) Asset backed securities repayable in both interest and principal which are issued under:

(a) Governmentally sponsored programs which are fully collateralized by obligations fully guaranteed as to principal and interest by a governmental entity may be purchased to the same extent as direct obligations of the governmental entity granting the guarantee; and

(b) Private programs which are fully collateralized by obligations fully guaranteed as to principal and interest by a governmental entity may be purchased to the same extent as direct obligations of the governmental entity granting the guarantee.

(5) Except for those investments specifically authorized in subparagraph (1)(a)3. of this Rule, 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 credit unions demonstrating technical expertise and policies sufficient to promote safe and sound use of such investments as part of prudent investment strategies.

(6) In the event a credit union's investment in securities no longer conforms to this Rule but conformed when the investment was originally made, the credit union 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 credit union wishes to hold the nonconforming investment, the credit union must submit a letter form application to the Department describing the efforts the credit union 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



(7) A credit union 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. § 7-1-650; § 7-1-654; § 7-1-663.

---

## CHAPTER 80-3-1

### MONEY TRANSMISSION AND RELATED FINANCIAL SERVICES

#### TABLE OF CONTENTS

80-3-1-.01 Payment Instrument Sellers and Money Transmitters.

80-3-1-.02 Check Cashers.

80-3-1-.03 Money Service Businesses: Compliance with Federal Requirements.

80-3-1-.04 Reports of Large Currency Transactions, Recordkeeping, and Suspicious Activity Reporting Requirements for Check Cashers, Payment Instrument Sellers and Money Transmitters.

80-3-1-.06 Reports of Apparent Criminal Irregularity by Check Cashers, Payment Instrument Sellers, Money Transmitters, and Authorized Agents.

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

80-3-1-.08 State Requirements for Financial Institutions.

80-3-1-.09 Verification of Lawful Presence Citizenship Affidavit.

80-3-1-.10 Nationwide Multistate Licensing System and Registry

#### **80-3-1-.01 Payment Instrument Sellers and Money Transmitters.**

(1) For purposes of Rules 80-3-1-.01, 80-3-1-.03, 80-3-1-.04, 80-3-1-.06, 80-3-1-.07(4), 80-3-1-.08, 80-3-1-.09, and 80-5-1-.02(1), the terms that are defined in O.C.G.A. § 7-1-680 shall have the identical meaning.

(2) Dual Purpose. A license for the sale of payment instruments shall also permit the licensee to conduct money transmission, but the licensee must clearly inform the Department in writing that it intends to transmit money. A separate license will be issued for persons who intend to conduct only money transmission.

(3) Every applicant for a license shall demonstrate to the Department that such applicant has sufficient financial resources in the form of working capital and tangible net worth to successfully engage in the business of selling payment instruments or money transmission. Sufficiency of financial resources shall be determined through financial analysis by the Department of pro-forma and historical financial information of the applicant. Each licensee

shall be required to complete and attest to official questionnaires and statements of assets and liabilities when requested for examination purposes. Licensees shall be prohibited from withholding, deleting, destroying, or altering information requested by an examiner of the Department or making false statements or material misrepresentations to the Department during the course of an examination or on any application or renewal form sent to the Department.

(4) Authorized Agents.

(a) Licensees may designate authorized agents to engage in the sale of payment instruments or money transmission at non-banking outlets and the place of business of such authorized agents will not be construed as a branch office. The authorized agent must be bonded and the licensee made solely liable for the payment of the issued payment instruments or transmitted money upon proper presentation and demand. The responsibility of both the licensee and its authorized agent shall be carefully defined in a written agreement setting forth the duties of both parties and providing for remuneration of the authorized agent. An arrangement for daily conveyance of proceeds from the sale of payment instruments and money transmission by the authorized agent to the licensee is preferable, particularly if the volume of transactions justifies more frequent conveyance. The licensee's blanket bond coverage shall extend to cover transactions by the authorized agent and the conveyance of the funds to the licensee or the licensee's depository financial institution.

(b) Licensees are required to submit authorized agent information to the Department in such form, timeframe, and manner and with such supporting documentation as required. The initial authorized agent list should include all authorized agents of the licensee as of the date the licensee begins business. Future reports related to authorized agents will be submitted on a quarterly basis. The initial authorized agent list as well as the subsequent quarterly reports shall be deemed to be the licensee's application for approval of the designated authorized agents. Failure to report changes to authorized agents and/or locations in the reporting period in which the authorized agent began or ceased offering the licensee's services can result in fines, revocation, suspension, or other administrative action by the Department.

(5) Every licensee or authorized agent of a licensee shall display prominently in the premises where money is transmitted or where payment instruments are issued or sold a copy of its license. Advertising material relative to the sale of payment instruments or money transmission available within this State shall bear the legend "LICENSED BY THE GEORGIA DEPARTMENT OF BANKING AND FINANCE" in letters at least one-quarter inch high and contain the licensee's unique identifier. The Department may waive the required legend as to specific material distributed in more than one licensing jurisdiction.

(6) Every licensee giving notices of additional or changes in locations operated by the licensee or by an authorized agent shall do so in a form and manner as provided by the Department. Such notice shall include the name and business locations of any authorized agent whose agency has been revoked, suspended, cancelled, terminated, or voluntarily closed by the licensee since the previous report. The reason for such revocation or suspension, and the amount of any outstanding claim by the licensee against the authorized agent relating to the sale of payment instrument or money transmission shall be provided to the Department upon request.

(7) Audit; quarterly reports.

(a) Every licensee shall have an audit of its books and records performed at least annually by independent public accountants in accordance with generally accepted auditing standards. Such audit will be provided to the Department within ten (10) days of the Department's request for such information. Each licensee is required to furnish the Department activity statement on a quarterly basis in a form and manner prescribed by the Department which, shall include, but not be limited to, the amount of outstanding payment instruments or outstanding orders to transmit that have not yet been paid. The activity statement shall be filed forty-five (45) days after the end of each calendar quarter. Licensees submitting an activity statement to the Department, whether in hard copy or electronically, are certifying to the material accuracy and validity of the information as submitted.

(8) Proceeds received from the sale of payment instruments or money transmission net of fees charged and retained by the authorized agent shall be remitted to the licensee or the licensee's depository financial institution by such means as the licensee shall require within five (5) business days from the date of the sale or issuance of payment instruments unless more frequent remittance is required by the Department or the licensee.

(9) Receipt. Each customer that is a payment instrument holder shall be provided with a written receipt or other evidence of acceptance of the issuance of payment instruments or the transmission of money showing the name of the licensee or trade name of the licensee that is registered with the Department, authorized agent identifier information, the date of issuance of the payment instrument or of the transmission of money, the dollar amount of the issued payment instrument or of the transmitted money, and the fee charged to the customer.

(10) Minimum Books and Records.

(a) Each licensee shall make, keep, and preserve the following books, accounts, and other records:

1. A record of each payment instrument sold;
2. A general ledger which shall be posted at least monthly containing all assets, liabilities, capital, and income and expense accounts;
3. Settlement sheets received from authorized agents;
4. Bank statements and bank reconciliation records;
5. Records of outstanding payment instruments;
6. Records of each payment instrument paid;
7. A list of the names and addresses of all of the licensee's authorized agents;

8. A copy of all currency transaction reports that are required to be filed by the licensee;
9. For money transmitters, records of all money transmissions sent or received as well as all outstanding money transmissions; and
10. Supporting documentation for all reports required to be prepared or filed with the Department or the Nationwide Multistate Licensing System and Registry.

(b) Each licensee shall maintain a principal location at which its books and records are maintained and which is accessible to the Department for examination during normal business hours. If the records are maintained outside of the state, then the licensee must have all required records delivered to the Department's main office within ten (10) days of the Department's request. The Department may examine any person that purports to satisfy the exemption from licensure set forth in O.C.G.A. § 7-1-682 to verify that the person qualifies for the exemption from licensure. A licensee that refuses to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department), that withholds material information, or makes a misrepresentation shall have its license revoked.

(11) A licensee shall make a written request to the Department seeking approval for any proposed change in ownership, change in control, or change in executive officer as required by O.C.G.A. § 7-1-688 at least thirty (30) days prior to the proposed change.

Authority O.C.G.A. § 7-1-61; § 7-1-681; §7-1-690

---

### **80-3-1-.02 Check Cashers.**

(1) For purposes of Rules 80-3-1-.02, 80-3-1-.03, 80-3-1-.04, 80-3-1-.06, 80-3-1-.07(3), 80-3-1-.08, 80-3-1-.09, and 80-5-1-.02(2), the terms that are defined in O.C.G.A. § 7-1-700 shall have the identical meaning.

(2) Every applicant for a license shall demonstrate to the Department that such applicant has sufficient financial resources in the form of working capital and tangible net worth to successfully engage in the business of cashing payment instruments. Sufficiency of financial resources shall be determined through financial analysis by the Department of pro-forma and historical financial information of the applicant. Each licensee shall be required to complete and attest to official questionnaires and statements of assets and liabilities when requested for examination purposes. Licensees shall be prohibited from withholding, deleting, destroying, or altering information requested by an examiner of the Department or making false statements or material misrepresentations to the Department during the course of an examination or on any application or renewal form sent to the Department.

(3) Every licensee shall maintain an original written authorization or other evidence of verification attesting to the fact that each specific corporation or other business association has authorized its officers and employees or specific officers or employees to present payment

instruments, drawn by the corporation or other business association payable to cash or drawn by any party payable to the corporation or other business association, to a licensee for cashing. A check casher shall not cash a payment instrument payable to persons other than natural persons unless the check casher has on file such written authorization or verification indicating that the payee has authorized the presentation of such payment instruments on behalf of the payee.

(4) Every licensee shall post in prominent view of each teller window or other customer service station a copy of its license. Advertising material related to the cashing of payment instruments and distributed within this state shall bear the legend "LICENSED BY THE GEORGIA DEPARTMENT OF BANKING AND FINANCE" in letters at least one-quarter inch high and contain the licensee's unique identifier.

(5) Minimum Books and Records.

(a) Books and records required herein shall be maintained by every licensee except the information required in items 1 through 8 of subsection (5)(b) of this Rule shall be maintained by licensees that cash payment instruments for an amount of one thousand dollars (\$1,000) or more.

(b) A record of cashed payment instruments shall be maintained by each licensee as a log of all transactions occurring each day. The log must be maintained in chronological order based on the date of negotiation of the payment instrument. Unless the cashed payment instrument is for an amount of one thousand dollars (\$1,000) or more, such record must be listed by the name of each person negotiating the payment instrument, the amount of the payment instrument, the date of negotiation of the payment instrument, and the amount of the fee for cashing the payment instrument. For all cashed payment instruments in an amount of one thousand dollar (\$1,000) or more, such record shall include:

1. The date of negotiation of the payment instrument;
2. Date of the payment instrument;
3. Payment instrument number;
4. Name and location or routing number of the payor bank or, if a pre-paid card, the branded card name;
5. Name of the drawer of the payment instrument;
6. Name, address, and identifying number (social security, driver's license, passport, etc.) of the person negotiating the payment instrument;
7. Amount of the payment instrument; and
8. Amount of fee charged for cashing the payment instrument.

(c) A daily cash reconciliation statement shall be maintained summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business. Such reconciliation statement shall separately reflect cash received from the sale of payment instruments (if licensed as a seller of payment instruments or an authorized agent of

such licensee), redemption of returned items, bank cash withdrawals, cash disbursed in cashing of payment instruments, and bank cash deposits.

(d) A general ledger containing records of all assets, liabilities, capital, income and expenses shall be maintained. The general ledger shall be posted from the daily record of cashed payment instruments or other record of original entry, at least quarterly, and shall be maintained in such manner as to facilitate the preparation of an accurate trial balance of accounts in accordance with generally accepted accounting practices. A consolidated general ledger reflecting activity at two or more locations under the same license may be maintained provided books of original entry are separately maintained for each location.

(e) For all entities cashing payment instruments, each customer cashing a payment instrument shall be offered the option of receiving a receipt showing the name of the licensee or trade name of the licensee, the transaction date, the amount of the payment instrument, and the fee charged.

(f) All licensees shall maintain supporting documentation for all reports and logs required to be prepared or filed with the Department or the Nationwide Multistate Licensing System and Registry.

(6) All payment instruments drawn on a financial institution domiciled in the United States and cashed by a licensee shall be sent for deposit to the licensee's account at a financial institution authorized to do business in the State of Georgia whose deposits are federally insured or sent for collection not later than the close of business on the next business day after the date on which the payment instrument was cashed.

(7) Each licensee shall maintain a principal location at which its books and records are maintained and which is accessible to the Department for examination during normal business hours. If the records are maintained outside of the state, then the licensee must have all required records delivered to the Department's main office within ten (10) days of the Department's request. The Department may examine any person that purports to satisfy the exemption from licensure set forth in O.C.G.A. § 7-1-701.1 to verify that the person qualifies for the exemption from licensure. A licensee that refuses to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department), that withholds material information or makes a misrepresentation shall have its license revoked. The business of the licensee may be conducted through additional outlets, including those operated as mobile facilities, provided that mobile facilities maintain a regular schedule of times and locations at which they cash payment instruments, file the schedule with the Department, and comply with local licensure requirements at each location at which business is conducted.

(8) A licensee shall notify the Department in writing within fifteen (15) days of the closing of the portion of its business that cashes payments instruments and shall surrender its original license to the Department at that time.

(9) A licensee shall make a written request to the Department seeking approval for any proposed change in ownership, change in control, or change in executive officer as required by O.C.G.A. § 7-1-705.1 at least thirty (30) days prior to the proposed change.

(10) Every licensee giving notices of changes in locations operated by the licensee over those previously reported shall do so on forms provided by the Department.

**80-3-1-.03 Money Service Businesses: Compliance with Federal Requirements.**

(1) For the purposes of this Rule, Money Service Businesses (“MSBs”) refer to a class of non-bank financial institutions defined in the Currency and Foreign Transactions Reporting Act of 1970 (“Bank Secrecy Act”), which Act requires such non-bank financial institutions to register with the Financial Crimes Enforcement Network, United States Department of the Treasury and to comply with other recordkeeping and compliance laws.

(2) A licensee under Article 4 or 4A of Chapter 1 of Title 7 that satisfies the definition of an MSB under the Bank Secrecy Act, shall comply with the federal registration requirements for such businesses and shall provide the Department with evidence of such registration.

(3) Georgia requires that all licensees under Article 4 or 4A of Chapter 1 of Title 7 must have a compliance program and must comply with the recordkeeping requirements, currency transaction reporting, and suspicious activity reporting set forth in the Bank Secrecy Act and its related regulations, including those set forth at 31 CFR Chapter X, provided the licensees are required to do so under the Bank Secrecy Act. MSBs filing a suspicious activity report (“SAR”) with a federal authority must send a copy of such report to the Department at the same time the SAR is filed. Other recordkeeping requirements required by state law are provided for in Rules 80-3-1-.01(10) and 80-3-1-.02(5). Licensees may consult [http://www.fincen.gov/financial\\_institutions/msb/](http://www.fincen.gov/financial_institutions/msb/) for questions about the federal requirements.

Authority O.C.G.A. § 7-1-61; § 7-1-690; § 7-1-706.1.

---

**80-3-1-.04 Reports of Large Currency Transactions, Recordkeeping, and Suspicious Activity Reporting Requirements for Check Cashers, Payment Instrument Sellers and Money Transmitters.**

(1) Persons engaged in the business of cashing payment instruments, selling payment instruments, and transmitting money and authorized agents of money transmitters and payment instrument sellers shall be subject to the filing requirements for large currency transactions as prescribed in Article 11 of Chapter 1 of Title 7, and as further directed herein.

(2) The reporting requirements contained in Article 11 of Chapter 1 of Title 7 shall be met by filing with the appropriate federal agency a copy of the form(s) filed in compliance with the Currency and Foreign Transactions Reporting Act of 1970 (“Bank Secrecy Act”) within the time limits set forth therein. Such forms shall include the filing of currency transaction reports and suspicious activity reports as described in the Bank Secrecy Act and accompanying regulations.

(3) Recordkeeping. Georgia law regarding recordkeeping for check cashers, payment instrument sellers and money transmitters shall be satisfied by compliance with all applicable

federal law. Such federal law includes, but is not limited to, the Bank Secrecy Act and the associated regulations at 31 CFR Chapter X. A licensed check casher that does not satisfy the definition of a check casher under the Bank Secrecy Act shall comply with the state recordkeeping requirements at Rule 80-3-1-.02(5).

(4) Records required to be maintained under Paragraph (3) of this rule may be maintained in a photographic, electronic, or other similar form at a central location within or outside the State of Georgia provided specific records can be provided to the location designated by the Department within ten (10) days of the date of a written notice by the Commissioner to the licensee.

(5) Currency transaction reporting requirements for financial institutions are contained in Chapter 80-9-1 of the Department's regulations.

Authority O.C.G.A. § 7-1-61; § 7-1-690; § 7-1-706.1.

---

**80-3-1-.06 Reports of Apparent Criminal Irregularity by Check Cashers, Payment Instrument Sellers, Money Transmitters, and Authorized Agents.**

(1) Sale of payment instruments and money transmitter licensees shall file with the Department the name, location, and federal tax identification number of any authorized agent within this state who has failed to remit to the licensee the proceeds received from the sale of the licensee's payment instruments or from licensee's money transmission activities within five (5) business days, or such lesser period of time as the licensee shall require, from the date of such sale or order to transmit or whose authorized agency status has been revoked, suspended, terminated, cancelled, or voluntarily closed due to an outstanding liability due to the licensee. The report shall state the aggregate amount of unremitted payment instrument sales or money transmission proceeds due to the licensee and any provisions which have been made to recover same.

(2) Structuring to avoid reporting.

(a) Any check casher, payment instrument seller, authorized agent of a payment instrument seller, other persons who cash payment instruments for a fee, money transmitters, and authorized agents of money transmitters shall report to the Department any instance involving such sale of payment instruments, cashing of payment instruments, or money transmission where there is reasonable cause to believe that its customer has, for the purpose of evading the reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970 ("Bank Secrecy Act") or Article 11 of Chapter 1 of Title 7:

1. Caused or attempted to cause a currency transaction report required under Article 11 of Chapter 1 of Title 7 or the Bank Secrecy Act not to be filed;

2. Caused or attempted to cause a currency transaction report required under Article 11 of Title 7 or the Bank Secrecy Act to be filed containing a material omission or misstatement as defined in O.C.G.A. § 7-1-912;



3. Completed a structuring (as defined in O.C.G.A. § 7-1-912), assisted in structuring, attempted a structuring, or attempted to assist in structuring any currency transaction.

(b) Authorized agents of payment instrument sellers and money transmitters shall not be required to report as provided in subsection (a) where the licensee has advised the authorized agent in writing that the licensee operates a system of internal procedures designed to gather the pertinent data and file the reports required in subsection (a).

(3) Any licensed payment instrument seller, money transmitter, or check casher shall notify the Department within five (5) business days of any discovery of any criminal act or apparent criminal act by any officer, director, or employee of such licensee or by any officer, director, or employee of an authorized agent occurring in this state and relating to the business of the licensee. Such notification shall include a full description of the acts or apparent acts believed to be in violation of the criminal laws of this state or the United States, the names of all persons believed to be involved, a statement as to action taken by the licensee in response to the discovery or suspicions, and a copy of the written notification to the licensee's fidelity insurance carrier.

(4) Licensees governed by these Rules shall be subject to amendments of the Bank Secrecy Act which may impose other reporting obligations for suspicious transactions.

Authority O.C.G.A. § 7-1-61; § 7-1-690; § 7-1-706.1.

---

### **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 gravity of the violation, history of previous violations, and such other facts and circumstances that contributed to the violation.

(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 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.

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

---

### **80-3-1-.08 State Requirements for Financial Institutions.**

(1) A financial institution required to report any currency transaction in excess of ten thousand dollars (\$10,000), including a transaction in excess of one hundred thousand dollars (\$100,000), may satisfy state currency transaction filing and reporting requirements by filing a timely report (FinCEN Form 104) with the federal authority designated in the Currency and Foreign Transaction Reporting Act of 1970 (“Bank Secrecy Act”).

(2) Banks and credit unions are required to follow federal guidelines and requirements for detecting abuses or the structuring of transactions designed to avoid Bank Secrecy Act reporting, including transactions described in Rule 80-3-1-.04(4).

Authority O.C.G.A. § 7-1-61.

---

### **80-3-1-.09 Verification of Lawful Presence Citizenship Affidavit.**

(1) Pursuant to O.C.G.A. § 50-36-1, the Department is required to obtain an affidavit verifying

the lawful presence of every natural person that submits an application for a license as a payment instrument seller, money transmitter, or check casher on behalf of an individual, business, corporation, partnership, limited liability company, or any other business entity. For businesses, corporations, partnerships, limited liability companies, and other business entities (collectively “company applicant”), only an owner or executive officer that is authorized to act on behalf of the company applicant is authorized to submit the required signed and sworn affidavit.

(2) In the event the individual that executed the lawful presence affidavit on behalf of the company applicant is no longer an owner or executive officer of the licensee, the licensee must notify the Department within ten (10) business days following the date of the occurrence and provide the Department with an affidavit from a current owner or executive officer verifying his or her lawful presence on behalf of the licensee. The failure to disclose within ten (10) business days that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee or to timely submit a new affidavit from a current owner or executive officer may subject the license to revocation, suspension, and other administrative action.

Authority O.C.G.A. § 7-1-61; § 7-1-682; § 7-1-683; § 7-1-702.

---

### **80-3-1-.10 Nationwide Multistate Licensing System and Registry.**

(1) License issuance and renewals.

(a) All applications for new or renewal licenses must be made through the Nationwide Multistate Licensing System and Registry (“NMLSR”) unless otherwise expressly exempted from this requirement by the Department in writing. Fees for new applications include an initial Department investigation fee and the appropriate application fee. Applications for new licenses which are approved between November 1 and December 31 in any year will not be required to file a renewal application for the next calendar year. All fees are non-refundable.

(b) All licenses issued shall expire on December 31 of each year, and an application for renewal shall be made annually between November 1 and December 31 each year. Subsequent renewal applications and/or license fees must be received on or before December 1 of each year or the renewal applicant will be assessed a late fee as set forth in Rule 80-5-1-.02. A renewal application is not deemed received until all required information and corresponding fees have been provided by the licensee. A proper renewal application not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license will expire. Unless a proper renewal application has been received any license which is not renewed on or before December 31 will require the renewal applicant to file a reinstatement application in order to conduct business as a check casher, money transmitter, or payment instrument seller in the State after that date.

(2) The responsibility of applicants and licensees to update information in NMLSR.

(a) It shall be the sole responsibility of each applicant for a license and each licensee to keep current at all times its information on the NMLSR. Amendments to any information on file with

the NMLSR must be made by the applicant or licensee within ten (10) business days of the date of the event necessitating the change. The Department shall have no responsibility for any communication not received by an applicant or licensee due to its failure to maintain current contact information on the NMLSR as required.

(b) Amendments to any responses to disclosure questions by an applicant for a license or a licensee must be made within ten (10) business days following the date of the event necessitating the change. Failure by an applicant for a license to timely update the applicant's responses to disclosure questions may result in the denial of the application. In the case of a licensee, failure to timely update any disclosure information may result in the revocation of its license.

(c) It shall be the responsibility of each applicant for a license and each licensee to ensure that its control persons keep current at all times their information on the NMLSR. Amendments to any information on file with the NMLSR must be made by the control person within ten (10) business days of the date of the event necessitating the change. For purposes of this Rule, control person means any individual that has the power, either directly or indirectly, to direct or cause the direction of management and policies of an applicant or licensee, whether through the ownership of voting or nonvoting securities, by contract, or otherwise.

(d) Amendments to any responses to disclosure questions by a control person must be made within ten (10) business days following the date of the event necessitating the change. Failure by a control person of an applicant for a license to timely update the control person's responses to disclosure questions may result in the denial of the application. In the case of a licensee, failure by a control person to timely update any disclosure information may result in the revocation of its license.

(3) A licensee may challenge information entered by the Department into the NMLSR. All challenges must be sent to the Department in writing addressed to the attention of the Deputy Commissioner of Non-Depository Financial Institutions. Once received, the Department shall consider the merits of the challenge raised and provide the licensee with a written reply that shall be the Department's final decision regarding the challenge.

Authority O.C.G.A. § 7-1-61; § 7-1-683.3; § 7-1-702.2.

---

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

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

#### **TABLE OF CONTENTS**

80-5-1-.01 General.

80-5-1-.02 License and Supervision Fees for Check Cashers, Payment Instrument Sellers, Money Transmitters, Representative Offices and Mortgage Lenders and Brokers; Due Dates.

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-.05 Other Charges and Fees.

80-5-1-.06 Fees for Credit Unions.

### **80-5-1-.01 General.**

(1) The annual appropriation for the Department of Banking and Finance as enacted by the General Assembly and signed into law, after adjustment for any differences between departmental revenue collections and departmental expenditures for the preceding fiscal year, shall be prorated among the financial institutions supervised or regulated by the Department.

(2) That portion of the annual appropriation prorated to each financial institution shall be assessed against such institutions. Annual assessments are for the Department's fiscal year, July 1 through June 30. Assessments for depository institutions are based upon each financial institution's assets reported on either a December 31 or June 30 Report of Condition for a partial year. All financial institutions with a June 30 or December 31 Call Report, including those acquired, converted, and or merged into a federal or national institution or into another state institution will also be assessed, either for a full year or for a partial year, as appropriate. Assessments for July 1, 2014 through June 30, 2015 will be delivered on or about December 1, and are due and payable no later than December 31. Starting with the Department's fiscal year of July 1, 2015 through June 30, 2016, assessments for a full year will be delivered on or about August 15, and are due and payable no later than September 15. A late payment penalty may be assessed for the full year billing at any time after the due date. Assessments for a partial year will be prorated for the number of full and partial months as a state institution and will be delivered as soon as practical and shall be due and payable upon receipt; however, under no circumstances, shall any portion of an annual assessment paid to the Department be refunded. A late payment penalty may be assessed for the partial year billing fourteen days after bill issuance.

(3) Newly chartered banks will not be assessed for the first three full months plus any partial month from the begin business date. Thereafter, annual assessments as set forth herein shall apply. The assessment period for newly chartered banks shall begin on the first day of the month after the first three full calendar months from the begin business date.

(4) Assessment fees for state chartered institutions merging or converting into federal or national institutions after July 1, but prior to the date that assessments are due and payable, will be prorated based on the number of full and partial months the institution operated as a state institution.

(5) Assessment fees for one or more state chartered institutions that merge into another state institution after July 1, but prior to the date that assessments are due and payable, will be assessed on the combined total assets and offices of the merged institutions as of June 30. State institutions that merge after the assessment date, shall pay the full assessment for each institution.

(6) Assessment fees for a state institution that fails and is acquired by a federal or national institution after July 1, but prior to the date that assessments are due and payable, will be prorated based on the number of full and partial months the institution operated as a state

institution. Assessment fees for a state institution that fails and is acquired by a state institution after July 1, but prior to the date that assessments are due and payable, will be assessed on the combined total assets and combined offices of the merged institutions as of June 30. State institutions that fail after the date the assessments are due and payable, will pay the full assessment for each institution.

(7) Assessment fees for a national bank that fails and is acquired by a state institution after July 1 will be prorated based on the number of full and partial months the institution operated as a state institution.

(8) The Department has made available an Applications Manual at its Internet website, which manual includes the fees for each type of application, registration and notification.

(9) The Department has policies which provide that certain qualifying institutions may expedite applications or submit shortened forms of applications. The fees for these expedited processes have been reduced accordingly. The criteria for banks to qualify for such treatment is set forth in Rule 80-1-1-.10 while the criteria for bank holding companies to qualify is set forth in Rule 80-6-1-.13.

Authority Ga. L. 1974, pp. 705, 732, 733, 921; Ga. L. 1976, Act 762. O.C.G.A Sec. 7-1-61.

---

**80-5-1-.02 License and Supervision Fees for Check Cashers, Payment Instrument Sellers, Money Transmitters, Representative Offices and Mortgage Lenders and Brokers; Due Dates.**

(1) Payment instrument sellers and money transmitters.

(a) The annual license fee is two thousand dollars (\$2,000) for payment instrument sellers and one thousand dollars (\$1,000) for money transmitters.

(b) The annual renewal license fee is two thousand dollars (\$2,000) for payment instrument sellers and one thousand dollars (\$1,000) for money transmitters and shall be due and must be received by the Department on or before the first day of December of each year. Where the person or corporation engages in both the sale of payment instruments and money transmission, the higher of the two fees shall be due and payable. A licensee whose renewal application and annual license renewal fee is not received by the Department on or before December 1 will be assessed a late fee of three hundred dollars (\$300) and cannot be assured of renewal of its license prior to January 1.

(c) An additional non-refundable application investigation fee of two hundred fifty dollars (\$250) will be assessed.

(d) Applicants for Department approval of a change in ownership, change in control, or change in executive officer as set forth in O.C.G.A. § 7-1-688 shall pay a nonrefundable investigation, application, and processing fee of five hundred dollars (\$500).

(2) Check Cashers.

(a) The annual license fee is four hundred dollars (\$400).

(b) The annual renewal license fee is four hundred dollars (\$400).

(c) An initial investigation and supervision fee shall be six hundred fifty dollars (\$650) for the first year. It is not refundable, but if the license is granted it shall satisfy the annual fee for the first license period.

(d) Initial and renewal license fees shall also include an additional fifty dollars (\$50) for the second and each additional location, plus a fee in an amount as directed by the Department to cover the cost of the required number of fingerprints for each individual background check.

(e) Annual renewal license fees shall be due and must be received by the Department on or before the first day of December of each year. A licensee whose renewal application and annual renewal license fee is not received by the Department on or before the first day of December of each year will be assessed a late fee of three hundred dollars (\$300) and cannot be assured of renewal of its license prior to January 1.

(f) Applicants for Department approval of a change in ownership, change in control, or change in executive officer as set forth in O.C.G.A. § 7-1-705.1 shall pay a nonrefundable investigation, application, and processing fee of five hundred dollars (\$500).

(g) Any person that was registered with the Department as a casher of checks prior to June 30, 2014 shall be deemed to be a licensee and not a registrant effective July 1, 2014. Effective July 1, 2014, all former registrants shall comply with all laws and regulations governing licensees. Pursuant to O.C.G.A. § 7-1-704, such license shall expire on December 31, 2014.

(h) Any person that, as of the effective date of this rule, was licensed by the Department or registered with the Department as a casher of checks for all or part of the period from October 1, 2013 through September 30, 2014 shall have its license extended through December 31, 2014. Pursuant to O.C.G.A. § 7-1-704, such license shall expire on December 31, 2014.

(3) Registrants of representative offices, trust production offices, business production offices, and loan production offices shall file a registration statement, as prescribed by the Department, and shall pay a registration fee of one hundred fifty dollars (\$150) on or before January 31 of each year. Such fee is intended to cover the costs of responding to questions or complaints from consumers with regard to these entities doing business in Georgia and is in lieu of registration under O.C.G.A. § 16-14-15, as provided in O.C.G.A. § 7-1-11. Registrants of international bank representative offices shall pay a registration fee of one thousand dollars (\$1,000). Each bank holding company registered with the Department shall pay on or before January 31 of each year an annual registration fee of one thousand dollars (\$1,000). Each bank holding company registered with the Department must pay five hundred dollars (\$500) for each additional Georgia subsidiary corporation in those categories, provided, however, any registrant required to register and pay a fee by another paragraph of this chapter shall only be required to pay one fee which shall be the higher fee.

(4) Mortgage licensees and registrants.

(a) Lenders. The initial and renewal application and license fee for mortgage lenders shall be one thousand dollars (\$1,000). The initial one thousand dollars (\$1,000) fee covers the main office. Any branch offices included in the initial application shall be assessed a fee of three

hundred fifty dollars (\$350) each. A fee of three hundred fifty dollars (\$350) will be assessed for each additional office not initially registered, if such office is located in Georgia, and if mortgage lending activity is conducted at the office. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and license fees plus a twenty dollar (\$20) fee for each approved branch office located in Georgia, must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and license fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.

(b) Brokers. The initial and renewal application and license fee for mortgage brokers shall be five hundred dollars (\$500). The initial five hundred dollar (\$500) fee covers the main office. Any branch offices located in Georgia shall be assessed a fee of three hundred fifty (\$350) each. Brokers include loan processors. Processors are defined in Rule 80-11-4-.07. Such a processor may have a separate main office and other branch offices where mortgage loan processing is done. The offices will be treated the same as brokers' offices. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and license fees must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and license fee, plus a twenty dollar (\$20) fee for each approved branch office located in Georgia, that is not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.

(c) Mortgage Loan Originators. The initial and renewal application and license fee for mortgage loan originators shall be one hundred dollars (\$100). Subsequent renewal application fees must be received by the Department on or before December 1 of each year or the applicant will be assessed a late fee of one hundred dollars (\$100). A renewal application is not deemed received until all required information, including a renewal fee in the appropriate amount and documentation showing that the requisite continuing education hours have been obtained, has been provided by the licensee. A renewal application, containing all of the required information along with the correct fees and proof of required continuing education that is not received by the Department on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Effective August 1, 2010, applicants may not conduct mortgage loan origination activity without a current license.

(d) Lender Registrants. The initial and renewal application and registration fee for mortgage lenders required to register but not be licensed with the Department shall be one thousand dollars (\$1,000), due on or before December 1 of each year. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and registration fees must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and registration fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.

(e) Broker Registrants. The initial and renewal application and registration fee for mortgage brokers required to register but not be licensed with the Department shall be five hundred dollars (\$500), due on or before December 1 of each year. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and registration fees must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and registration fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.

(f) All license, investigation, registration, and supervision fees, late fees and assessed civil penalties must be paid prior to renewal of the annual license or registration, reinstatement of a license or registration, reapplication for a license or registration or any other approval from the Department.

(g) All late fees collected by the Department, net of the cost of recovery, which cost shall include any cost of hearing and discovery in preparation for hearing, shall be paid into the state treasury to the credit of the general fund or may be paid as provided in O.C.G.A. § 7-1-1018(e).

(h) Applicants for approval to acquire directly or indirectly ten percent (10%) or more of the voting shares of a corporation or ten percent (10%) or more of the ownership of any other entity licensed to conduct business as a mortgage lender and/or a mortgage broker under O.C.G.A. Article 13 (otherwise called change of control) shall pay a nonrefundable investigation, application and processing fee of five hundred dollars (\$500).

(i) Application for an additional office of a licensee shall be accompanied by a nonrefundable fee of three hundred fifty dollar (\$350), as provided in O.C.G.A. §7-1-1006.

(j) The fee for initial application for approval by the Department for a school or education provider shall be five hundred dollars (\$500). An application for approval will be on a form provided by the Department at its website. The fee is nonrefundable. The fee for annual renewal of such approval is two hundred fifty dollars (\$250).

(5) The Department may discount or surcharge all supervision or license fees herein provided to assure funding of annual appropriations by the General Assembly.

Authority Ga. L. 1974, pp. 705, 732, 733, 921; Ga. L. 1976, Act 762, p. 168; 1990, p. 739; 1993, p. 543; O.C.G.A. § 7-1-41; § 7-1-61; § 7-1-683; § 7-1-685; O.C.G.A. § 7-1-702; O.C.G.A. § 7-1-704; O.C.G.A. § 7-1-716; O.C.G.A. § 7-1-721; § 7-1-1001.1; and § 7-1-1005.

---

### **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), and trust departments 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, or building and loan 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 cases of:

(i) Interstate transactions where a comparable fee has already been paid for an earlier, related transaction among the same entities and where the resulting holding company pays an annual registration fee of \$1,000; or

(ii) Interstate transactions involving no Georgia state banks where the resulting holding company with branches or banks in Georgia pays an annual registration fee of \$1,000.

(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 cases of:

(i) Interstate transactions where a comparable fee has already been paid for an earlier, related transaction among the same entities and where the resulting holding company pays an annual registration fee of \$1,000; or

(ii) Interstate transactions involving no Georgia state banks where the resulting holding company with branches or banks in Georgia pays an annual registration fee of \$1,000.

(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. A new trust company, which must be affiliated with a Georgia bank, requires an investigation fee of \$20,000.



(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 December 31, 2014 an annual supervision fee of \$1,000. Starting with the 2015 calendar year, the annual bank holding company supervision fee of \$1,000 is due and payable on September 15. 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. Secs. 7-1-41, 7-1-61.

---

### **80-5-1-.05 Other Charges and Fees.**

(1) The department may impose reasonable charges for the search, retrieval, or redaction of records which are subject to public inspection consistent with the provisions of Code Section 50-18-71. In addition to the charges for the search, retrieval, or redaction of records subject to public inspection, persons requesting copies of such records shall pay 10 cents per page of copy as provided in subsection (c) of Code Section 50-18-71. One copy of any department publication not available electronically may be provided without charge to financial institutions paying supervision fees pursuant to Rule 80-5-1-.02. Copies of records of the department available for public inspection shall be made by department personnel.

(2) Requests for non-consumer related letter rulings submitted by persons other than persons under the direct supervision of the department shall be accompanied by a fee of \$250.

(3) A charge of \$1,500 shall be paid by parties requesting public hearings before the department pursuant to Rule Chapter 80-1-1. In addition, where a hearing officer not regularly employed by the department conducts the hearing, the actual charge for the services of such person shall be paid.

(4) Persons requesting affidavits certifying to the authenticity of any documents shall pay a fee of \$25 in addition to any copy charges.

(5) Each person required to submit fingerprint cards to the department for any reason, including but not limited to: initial application, change in control, addition of new officer or director or person managing the business, or expanded background check of an employee, shall submit a money order or certified check in an amount as directed by the department a fee to cover the cost of the required number of fingerprints for each individual background check.

Authority Ga. L. 1974, pp. 732, 733; Ga. L. 1988, p. 243; 1993, p. 543; O.C.G.A. § 7-1-41; § 7-1-61; § 7-1-1004.

---

### **80-5-1-.06 Fees for Credit Unions.**

(a) Applicants for approval by the department for the addition of a single residential common bond group shall pay an investigation fee of \$1,000.

(b) Applicants for department approval of merger of two credit unions where neither is considered financially or otherwise unsafe or unsound shall pay an investigation fee of \$1,000.

(c) Applicants for department approval of conversion from a federal or out of state credit union to a state credit union shall pay an investigation fee of \$1,000.

(d) Applicants for department approval of a credit union subsidiary shall pay a processing fee of \$500.

(e) The department may in its discretion waive or reduce a fee based on the circumstances of the application.

Authority O.C.G.A. §7-1-41; §7-1-61; §7-1-663.

---

## **CHAPTER 80-8-1**

### **AGENCY ORGANIZATION AND PROCEDURES**

#### **TABLE OF CONTENTS**

80-8-1-.01 Organization.

### **80-8-1-.01 Organization.**

(1) The Department is organized pursuant to the provisions of O.C.G.A. § 7-1-30 and is charged with the responsibility of supervising the activities of depository financial institutions and certain other financial entities operating pursuant to the provisions of Title 7.

(2) The administration of the Department is under the direction of the Commissioner of Banking and Finance. The Commissioner is assisted by a Senior Deputy and Divisional Deputies in the areas of Administration, Legal and Consumer Affairs, Non-Depository Financial Institutions, and Financial Institution Supervision. The Financial Institutions Supervision Division administers laws, regulations and supervisory matters relating to credit unions, banks, international financial institutions, trust companies, holding companies and state savings and loan associations; and processes applications for such entities. The state is geographically divided into districts or divisions, each of which is administered by a District Director. Legal and Consumer Affairs is responsible for legal matters in consultation with the Attorney General's office and for responses to complaints and questions from consumers regarding the entities regulated. Non-Depository Financial Institutions is responsible for regulation and supervision of mortgage lenders and brokers under the Georgia Residential Mortgage Act; and the regulation and supervision of money service businesses, including check cashers, payment instrument sellers, and money transmitters. Administration is responsible for personnel and all budgetary matters.

(3) The Department is funded entirely from the examination, supervision, licensing and other fees paid by supervised financial institutions and other entities under its jurisdiction, and operates under the budgetary system of the state of Georgia.

Authority Ga. L. 1964, p. 338; 1974, p. 733.

---

## CHAPTER 80-9-1

### CURRENCY TRANSACTION REPORTS AND SUSPICIOUS ACTIVITIES

#### TABLE OF CONTENTS

80-9-1-.01 State Requirements.

#### **80-9-1-.01 State Requirements.**

(1) A financial institution required to report any currency transaction in excess of \$10,000 including a transaction in excess of \$100,000 may satisfy state currency transaction filing and reporting requirements by filing a timely report (FinCEN Form 104) with the federal authority designated in the Currency and Foreign Transaction Reporting Act of 1970 ("Bank Secrecy Act").

(2) Banks and credit unions are required to follow federal guidelines for detecting abuses or the structuring of transactions designed to avoid Bank Secrecy Act reporting, including transactions described in Rule 80-3-1-.04(4).

Authority O.C.G.A. §7-1-61; O.C.G.A. § 7-1-689; O.C.G.A. §7-1-706.

## CHAPTER 80-11-2

### BOOKS AND RECORDS REQUIREMENTS; AUDITS

#### TABLE OF CONTENTS

80-11-2-.02 Minimum Requirements for Books and Records.

#### **80-11-2-.02 Minimum Requirements for Books and Records.**

(1) Any mortgage broker or lender required to be licensed or registered under Article 13 of Chapter 1 of Title 7 ("licensee" or "registrant") must maintain the following books, accounts and records:

(a) Copies of all disclosure documents required by Rule 80-11-1-.01;

(b) Samples of advertisements as required by Rule 80-11-1-.02;

(c) Copies of all written complaints by customers and written records of disposition;

(d) Copies of examination reports prepared by any agency, division or corporate instrumentality of the United States, the State of Georgia or any other state, which reports pertain to the mortgage brokerage and/or lending business of the licensee or registrant and are not prohibited from being disclosed to the Department of Banking and Finance by state or federal law;

(e) Copies of reports required to be prepared and/or submitted by the licensee or registrant to any agency, division, or corporate instrumentality of the United States, the State of Georgia or any other state, which reports pertain to the mortgage brokerage and/or lending business of the licensee or registrant and are not prohibited from being disclosed to the Department of Banking and Finance by state or federal law;

(f) Copies of all payroll records, including federal and state withholding tax forms, W-2's, and 1099 forms filed with the Internal Revenue Service by the licensee or registrant, or its agent on behalf of individuals employed by the licensee or registrant or on behalf of individuals acting as independent contractors in the mortgage brokerage and/or lending business of the licensee or registrant;

(g) A general ledger and subsidiary records sufficient to produce, when requested by the department, an accurate monthly statement of assets and liabilities and a cumulative profit and loss statement for the current operating year;

(h) All checkbooks, bank statements, deposit slips and canceled checks which pertain to the mortgage brokerage and/or lending business of the licensee or registrant;

(i) Supporting documentation for all expenses and fees paid by the mortgage broker on behalf of the customer, which documentation indicates the amount paid and the date paid;

(j) Copies of all credit report bills received from all credit reporting agencies for the most recent five year period;

(k) Documentation to indicate a consumer had a choice of attorney, if attorneys' fees are intended to be excluded from a points and fees calculation under the Georgia Fair Lending Act;

(l) An indication of whether each loan has points and fees of 5% or more, as calculated under the Georgia Fair Lending Act;

(m) Documentation to support the source and purpose for each receipt of monies in any form in an amount greater than \$100 and documentation to identify the recipient and purpose of each payment of monies in any form in an amount greater than \$100 by the licensee or registrant in its mortgage brokerage and/or lending business in order that the receipts may be reconciled to bank deposits and to books of the licensee or registrant;

(n) Employee file for each employee. The employee file must contain all documents related to hiring the employee, including criminal background check, date employment began, and date the Department's website was reviewed to verify eligibility for employment; and

(o) Copies of all submitted mortgage call reports, including any amended reports, for the previous five (5) years and all related work papers and supporting documentation that support the accuracy of the information contained in the mortgage call reports.

(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 Ga. L. 1993, p. 543; O.C.G.A. § 7-1-61; § 7-1-1012.

---

## CHAPTER 80-11-3

### ADMINISTRATIVE FINES AND PENALTIES

#### TABLE OF CONTENTS

80-11-3-.01 Administrative Fines.

#### **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 gravity of the violation, history of previous violations, and such other facts and circumstances as have contributed to the violation.

(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) Maintenance of Loan Files. Any person who is required to be licensed 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.

(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 of the Georgia Residential Mortgage Act, any person who acts as 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 collected after the date on which they are due shall subject the person to a late payment fee of one hundred dollars (\$100) for each due date missed. The filing of a fee statement after the date on which it is due, even if no \$10.00 fees were collected by the collecting agent during the applicable reporting period, shall subject the person to a late filing fee of one hundred dollars (\$100) for each due date missed. If the Department finds that a person has not, through negligence or otherwise, submitted \$10.00 fees within six months of the due date, it may impose an additional one hundred dollars (\$100) fine for failure to remit fees. 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) Education and Experience Requirements. Any mortgage broker licensee subject to the experience and education requirements who fails to meet such requirements shall be fined one thousand dollars (\$1,000) for operating a mortgage business without meeting licensing standards, and their license or registration will be subject to revocation or suspension.

(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 Mortgage 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; § 7-1-1012; § 7-1-1004.1.

## CHAPTER 80-11-5

### MORTGAGE LOAN ORIGINATOR LICENSURE AND OTHER REQUIREMENTS

#### TABLE OF CONTENTS

80-11-5-.01 Mortgage Loan Originator Licensure Requirements.

80-11-5-.08 Bona Fide Nonprofit Corporations.

#### **80-11-5-.01 Mortgage Loan Originator Licensure Requirements.**

(1) A mortgage loan originator may not engage in the business of mortgage loan origination for a licensed residential mortgage broker or lender without first obtaining and maintaining a current Georgia mortgage loan originator's license issued through the National Mortgage Licensing System and Registry ("NMLSR").

(2) An applicant for mortgage loan originator's license must have a sponsor at and during the time his or her application is being considered for approval or renewal by the Department. Failure to have a sponsor at the time application for licensure is made on the NMLSR or while it is pending shall result in the application being administratively withdrawn by the Department. In the event the applicant wishes to submit a new application after the application has been administratively withdrawn, then the applicant shall be required to submit a new application as well as pay all associated fees. For purposes of this Rule Chapter, "sponsorship" means the authorization for a properly licensed mortgage loan originator to conduct business as an employee under and on behalf of a specific mortgage broker or mortgage lender's license or registration. Sponsorship must be initiated and maintained by the licensed or registered mortgage broker or mortgage lender employing a mortgage loan originator.

(3)(a) As a continuing requirement of licensure, a mortgage loan originator must at all times have proper sponsorship on record with the NMLSR by a licensed or registered Georgia mortgage broker or mortgage lender.

(b) Sponsorship must be applied for and accepted by the Department. Once established, sponsorship can be removed by the employing licensee or registrant. It shall be the responsibility of every mortgage loan originator applicant and licensee to ensure that his or her sponsorship is correctly reflected at all times on the NMLSR.

(4) A mortgage loan originator shall have coverage under the surety bond of his or her licensed or registered mortgage broker or mortgage lender employer.

(5) An applicant for a mortgage loan originator's license will not be approved for licensure if he or she has pleaded guilty to, been found guilty of, or entered a first offender or nolo plea for a felony. A mortgage loan originator license applicant will not be approved for licensure or reinstatement of licensure if he or she has been convicted of a felony in an instance in which a restoration of rights subsequently was issued by a state or federal pardoning authority empowered to dispense this relief.

(6) A mortgage loan originator must immediately surrender his or her license to the Department through the NMLSR once he or she leaves the employ of a licensed broker or lender and begins working as a loan officer for an exempt entity identified in O.C.G.A. § 7-1-1001.

(7) An application for a mortgage loan originator license, which is missing material information, shall be held in an incomplete status for a period of five (5) business days after the issuance of written notice by the Department or NMLSR specifying the identified deficiency. If any such deficiency remains outstanding for more than five (5) business days, the license application will be considered abandoned by the applicant and will be administratively withdrawn by the Department. In the event the applicant wishes to submit a new application after it has been administratively withdrawn, then the applicant shall be required to submit a new application as well as pay all associated fees.

Authority O.C.G.A. § 7-1-1001.1; § 7-1-1002; § 7-1-1003.2; § 7-1-1004.

---

### **80-11-5-.08 Bona Fide Nonprofit Corporations.**

(1) An employee of a nonprofit corporation that the Department has determined is a bona fide nonprofit corporation pursuant to O.C.G.A. § 7-1-1001(a)(18) and this Rule is exempt from the requirement of obtaining a mortgage loan originator license for the period of time that the Department's determination is in place. This exemption from licensure does not apply if the employee originates residential mortgage loans outside the scope of the employee's duties and employment at the bona fide nonprofit corporation.

(2) A nonprofit corporation may request that the Department determine it is a bona fide nonprofit corporation for purposes of O.C.G.A. § 7-1-1001(a)(18). The nonprofit corporation shall submit to the Department a determination request in such form and manner and with such supporting documentation as required to enable the Department to conclude whether the nonprofit corporation satisfies the criteria set forth in O.C.G.A. § 7-1-1001(a)(18) and this Rule.

(3) One of the factors that the Department must consider in determining whether an entity is a bona fide nonprofit corporation is whether it complies with O.C.G.A. § 7-1-1001(a)(18)(vi) and provides loan terms that are favorable to the borrower. The Department may consider the following loan terms when determining whether a loan is made in the best interest of the borrower:

- (a) Loan terms that do not charge for the accrual of interest;
- (b) Loan terms that charge interest at below market rates;
- (c) Loan terms that require a borrower to qualify for the loan by the contribution of sweat equity; or
- (d) Loan terms that forgive repayment in whole or in part, whether over a period of time, on a specified date, or subject to ownership or occupancy conditions.

(4) After completing its review of the determination request, the Department will determine whether the nonprofit corporation satisfies the requirements of a bona fide nonprofit corporation.

(5) A nonprofit corporation determined by the Department to be a bona fide nonprofit corporation shall, between December 1 and December 31 of each year, submit a certification that the nonprofit corporation continues to meet the criteria under which the Department issued a determination that the entity is a bona fide nonprofit corporation. In addition to the annual certification, a bona fide nonprofit corporation shall give the Department thirty (30) days written notice prior to any proposed significant change to the entity's mission, policies, practices, or operations to enable the Department to consider whether the entity would still qualify as a bona fide nonprofit corporation.

(6) If the Department determines that a nonprofit corporation no longer satisfies the requirements of O.C.G.A. § 7-1-1001(a)(18), then the Department shall rescind the determination that the entity is a bona fide nonprofit corporation.

(7) In the event a nonprofit corporation no longer satisfies the requirements of O.C.G.A. § 7-1-1001(a)(18), the employees of the nonprofit corporation will no longer be exempt from the mortgage loan originator requirements.

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

---

## CHAPTER 80-12-11

### HOLDING COMPANY

#### TABLE OF CONTENTS

80-12-11-.03 Lawful and Unlawful Acquisitions.

#### **80-12-11-.03 Lawful and Unlawful Acquisitions.**

(1) It shall be unlawful for a holding company to acquire direct or indirect ownership or control of any voting shares of any MALPB, if, after such acquisition, such holding company will directly or indirectly own or control five (5) percent or more of the voting shares of such MALPB, or for any company to become a holding company as a result of the acquisition or control of such MALPB, unless: the MALPB has been in existence and continuously operating as an MALPB for a period of three (3) years or more prior to the date of acquisition; and the holding company has sought approval from the Department prior to acquiring or controlling the MALPB and the Department has approved such proposed acquisition or control in writing.

(2) Notwithstanding the express provisions of Paragraph 1, a holding company is authorized to acquire or control an MALPB through formation or chartering of an MALPB in Georgia.

(3) The Department has the discretion to waive the three (3) year minimum age requirement set forth in Paragraph 1, if it has issued a written determination, prior to acquisition, that the waiver will not adversely impact the MALPB or the merchant acquiring industry. In making

such a determination the Department will take into consideration competitive, financial, managerial, safety and soundness, compliance and other concerns.

(4) No holding company shall acquire direct or indirect ownership or control of any voting shares of an MALPB, as set forth in Paragraph 1, if it will result in the holding company having ownership or control of more than two (2) MALPBs in a five (5) year period. The Department has the discretion to waive this restriction, if it has issued a written determination, prior to acquisition, that the additional MALPB the holding company seeks to own or control is insolvent or in an unsafe or unsound condition to conduct business.

Authority O.C.G.A. §§ 7-1-73, 7-9-3, 7-9-6, 7-9-13.