

STATE OF GEORGIA DEPARTMENT OF BANKING AND FINANCE



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*NATHAN DEAL
GOVERNOR*

*KEVIN HAGLER
COMMISSIONER*

*SPECIAL EDITION
IMPORTANT NOTICE
PROPOSED RULEMAKING*

May 17, 2018

**NOTICE OF PROPOSED RULEMAKING
AND
OPPORTUNITY TO COMMENT**

**PROPOSED ENACTMENT OF RULES AND REGULATIONS
BY
DEPARTMENT OF BANKING AND FINANCE
STATE OF GEORGIA**

To all interested persons:

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, 7-1-690, 7-1-706.1, 7-1-1012, and other cited statutes, the Department of Banking and Finance hereby gives notice of its intent to adopt new rules.

A synopsis and purpose precedes the proposed rules.

Comments to the Department of Banking and Finance must be received by the close of business on **Monday, June 18, 2018**. Please send all comments to:

Oscar B. Fears, III, Deputy Commissioner
Georgia Department of Banking and Finance
2990 Brandywine Road, Suite 200
Atlanta, GA 30341-5565
Fax: (770) 986-1654 or 1655
Email: bfears@dbf.state.ga.us

The Department shall review all comments, may contact commenters to discuss their suggestions, and, after the comment period has closed, intends on promulgating final rules. The Department will consider the proposed new rules for adoption at a meeting **at 2:00 p.m. on Wednesday, June 27, 2018**, at the offices of the Department of Banking and Finance at Suite 200, 2990 Brandywine Road, Atlanta, Georgia 30341. Notice and a copy of the final rules adopted will be e-mailed to persons who have made a special request, and will be made available on our website at <http://dbf.georgia.gov/>. Other interested parties may receive a copy of the final rules by contacting the Department at (770) 986-1633, after **Wednesday, June 27, 2018**.

2018 Rules and Regulations

Proposed Changes: Synopsis, Purpose and Background

80-1-1-.12 Notification of Intent to Utilize a Federal Power.

The proposed rule sets forth the information that a bank must provide in its notice to utilize a federal power as well as when a notice to utilize a federal power provided to the Department is deemed complete in order to invoke the parity process set forth in House Bill 780 (“HB780”).

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

The proposed amendment clarifies that, other than for purposes of the legal lending limit, the Department does not view an overdraft of an account as an extension of credit.

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

The proposed amendment aligns with the recent change to federal guidance to permit an evaluation in lieu of an appraisal for commercial properties worth \$500,000 or less.

80-1-11-.06 Sharing Confidential Supervisory Information.

The proposed rule sets forth the circumstances under which a financial institution can share information contained in a report of examination with officers, directors, employees, external accountants, attorneys, or consultants.

80-2-1-.01 General Requirements for Accounting Procedures.

The proposed amendment provides that all credit unions must maintain their records in accordance with Generally Accepted Accounting Principles. The proposed revision also provides that a credit union must amend a financial statement in the event it becomes aware of a misstatement. The proposed amendment also provides that a credit union must post a notice on its website that a financial statement can be reviewed by members and gives the credit union the option of posting such financial statement on its website.

80-2-1-.04 Notification of Intent to Utilize a Federal Power.

The proposed rule sets forth the information that a credit union must provide in its notice to utilize a federal power as well as when a notice to utilize a federal power provided to the Department is deemed complete in order to invoke the parity process set forth in HB780.

80-2-4-.05 Credit Union as a Lessor of Real Estate.

The proposed rule provides that after obtaining the prior written approval of the Department a credit union may lease excess real estate as long as the credit union or its wholly-owned subsidiary occupies at least 67% of the premises. The proposed rule also sets forth the information that must be contained in the application.

80-2-4-.06 Charitable Donation Accounts.

The proposed rule sets forth limitations on a credit union's investment in a charitable donation account.

80-2-4-.07 Life Insurance as an Employee Benefit.

The proposed rule sets forth certain parameters on the ability of a credit union to purchase life insurance as expressly authorized by HB780.

80-2-6-.01 Supervisory Audits.

The proposed amendment provides that unqualified opinion audits will be produced to the Department upon request unlike all other audits which will be provided to the Department within fifteen days of receipt by the credit union. The proposed revision also provides that the engagement letter will be produced to the Department simultaneously with the audit report and that such engagement letter shall indicate the methods utilized by the auditor to protect member information. The proposed revision provides that the Department can obtain an audit and engagement letter directly from the auditor even if such documentation was produced by the credit union. The proposed amendment provides that the failure to obtain the required audit shall be reported to the Department. In addition, the proposed amendment indicates that if the Department determines an audit is deficient, then it can require the credit union to obtain a new audit. Finally, the proposed revision provides that the Supervisory Committee must make certain inspections or perform certain requirements no less frequently than on an annual basis.

80-2-6-.02 Percentage of Accounts to be Confirmed by Supervisory Committee.

The proposed revision seeks to eliminate the rule requiring Supervisory Committees of credit unions perform a 100% account confirmation.

80-2-6-.04 Scope of Audit.

The proposed revision identifies certain items that must be reviewed as part of a credit union's annual audit.

80-2-8-.02 Affiliated Organizations as Additions to Non-Residential Group Common Bonds.

The proposed amendment changes the reference from "non-residential" to "non-geographic" to reflect the field of membership change to include employment along with residence within a well-defined neighborhood, community, or rural district in House Bill 143 ("HB143") last session.

80-2-8-.03 Requirements for Adding Additional Common Bond Groups to a Credit Union's Field of Membership.

The proposed amendment changes the reference from “non-residential” to “non-geographic” to reflect the field of membership change to include employment along with residence within a well-defined neighborhood, community, or rural district in HB143 last session.

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

The proposed amendment changes the reference from “residential” to “geographic” to reflect the field of membership change to include employment along with residence within a well-defined neighborhood, community, or rural district in HB143 last session.

80-2-12-.01 Loan Generally, Interpretations and Rulings.

The proposed amendment revises the language to clarify that there is not a “required” margin between the value of collateral and the amount of a loan. In addition, the proposed amendment clarifies that, other than for purposes of the legal lending limit, the Department does not view an overdraft of an account as an extension of credit.

80-2-12-.02 Real Estate Loans.

The proposed revision streamlines the loan-to-value limit for nonamortized commercial loans made by a credit union and eliminates the provisions related to amortized loans.

80-2-12-.04 Assets Acquired – Debts Previously Contracted (“D.P.C.”).

The proposed rule sets forth the processes for determining the value of property foreclosed upon by a credit union. The proposed rule also provides the process for a credit union to retain foreclosed property beyond the statutorily authorized retention period and the circumstance where the Department will not permit an extension. Finally, the proposed rule provides the circumstances under which a credit union may make capital improvements to foreclosed property.

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

The proposed amendment eliminates language indicating a timeframe during which authorized agents must remit funds to licensees and instead indicates that the timing will be governed by the terms of the contract between the parties. The proposed revision eliminates the requirement for posting a legend on advertisements and the requirement that authorized agents post a copy of the licensee's license but, instead, requires licensees to ensure that authorized agents post a copy of a statement indicating that it is an authorized agent of the specific licensee. The proposed amendment also requires that licensees maintain records related to SARs as the requirement that

SARs be provided to the Department at the time of filing is being eliminated. In addition, the proposed revision provides that licensees can maintain records electronically at any location as long as the records can be produced to a location designated by the Department within ten days. Finally, the proposed amendment reflects a revision in HB780 that a request for change in executive officer as a result of change in ownership or other change in control of the licensee must be filed 30 days or more before the proposed change.

80-3-1-.02 Check Cashers.

The proposed amendment provides that check cashers shall obtain the name, address, and identifying number of persons negotiating payment instruments for all payment instruments not just those in the amount of \$1,000 or more. The proposed revision indicates that licensees can maintain records electronically or otherwise at any location as long as the records can be produced to a location designated by the Department within ten days. Finally, the proposed amendment reflects a revision in HB780 that a request for change in executive officer as a result of a change in ownership or other change in control must be filed 30 days or more before the proposed change.

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

The proposed revision eliminates the requirement that licensees remit to the Department a copy of all SARs filed with a federal agency.

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

The proposed revision provides that records maintained off-site must be produced to a location designated by the Department within ten days.

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

The proposed revision provides if a licensee or its authorized agent reports suspicion of structured transactions to the appropriate federal agency, then the licensee or authorized agent is not required to report such fact to the Department. The proposed amendment also aligns the language regarding the timing and reporting of criminal or apparent criminal activity of a director, officer, or employee of a licensee or authorized agent with the language in O.C.G.A. §§ 7-1-687 and 7-1-705.

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

The proposed amendment distinguishes between the timing of obtaining approvals of changes in executive officers depending on the underlying circumstances causing the change for check

cashers, money transmitters, and sellers of payment instruments pursuant to the provisions in HB780. The proposed revision also creates a fine of \$1,000 for each transaction that is in violation of the prohibited acts section for check cashers, money transmitters, and sellers of payment instruments. The proposed amendment provides that the refusal to permit an examination of investigation shall result in a fine of \$5,000 and the issuance of a notice of intent to revoke license for check cashers, money transmitters, and seller of payment instruments. Finally, the proposed amendment removes the fine for failure to display a legend indicating licensed by the Department on advertisements for money transmitters and sellers of payment instruments, but provides that a licensee is subject to a \$500 fine if its authorized agents fail to post the statement required by Rule 80-3-1-.01(5).

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

The proposed amendment eliminates the requirement that copies of certain SARs be automatically produced to the Department.

80-10-1-.01 Minimum Records Retention Periods.

The proposed amendment substantially reduces the number of documents that financial institutions are required to maintain but gives the individual institutions the discretion to maintain for longer periods of time. The proposed revision also provides that nothing in the rule alters any other record retention requirements established by law.

80-11-1-.06 Compliance with Federal Requirements.

The proposed rule provides that mortgage lenders and brokers that satisfy the definition of “loan or finance company” under the Bank Secrecy Act must have an anti-money laundering program and comply with all applicable filing and reporting requirements under the Bank Secretary Act and related regulations.

80-11-3-.01 Administrative Fines.

The proposed amendment provides that a refusal to submit to an examination or investigation requires at least two attempts by the Department to conduct an examination or investigation.

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

The proposed amendment sets forth that insurance policies must indicate that the policy cannot be cancelled without the insurance company providing at least 60 days prior notice to the Department or contain substantially similar protections related to cancellation approved by the Department in writing. The proposed revision also provides that a trust company must get

approval from the Department prior to reducing or taking action to reduce the amount of its insurance coverage.