STATE OF GEORGIA
DEPARTMENT OF
BANKING AND FINANCE

BULLETIN... BULLETIN... BULLETIN... BULLETIN... BULLETIN...

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SPECIAL EDITION
IMPORTANT NOTICE
FINAL RULEMAKING

June 27, 2018

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF BANKING AND FINANCE
STATE OF GEORGIA

Adopted June 27, 2018

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, 7-1-690, 7-1-706.1, 7-1-1012, and other cited statutes, the following attached Rules of the Department of Banking were adopted on June 27, 2018. The Rules were filed with the Secretary of State on June 27, 2018 and, pursuant to O.C.G.A. § 50-13-6, will be effective on July 17, 2018, 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 17, 2018. The Department received two (2) written comments regarding the proposed Rules. The Department fully considered the comments it received and made substantive revisions to Rules 80-3-1-.01(5) and 80-3-1-.07(1)(p) to revert to the original language in the rule related to posting of licenses. The Department also made revisions to Rule 80-3-1-.07(1)(a), (d), and (f) to align certain references to changes in the proposed Rules. The Department believes that the Rules as adopted encourage safety and soundness, encourage safe and fair mortgage lending, and conform to the law.

CHAPTER 80-1-1

APPLICATIONS, REGISTRATIONS AND NOTIFICATIONS

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

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

(1) In order to invoke O.C.G.A. § 7-1-296, a bank must provide the Department with notice if it intends to utilize a federal power or avail itself of any federal preclusion or preemption of any provision of law, rule or regulation of this State. Such notice shall contain the following information:

(a) A detailed description of the proposed activity to be undertaken by the bank;

(b) A citation to the specific federal authorization of such proposed activity;

(c) A description of any federal requirements, limitations, and/or restrictions imposed on the proposed activity;

(d) Documentation establishing that the bank satisfies all the federal requirements, limitations, and restrictions to engage in the activity;

(e) To the extent the activity relates to a new product or service to be offered by the bank, an analysis of how the proposed activity fits within the bank's business plan;

(f) An analysis of the projected financial impact of the proposed activity; and

(g) Such other information as may be required by the Department.

(2) A notice shall be incomplete and, thus, not received by the Department until all information has been provided to the satisfaction of the Department.

(3) If the Department determines that the notice is incomplete, then the Department shall provide the bank with notice of this fact. The bank must cure any deficiencies in the notice or provide any information requested by the Department within thirty (30) days after receipt of such notification from the Department. If the bank fails to address and/or cure the deficiencies or provide the requested information to the Department within the thirty (30) day period, the notice shall be deemed withdrawn. However, prior to the expiration of the thirty (30) day period, a bank can make a written request for an extension of time to cure the deficiencies or provide the information requested by the Department and it shall be in the Commissioner's sole discretion to approve, conditionally or otherwise, or deny the request for an extension of time. Further, the Department may provide a bank with multiple notifications of deficiencies with the notice or multiple requests for additional information.

(4) After the bank satisfactorily completes the notice and provides all of the required documents, the Department will issue an official acceptance letter evidencing that the notice is deemed complete. The issuance of the official acceptance letter shall not be construed as evidence that the federal power identified in the notice is authorized.

(5) Within 45 (forty-five) days after issuance of the official acceptance letter, the Department may object to the exercise of the federal power, in whole or in part, or to the federal preclusion or preemption of the law, rule, or regulation of this State, in whole or in part. Prior to the expiration of the review period, the Department may extend the review period for an additional 45 (forty-five) days by providing the bank with written notice of such extension. In the event the Department does not object to the exercise of the federal power during the applicable review period, the bank will have satisfied the requirements in O.C.G.A. § 7-1-296 to exercise the federal power.

Authority: O.C.G.A. §§ 7-1-61; 7-1-296.

CHAPTER 80-1-5

LOANS AND DISCOUNTS

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

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

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

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

(3) Loans by a bank to any wholly-owned subsidiary of the bank, which subsidiary is located within an approved office of the bank and which has agreed to abide by all laws, rules and regulations applicable to the bank shall be exempt from the twenty-five (25) percent maximum lending limit of the bank. In addition, to the extent allowed by other applicable law and with the prior written approval of the Department, this exemption from the twenty-five (25) percent maximum lending limit may be extended to loans from a bank to a wholly owned subsidiary of an affiliated bank.

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

payments, is guaranteed by an instrumentality of the United States government and such guarantee is assignable and has been assigned to the bank, such loan may be excluded to the extent of the guarantee.

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

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

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

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

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

(8) Wherever approval of the Board of Directors or Loan Committee is required, such approval must be specific, prior, written approval of each extension of credit, except that advances made under a master note covering a specific purpose or project need not receive specific approval where such approval was accorded the master note. Annual approval of a line of credit may be used where interest rate, repayment terms, and anticipated collateral are clearly identified and current credit information is on file. Commodity, floor-plan and discount lines of credit which are anticipated to exceed fifteen (15) percent of the statutory capital base may be approved annually to be deemed appropriate by the Board of Directors without each transaction receiving specific prior approval. For those lines that are expressly authorized by statute or regulation to exceed twenty-five (25) percent of the statutory capital base, the line

must be reviewed quarterly by the Board of Directors or Loan Committee when the line is in fact in excess of twenty-five (25) percent of the statutory capital base.

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 80-1-10

FIXED ASSETS AND ASSETS ACQUIRED (“D.P.C.”)

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

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

(1) All assets acquired through foreclosure or in lieu of foreclosure and all "Other Real Estate" acquired in such manner or otherwise shall be initially appraised six (6) months prior to or three (3) months following the acquisition by an independent appraiser knowledgeable in the fair market value of such assets or, in the alternative, evaluated by a qualified officer of the bank in conformity with the Evaluation Content portion of the Interagency Appraisal and Evaluation Guidelines if the book value of the property is less than two (2) percent of the statutory capital base of the bank, $250,000 for residential property, or $500,000 for commercial property whichever amount is greater. Appraisals subsequent to the initial appraisal are required if, based upon a review of the following factors, there is a reasonable basis to determine that the prior appraisal is no longer reliable as a reasonable estimate of the property's fair market value: volatility of local market; changes in terms and availability of financing; natural disasters; limited or over supply of competing properties; improvements to the subject property or competing properties; lack of maintenance of the subject or competing properties; changes in underlying economic and market assumptions, such as capitalization rates and lease terms; changes in zoning, building materials, or technology; and environmental contamination. In the event there is no basis to determine that the initial appraisal is no longer reliable, then appraisals shall be at intervals of not more than five (5) years.

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

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

(4) Property subject to this rule shall be initially carried on the books of the bank at the fair market value determined by independent appraisal, unless otherwise provided, less the estimated costs to sell the property ("new basis"). This valuation shall be determined as of the date the bank takes legal title to or physical possession of the property, whichever event occurs first. Subsequently, the carrying value shall be subject to write-down or write-up based upon the most recent appraisal. However, the property must be carried at the lower of the current fair market value less the estimated costs to sell the property or the new basis.

The new basis may be adjusted upward in the event the bank makes any permanent capital improvements, subject to the limitations in paragraph (5), necessary to prepare the property for sale but the adjustment in the new basis shall be the lower of the increase in the fair market value of the property after the capital improvements or the amount expended to make the capital improvements. Non-capital improvements and expenses necessary to carrying and maintaining the property (taxes, legal fees, insurance, yard maintenance, etc.) shall be expenses and not added to the carrying value. Income earned from the property, other than from conversion or sale, shall be credited to income and shall not reduce the carrying value of the property.

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

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

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

(c) Consistent with safe and sound banking practices.

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

Authority: O.C.G.A. § 7-1-61.

CHAPTER 80-1-11

PUBLIC DISCLOSURE OF INFORMATION

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

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

(1) When necessary or appropriate for business purposes, a financial institution, or any director, officer, or employee thereof, may disclose information contained in, or related to, reports of examination issued by the Department, to a person or organization officially connected with the financial institution as officer, director, or employee or as an external accountant, attorney, or consultant. A financial institution or a director, officer, or employee may make such disclosure if the external accountant, attorney, or consultant is under a written contract to provide services to the financial institution and the external accountant, attorney, or consultant has a written agreement with the financial institution in which the external accountant, attorney, or consultant:

(a) States its awareness of, and agreement to maintain the confidentiality of the disclosed information as required by O.C.G.A. §§ 7-1-67 and 7-1-70; and

(b) Agrees not to use the disclosed information for any purpose other than as provided under its contract to provide services to the financial institution.

(2) The requirements for written contractual acknowledgements and agreements shall not apply if the recipient of the disclosed information is subject to independent ethical standards to maintain the confidentiality of such information

Authority: O.C.G.A. §§ 7-1-61; 7-1-70.

CHAPTER 80-2-1

BOOKS AND RECORDS

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

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

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

(1) A credit union is required to maintain its books of account in accordance with Generally Accepted Accounting Principles, including a complete and accurate account of:

(a) All of its assets, whether in its name or in the name of another person;

(b) All of its liabilities, its borrowings, and any security interests in its assets; and

(c) All of its income, expenses, capital gains and losses.

(2) Each credit union shall, by the end of each month, prepare a financial statement reflecting its position and operations of the preceding month. This statement, to be prepared from the accounts of the general ledger of the credit union, shall include a complete report of the credit union's earnings, setting forth in detail all items of income and expense. It shall be signed by an officer of the credit union and attested to by one member of the Board of Directors who is not an officer of the credit union. In the event the credit union shall become aware of a misstatement in a financial statement, then the credit union must amend the financial statement in a timely manner. A notice, which the credit union shall at all times display, shall be posted in a public area of its main office and each branch office as well as any credit union website, informing its members that the monthly financial statement may be examined, upon request of a member, at each office of the credit union and/or on the credit union’s website. The notice shall include at a minimum, directions as to who to contact to view the statement.

(3) Each credit union shall file with the Department a complete report of its condition as of the last business day in March, June, September and December of each calendar year and at such

other dates as the Commissioner may determine. Such reports shall be filed no more than thirty (30) days after the close of the applicable accounting period. Each such report shall be on forms required by the Department and shall be attested as provided on the form.

Authority: O.C.G.A. § 7-1-61.

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

(1) In order to invoke O.C.G.A. § 7-1-671, a credit union must provide the Department with notice if it intends to utilize a federal power or avail itself of any federal preclusion or preemption of any provision of law, rule or regulation of this State. Such notice shall contain the following information:

(a) A detailed description of the proposed activity to be undertaken by the credit union;

(b) A citation to the specific federal authorization of such proposed activity;

(c) A description of any federal requirements, limitations, and/or restrictions imposed on the proposed activity;

(d) Documentation establishing that the credit union satisfies all the federal requirements, limitations, and restrictions to engage in the activity;

(e) To the extent the activity relates to a new product or service to be offered by the credit union, an analysis of how the proposed activity fits within the credit union's business plan;

(f) An analysis of the projected financial impact of the proposed activity; and

(g) Such other information as may be required by the Department.

(2) A notice shall be incomplete and, thus, not received by the Department until all information has been provided to the satisfaction of the Department.

(3) If the Department determines that the notice is incomplete, then the Department shall provide the credit union with notice of this fact. The credit union must cure any deficiencies in the notice or provide any information requested by the Department within thirty (30) days after receipt of such notification from the Department. If the credit union fails to address and/or cure the deficiencies or provide the requested information to the Department within the thirty (30) day period, the notice shall be deemed withdrawn. However, prior to the expiration of the thirty (30) day period, a credit union can make a written request for an extension of time to cure the deficiencies or provide the information requested by the Department and it shall be in the Commissioner's sole discretion to approve, conditionally or otherwise, or deny the

request for an extension of time. Further, the Department may provide a credit union with multiple notifications of deficiencies with the notice or multiple requests for additional information.

(4) After the credit union satisfactorily completes the notice and provides all of the required documents, the Department will issue an official acceptance letter evidencing that the notice is deemed complete. The issuance of the official acceptance letter shall not be construed as evidence that the federal power identified in the notice is authorized.

(5) Within 45 (forty-five) days after issuance of the official acceptance letter, the Department may object to the exercise of the federal power, in whole or in part, or to the federal preclusion or preemption of the law, rule, or regulation of this State, in whole or in part. Prior to the expiration of the review period, the Department may extend the review period for an additional 45 (forty-five) days by providing the credit union with written notice of such extension. In the event the Department does not object to the exercise of the federal power during the applicable review period, the credit union will have satisfied the requirements in O.C.G.A. § 7-1-671 to exercise the federal power.

Authority: O.C.G.A. §§ 7-1-61; 7-1-671.

CHAPTER 80-2-4

INVESTMENT OF CREDIT UNION FUNDS

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

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

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

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

(1) Pursuant to O.C.G.A. § 7-1-650(8)(a), a credit union may purchase, hold, and convey real estate the credit union occupies or intends to occupy primarily for the transaction of its business. Subject to compliance with the provisions of this rule as well as the Department's prior written approval, a credit union may lease excess real estate.

(2) For purposes of this rule, the phrase "occupy primarily" means occupation and use, on a full-time basis, of at least sixty-seven (67) percent of the square footage of each individual premise by the credit union or by a credit union and a wholly owned subsidiary of the credit union.

(3) The underlying real estate must have been acquired in good faith for permissible purposes and with the intent of providing services to the credit union's members. Nothing herein shall be deemed to authorize a credit union to acquire real estate for speculative purposes.

(4) The credit union may not lease real estate to a third-party if it raises safety and soundness concerns.

(5) The application for approval to lease real estate to a third-party shall contain, at a minimum, the following information:

(a) A detailed description of the lease that is contemplated, including but not limited to, the terms of the lease, a description of the proposed lessee's operations, the relationship, if any, between the credit union and the proposed lessee, the real estate that is proposed to be leased, and the percentage of the real estate that will be occupied by lessee;

(b) The total amount of the credit union's fixed assets that will be leased in the event the lease is approved;

(c) An affirmative statement that there is no involvement by any director, committee member, officer or employee of the credit union or any related interest of such individuals with the individual or entity that is the proposed lessee. In the event there is any such involvement, then it should be detailed in the application; and

(d) A copy of the resolution adopted by the Board of Directors authorizing the lease of the specific premises to the proposed lessee.

Authority: O.C.G.A. § 7-1-61.

80-2-4-.06 Charitable donation accounts.

Credit unions are authorized to invest in charitable donation accounts subject to the following limitations:

(1) The primary purpose of the charitable donation account must be to generate funds to donate to 501(c)(3) non-profit organizations that serve a charitable, social, welfare, or educational purpose and serves the credit union's field of membership;

(2) Prior to investing in a charitable donation account, the Board of Directors must adopt a Conflict of Interest and Ethics Policy that specifically addresses charitable contributions. Such Conflict of Interest and Ethics Policy must include all designated charitable purposes

authorized to receive contributions and each designated charitable purpose must be consistent with the best interests of the membership of the credit union. The credit union shall develop written procedures regarding the funding of charitable donation accounts and the distribution of funds from such accounts;

(3) The terms and conditions controlling the charitable donation account must be documented in a written agreement. At a minimum, the written agreement must provide that donations will only be made to authorized organizations, document the investment strategies and risk tolerances that must be followed in administering the account, provide that all records of the account, including distributions and liquidation, will be maintained in conformity with generally accepted accounting principles, and provide for the frequency of distributions to authorized organizations;

(4) The charitable donation account may purchase an investment that would otherwise be impermissible if purchased by the credit union so long as the type of investment is authorized by the written agreement;

(5) Prior to the charitable donation account investing in an otherwise impermissible investment under Paragraph (4), the credit union must develop policies and procedures, approved by the Board of Directors, detailing the risk management processes that will be utilized prior to investing in an otherwise impermissible investment, including, but not limited to, the controls that will be implemented to monitor the investment, the timing and methodology of evaluating the quality and risks posed by the investment, and a documented and reasonable approach to transfer or otherwise divest of the investment in an expedited manner;

(6) The aggregate investment in charitable donation accounts cannot exceed five (5) percent of the credit union's net worth;

(7) A credit union cannot contribute funds to a charitable donation account if it has negative earnings unless it has received prior written approval from the department;

(8) A minimum of 51 percent of the total return from each charitable donation account must be distributed to one or more authorized organizations;

(9) Distributions must be made to authorized organizations no less frequently than every five (5) years;

(10) Assets of charitable donation accounts must be held in segregated custodial accounts or special purpose entities specifically identified as charitable donation accounts. If a credit union structures the charitable donation account as a trust, such trust must be a revocable trust and the trustee must be an entity regulated by a state or federal regulatory agency;

(11) Upon termination of the charitable donation account and subject to compliance with Paragraph 8, the credit union may receive a distribution of the remaining assets in cash or, alternatively, in kind so long as those assets are permissible investments for state-chartered credit unions; and

(12) Such investment must be consistent with principles of safety and soundness.

Authority: O.C.G.A. § 7-1-61.

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

Subject to any additional limitations the Commissioner or applicable federal regulator may impose by policy, guidance, or order, including, but not limited to, the Interagency Statement on the Purchase and Risk Management of Life Insurance as well as safety and soundness principles, a credit union may purchase, hold or fund life insurance as follows:

(1) Life insurance purchased, held, or funded in connection with employee compensation or benefit plans approved by the credit union's board of directors;

(2) Life insurance purchased or held to recover the cost of providing preretirement or postretirement employee benefits approved by the credit union's board of directors;

(3) The kind and amount of life insurance must be reasonable given the size of the credit union, the financial condition of the credit union, the duties of the employee, and other compensation of the employee;

(4) Obtain written approval from the Department prior to purchasing, holding, or funding split dollar life insurance or a product substantially similar to split dollar life insurance to ensure consistency with the Interagency Statement on the Purchase and Risk Management of Life Insurance and safety and soundness principles;

(5) A credit union investing to fund life insurance obligations may purchase an investment that would otherwise be impermissible if the investment is approved by the credit union's board of directors, is directly related to the credit union's obligation or potential obligation under such life insurance, and the credit union holds the investment only for as long as it has an actual or potential obligation under such life insurance; and

(6) Prior to the board of directors approving an otherwise impermissible investment under Paragraph (5), the credit union must develop board approved policies and procedures detailing the risk management processes the board will take into consideration in approving an otherwise impermissible investment, including, but not limited to, the controls that will be implemented to monitor the investment, the timing and methodology of evaluating the

quality and risks posed by the investment, and a documented and reasonable approach to transfer or otherwise divest of the investments in an expedited manner.

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

CHAPTER 80-2-6

SUPERVISORY AUDITS

80-2-6-.01 Supervisory Audits.

80-2-6-.02 Repealed and Reserved.

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

80-2-6-.01 Supervisory Audits.

(1) Every Supervisory Committee shall have an annual audit of the credit union performed, which must be comprehensive in scope covering the period elapsed since the last annual audit, and submit a summary of the audit results at the next annual meeting of the members of the credit union.

(2) The annual audit must be performed by a licensed independent accountant or firm of accountants. However, if the credit union has assets of less than $15 million, the Supervisory Committee may elect to have the annual audit conducted by the internal auditors of any sponsoring group, concern, or association of credit unions approved by the Department in writing.

(3) (a) Audit reports in which a licensed independent accountant expresses an unqualified opinion shall be provided to the Department upon request. All other audit reports in which a licensed independent accountant expresses anything other than an unqualified opinion, including, but not limited to, a qualified opinion, an adverse opinion, or a disclaimer of opinion, shall be provided to the Department within fifteen (15) days following receipt by the financial institution. All audit reports generated by anyone besides a licensed independent accountant in accordance with Paragraph 2 of this rule, shall be provided to the Department within fifteen (15) days following receipt by the financial institution. Audit reports submitted to the Department shall be accompanied by the Letter to Management, if applicable, detailing any reportable conditions discovered during the audit engagement.

(b) Failure to obtain the required audit, or the auditor's report thereof, shall be reported to the Department within fifteen (15) days of discovery.

(c) The engagement letter should clearly define the extent of the audit work including, the scope of the audit, the objectives, the resource requirements, the audit timeframes, and the resulting reports, as well as detail the methods utilized by the auditor to handle and protect member information. The credit union shall provide the Department with a copy of the engagement letter at the same time the audit report is provided to the Department.

(d) The auditor shall also provide the Department with a copy of the audit as well as the engagement letter at the request of the Department.

(4) If the audit is conducted by a licensed independent accountant or firm of accountants, the individual or firm is responsible for the preparation and maintenance of any work papers used to support the findings and conclusions in the audit. Conversely, if the audit is conducted by the internal auditors of any sponsoring group, concern, or association of credit unions, the Supervisory Committee shall be responsible for the preparation and maintenance of any work papers used to support the finding and conclusions in the audit. Under either scenario, the work papers shall be subject to review by the Department and must be made available to the Department upon request.

(5) In the event the Department determines that an audit is deficient, the Department may require the credit union to immediately obtain a new annual audit performed on terms and by an individual acceptable to the Department.

(6) At frequent intervals, but under no circumstances less than annually, the Supervisory Committee shall also make, or cause to be made, an inspection of the assets and liabilities of the credit union, the credit union's loan and deposit accounts, and the credit union's information technology. The Supervisory Committee shall also have supplementary audits performed upon request of the Department.

(7) At frequent intervals, but under no circumstances less than annually, the Supervisory Committee shall make, or cause to be made, a physical cash count.

Authority: O.C.G.A. §§ 7-1-61; 7-1-657.

80-2-6-.02 Repealed and Reserved.

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

(1) The auditor should be generally familiar with the statutes, rules, and regulations under which the credit union being audited operates, and with its charter and bylaw provisions. The annual

audit should incorporate the necessary procedures to satisfy the auditor that there is compliance with the applicable requirements that might materially affect the credit union's financial position of operation.

(2) Such annual audit shall include a review of the credit union's internal controls and such other tests and reviews of the credit union's records as deemed appropriate by the auditor, including, but not limited to, verifications of the credit union's loan and deposit accounts as well as adequate testing and review of the credit union's information technology activities.

(3) Specific Requirements for the annual audit:

(a) The audit must state the method and degree of direct verification of loan and share accounts and analyze the results by schedule. The audit should indicate whether positive or negative account confirmations were used, number of confirmations mailed, number of replies received, number of undeliverable confirmations, analysis of discrepancies disclosed, and degree of follow-up confirmation for non-replies and undeliverable confirmations;

(b) The audit includes a verification of a timely and accurate cash reconciliation and an affirmative verification of investments and deposits made by the audited credit union as well as the adequacy of the internal controls over these processes;

(c) Verification of the status of funds borrowed by the audited credit union, including promissory notes and certificates;

(d) The audit must confirm that internal routines and controls were evaluated and no exceptions were found or that certain listed exceptions were noted; and

(e) The audit must set forth in sufficient detail the general scope of the audit performed.

Authority: O.C.G.A. § 7-1-61; 7-1-657.

CHAPTER 80-2-8

FIELD OF MEMBERSHIP

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

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

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

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

(1) Organizations whose employees, members, or owners are primarily (more than fifty (50) percent) composed of persons or organizations within a non-geographic group common bond shall be eligible for membership in the credit union and all employees, members and owners of such an organization shall likewise be eligible for membership within the related common bond group, subject to approval according to this rule.

(2) Organizations and employees and members of organizations having a continuing contractual relationship with a non-geographic group common bond for other than membership eligibility purposes shall be eligible for membership in such group, provided they are approved according to this rule.

(3) Inclusion of organizations set forth in (1) and (2) above and employees and members of such organizations as members of a common bond group within a credit union must be approved by a majority of the Board of Directors of the credit union based upon a written request from a senior policy-making official of the organization certifying that the organization desires credit union services and that the organization will provide payroll deduction facilities or a technological equivalent enabling automatic access to members' payroll or designated financial account wherever located.

(4) Membership by the affiliated organization shall not be effective until:

(a) The Board of Directors amend the bylaws to add such organization to the field of membership; and

(b) A copy of the amended bylaws, properly adding such organization to the field of membership, is received by the department. Such receipt of compliant bylaws shall constitute approval of the bylaws by the department.

Authority Ga. L. §7-1-61; §7-1-663.

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

(1) A field of membership may consist of more than one common bond. Application to the department is required to include a proposed amendment to the bylaws.

(2) An application to add a common bond group must:

(a) Demonstrate that membership is financially and economically viable, that the application promotes competition, and that it broadens the availability of financial services to the proposed membership;

(b) Provide payroll deduction services or a technological equivalent enabling automatic access to a member's payroll or designated financial account wherever located;

(c) Be approved for inclusion into the field of membership by a majority of the credit union's Board of Directors;

(d) In the case of a non-geographic group common bond, demonstrate sponsor support for any new group sought or if necessary, the impact of loss of support from a sponsor; and

(e) Meet any additional requirements in this rule chapter.

(3) A credit union may expand its field of membership pursuant to this section only where:

(a) It has demonstrated sufficient managerial and financial capacity to safely and soundly serve such expanded membership; and

(b) It has developed a comprehensive business plan acceptable to the department designed to accomplish such expansion program in a safe, sound and business like manner.

(4) Requests for approval of additional groups of any type must be in writing and include evidence that all the requirements of this rule chapter have been met.

Authority Ga. L. §7-1-61; §7-1-663.

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

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

(2) Definitions for geographic groups:

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

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

(c) “Community” shall mean an area where:

1. Residents share common political, environmental, geographical or economic characteristics that tend to create an mutual interest; or

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 80-2-12

CREDIT UNION LOANS

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

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

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

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

(1) Lending limitations of Code Section 7-1-658(d) shall be computed quarterly with balances reflected on the credit union's statement of condition on the last calendar day of the preceding quarter. Where the lending limitations are reduced by recalculation, existing debt which was in conformity with the legal limitations at the time it originated shall not be construed to be non-conforming with new legal limitations; provided, however, in the absence of agreements to the contrary and originating at the time such debt originated regarding repayment programs for the debt in question, any extension, renewal, rollover or the like of the existing debt shall be considered to be a new loan and must conform to the new, lower lending limitations. Demand notes in excess of resultant lower lending limitations or included in aggregate debts in excess of such limitations must be called for maturity within six (6) months after it has been determined that the new lending limits are applicable; provided, such notes may be wholly or partially renewed on a demand basis or otherwise where the aggregate debt of the borrower conforms to the new lending limits.

(2) Where the credit union has documented the appointment of loan officers in lieu of a credit committee, the duties assigned by law or regulation to the credit committee shall be performed by those duly appointed. Where law or regulations specifically require action by the Board of Directors, such actions may not be delegated to loan officers. Loans in excess of 50 percent of a credit union's maximum loan limitation or such lower limit as the Board of Directors shall establish shall be acted upon by loan officers specifically designated to approve such loans. No person shall have the authority to disburse funds of the credit union for any loan which has been approved by such person.

(3) Advances made under a master note covering a specific purpose or project need not receive specific approval provided in Code Section 7-1-658(f) where such approval was accorded the master note. Annual approval of a line of credit may be used where interest rate, repayment terms, and anticipated collateral are clearly identified and current credit information is on file.

(4) A "secured loan" within the meaning of Code Section 7-1-658(e)(1) includes loans supported by:

(a) a financial statement on any endorser, guarantor or co-maker, properly signed, which is not more than eighteen months old, if the loan is to be considered secured, and such statement must reflect adequate income to service the loan and unencumbered equity sufficient to protect the loan.

(b) "Adequate collateral". The lack of a perfected lien, inadequate insurance, insufficient margins between collateral value and the amount of the loan shall be prima facie evidence of inadequate security to the debt.

(c) Properly assigned deposit accounts when they are not subject to check or withdrawal, mature on or after the loan which is secured, and are under the sole control of the credit union. Where deposit balances are properly taken as collateral to a loan, the loan may be reduced to the extent of the deposit in determining the amounts loaned for either secured or unsecured legal lending limitations, as applicable.

(5) In determining the primary collateral basis upon which a loan is granted, that portion of the collateral having the greatest market value shall be assumed to be the primary collateral and the credit worthiness of the individual and of the endorser, guarantor or co-maker, shall not be considered in determining conformity with the law unless proper, current, financial information is in the file on the borrower, or endorser, guarantor or co-maker.

(6) In determining amounts loaned, all amounts guaranteed or insured by any instrumentality of the United States government shall be deducted to the extent of the guaranty or insurance coverage.

(7) Except as provided in this paragraph, exposures in the form of insufficient funds checks held beyond the permissible return date and overdrafts shall be considered "extensions of credit" solely for the purpose of determining compliance with the legal limitation as it applies to the maker of the check or owner of the overdraft. Such exposures shall also be subject to applicable requirements for prior written approval and adequate collateral. Such exposures will not be considered extensions of credit for purposes of compliance with this rule, provided that the exposure is inadvertent, which requires that:

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

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

(8) The Department of Banking and Finance shall consider the liabilities of separate persons, corporations and entities to be combined for lending limit purposes, when there is no evidence of a separate source of repayment, there is an apparent lack of ability to service the obligation from the operations of the separate person or corporation without relying on a related source of repayment, or where the separate entities make common use or are dependent upon funds of the group. "Related" shall mean connected by corporate or business structure or by common use or dependence upon funds, facilities or personnel.

Authority: O.C.G.A. § 7-1-61.

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

(1) A real estate loan shall be any loan secured by real estate where the credit union relies upon such real estate as the primary security for the loan. If the proceeds of the loan are used for the purchase of the real estate pledged, the loan will be presumed to be a real estate loan. Where the credit union relies substantially upon other factors, such as the general credit standing of the borrower, guaranties, or security other than real estate, the loan does not constitute a real estate loan, although as a matter of prudent underwriting it may also be secured by real estate, provided:

(a) Current credit information on the borrower and/or the guarantors is maintained sufficient to show the credit worthiness of the borrower or guarantors adequate to support the debt; and

(b) The other collateral is properly pledged to the credit union, protected by adequate hazard insurance, and supported by a statement of appraised or estimated value.

(2) A loan may be secured by a first lien although subordinate to another lien if:

(a) The credit union takes obligations of the borrower in an amount equal to the debt outstanding on the prior mortgage obligation plus the amount secured by such credit union's lien and

(b) The credit union may at any time effect payment of the prior lien. In such case the credit union may require the borrower to make all mortgage payments to such credit union, with that credit union servicing the prior lien from such payments, provided that:

1. Where such "wrap around" arrangements are made, the credit union will obtain a statement from the borrower and the holder of the first lien that no further advances will be made to the borrower by the first lien holder and subject to its lien without the prior consent of the credit union, and that

2. The credit union may repay the first lien at its option with no penalty or a stated prepayment penalty.

(3) Conditions common to all real estate loans as to legal requirements and technical aspects shall be met, including but not limited to evidence of title search, recordation, written appraisal, and adequate insurance protection upon the insurable improvements with loss payable clause to the credit union. The lack of the foregoing technical requirements, while causing the loan to be technically defective, shall not be cause to consider the loan as nonconforming and in violation of law unless the total aggregate borrowings by the borrower

exceed the unsecured lending limits of Code Section 7-1-658(d), in which case the real estate collateral will not contribute to the "ample security" of the line.

(4) Interpretations of provisions within the statute:

Nonamortized commercial real estate loans shall not exceed seventy-five percent (75%) of the fair market value of the property pledged, such loans and renewals thereof may be made payable on demand, or on demand after a specified future date, but no such loans or renewals may be made or held for a period in excess of five years, after which time sufficient principal payments must be made on a regular basis to amortize the loan.

(5) Other exemptions from the limitations as to loan to value ratios and requirements for first lien are as follows:

(a) Loans to the extent secured in whole or in part by guarantees or commitments to take over, insure, participate in, or purchase the same, made by any governmental agency of the United States or entities sponsored by the United States, including corporations wholly owned either directly or indirectly by the United States.

(b) Loans which are fully guaranteed or insured by this State or by a State Authority.

(c) Loans secured in whole or in part by real estate occupied by the borrower for residential purposes, provided the credit is extended for purposes other than acquisition of the property and the aggregate outstanding debt secured by the property does not exceed the appraised value of the property plus reasonable estimated values for other collateral held against the total indebtedness.

(d) Commercial loans made for operating funds, working capital, or similar purposes, (other than the purchase of, investment in, or development of real estate) predicated upon the credit standing of the borrower or endorser, guarantor or co-maker, or other such security, but on which real estate collateral (including second mortgages) is taken as precautionary measure against possible contingencies may be exempt from the restrictions and limitations imposed upon real estate loans, provided such loans are supported (in addition to adequate credit information and/or collateral documents) by a general purpose statement signed by the borrower or by a credit memorandum signed by a loan officer, stating the purpose for which the loan is made and sufficient to indicate the exemption is valid.

(e) Loans representing the sale by the credit union of other real estate acquired for debts previously contracted shall be exempt from the limitations as to property values and membership requirements exempted by Code Section 7-1-650(9), but shall be subject to all other requirements of this regulation, provided that the amount so financed shall not be for a greater sum than the credit union's investments in such property.

(f) Loans which, when made, were either unsecured or secured by personalty, but which are now secured in whole or in part by liens on real estate taken in order to prevent loss on a debt previously contracted.

(g) Amortized loans in excess of ninety-five percent (95%) of fair market value, but not more than one hundred percent (100%) of fair market value, where not less than twenty percent (20%) of the outstanding principal balance on the loan is insured or a commitment is made to insure for the first ten (10) years of the loan by a mortgage guaranty insurance company licensed to do business in this State.

(h) Temporary loans maturing in not more than one year made for the purpose of financing the acquisition of single-family, residential property to be used as the principal residence of the borrower and where the aggregate total of all liens against the property does not exceed the purchase price of such property; provided, such loan is to be repaid from the sale of the borrower's former principal residence and the proceeds in excess of amounts owed against the former residence and costs of sale are assigned to the credit union.

(6) All construction and development loans made or held by a credit union shall be exempt from the state loan to value limitations of this statute when made to comply with the following conditions:

(a) Loans having maturities not to exceed sixty (60) months may be made to finance the construction of industrial or commercial buildings where there is a valid and binding agreement entered into by a financially responsible lender to advance the full amount of the credit union's loan upon completion of the buildings.

(b) Loans having maturities not to exceed twenty-four (24) months may be made for residential construction or development purposes where the credit union holds a firm (or conditional) commitment to guarantee or insure from any instrumentality or corporation wholly-owned by the United States or by any Authority of this State as indicated in Rule 80-2-12-.02(5)(a) and (b) of this Rule, or where there is a take-out agreement by any financially responsible lender to advance the full amount of the credit union's loan upon completion of the dwelling.

(c) Temporary construction or development loans may be made by a credit union for a period not to exceed sixty (60) months where the loan is made to finance the construction of residential development which will exceed nine (9) units or industrial or commercial buildings, or for a period not to exceed twenty-four (24) months where the loan is made to finance construction of nine (9) or less residential units or farm buildings or to improve and develop land preliminary to such construction, without a prior commitment to guarantee or insure or take-out agreement by an instrumentality or corporation wholly-owned by the United States or of this State or any other financially responsible lending agency. The parties must actually intend the loan to be paid off or refinanced by a purchaser within the specified maturities and the lots, when development is residential, must be released periodically during the development of

land for such purposes, and pro rata reductions must be made in the principal of the debt. All such temporary construction and development loans must be supported by a statement of purpose or intent, and if held beyond the construction or development periods, must be made to conform to the seventy-five percent (75%) and ninety-five percent (95%) limitations; otherwise, they will be held to be nonconforming real estate loans.

1. 75% and 95% limitations are defined for purposes of this Rule as loans for not more than 75 percent of the fair market value of the real estate in the case of a single maturity loan, or for not more than 95 percent of the fair market value of the real estate in the case of loans that must be regularly amortized.

(d) Commitments to guarantee, insure or purchase must be currently valid, and maturities of the loans may not be extended or loans held beyond the periods stipulated above.

(7) Except as otherwise provided in law or regulations, credit unions may not acquire directly or indirectly an ownership interest in real estate without the prior written approval of the Department.

Authority: O.C.G.A. § 7-1-61.

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

(1) All assets acquired through foreclosure or in lieu of foreclosure and all "Other Real Estate" acquired in such manner or otherwise shall be initially appraised six (6) months prior to or three (3) months following the acquisition by an independent appraiser knowledgeable in the fair market value of such assets or, in the alternative, evaluated by a qualified officer of the credit union in conformity with the Evaluation Content portion of the Interagency Appraisal and Evaluation Guidelines if the book value of the property is less than two (2) percent of the net worth and allowance for loan and lease losses of the credit union, $250,000 for residential property, or $500,000 for commercial property whichever amount is greater. Appraisals subsequent to the initial appraisal are required if, based upon a review of the following factors, there is a reasonable basis to determine that the prior appraisal is no longer reliable as a reasonable estimate of the property's fair market value: volatility of local market; changes in terms and availability of financing; natural disasters; limited or over supply of competing properties; improvements to the subject property or competing properties; lack of maintenance of the subject or competing properties; changes in underlying economic and market assumptions, such as capitalization rates and lease terms; changes in zoning, building materials, or technology; and environmental contamination. In the event there is no basis to determine that the initial appraisal is no longer reliable, then appraisals shall be at intervals of not more than five (5) years.

(2) All requests for permission to hold assets acquired through foreclosure or in lieu of foreclosure and to hold other types of "Other Real Estate" beyond limitations imposed by statute must include a statement as to efforts made to dispose of the asset, reasons for the

failure of such efforts, plans for disposal of the asset during the extended ownership period, a copy of the most recent appraisal, and a statement as to the estimated annual cost of carrying the asset and estimated annual income produced by the asset.

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

(4) Property subject to this rule shall be initially carried on the books of the credit union 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 credit union 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 credit union makes any permanent capital improvements, subject to the limitations in paragraph (5), necessary to prepare the property for sale but the adjustment in the new basis shall be the lower of the increase in the fair market value of the property after the capital improvements or the amount expended to make the capital improvements. Non-capital improvements and expenses necessary to carrying and maintaining the property (taxes, legal fees, insurance, yard maintenance, etc.) shall be expenses and not added to the carrying value. Income earned from the property, other than from conversion or sale, shall be credited to income and shall not reduce the carrying value of the property.

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

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

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

(c) Consistent with safe and sound banking practices.

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

Authority: O.C.G.A. § 7-1-61.

CHAPTER 80-3-1

MONEY TRANSMISSION AND RELATED FINANCIAL SERVICES

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-.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. 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, including notices of additional locations or changes in locations operated by an authorized agent, 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 notice of new locations operated by authorized agents as well as the licensee's application for approval of the designated authorized agents. The notice required by this section shall also 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. 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.

(6) Every licensee giving notices of additional locations or changes in locations operated by the licensee shall do so in a form and manner as provided by the Department.

(7) 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. Audits will be provided to the Department within ten (10) days of the Department's request for such information. In addition, each licensee is required to furnish the Department an 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, 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 in accordance with the terms of the contract between the licensee and the authorized agent.

(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 and suspicious activity reports that are required by law to be filed by the licensee and the related work papers;

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. Records required to be maintained under this rule may be maintained in a photographic, electronic, or other similar format at a central location within or outside the State of Georgia provided specific records can be transmitted to a location designated by the Department 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 ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such proposed change in ownership or change in control of the licensee 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, and 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.

(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.

1. For all cashed payment instruments, such record shall include:

(i) The date of negotiation of the payment instrument;

(ii) Name, address, and identifying number (social security, driver's license, passport, etc.) of the person negotiating the payment instrument;

(iii) Amount of the payment instrument; and

(iv) Amount of fee charged for cashing the payment instrument.

2. For all cashed payment instruments in an amount of one thousand dollars ($1,000) or more, such record shall also include:

(i) Date of the payment instrument;

(ii) Payment instrument number;

(iii) Name and location or routing number of the payor bank or, if a pre-paid card, the branded card name; and

(iv) Name of the drawer of the payment instrument.

(c) A daily cash reconcilement 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 reconcilement 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. Records required to be maintained under this rule may be maintained in a photographic, electronic, or other similar format at a central location within or outside the State of Georgia provided specific records can be transmitted to a location designated by the Department 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.

(8) 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. A licensee must provide the Department with written notice at least thirty (30) days prior to it conducting business at any additional outlets.

(9) 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.

(10) A licensee shall make a written request to the Department seeking approval for any proposed change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control of the licensee as required by O.C.G.A. § 7-1-705.1 at least thirty (30) days prior to the proposed change.

(11) Every licensee giving notices of changes in locations operated by the licensee over those previously reported shall do so at least thirty (30) days prior to conducting business at the new location and on forms provided by the Department.

Authority: O.C.G.A. §§ 7-1-61, 7-1-701.1, 7-1-702.1, and 7-1-706.1.

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 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "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) 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 provided the licensees are required to do so under the Bank Secrecy Act. 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 https://www.fincen.gov/resources/financial-institutions/money-services-businesses 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 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "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 such 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. 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 transmitted to a location designated by the Department within ten (10) days of the date of the Department's request.

(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, and 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 in accordance with the terms of the contract between the licensee and the authorized agent 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) Unless otherwise reporting to the appropriate federal agency under Paragraph (2) of Rule 80-3-1-.04, every 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 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "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 ten (10) business days of any knowledge or 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, and 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 financial resources of the person, gravity of the violation, history of previous violations, and such other facts and circumstances deemed appropriate by the department.

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

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

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

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

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

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

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

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

(g) Deferred Payment. Any licensee that defers payment on a payment instrument pending collection and has not obtained the surety bond as required by O.C.G.A. § 7-

1-707(c) shall be subject to a fine of five thousand dollars ($5,000) per occurrence and its license will be subject to revocation or suspension.

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

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

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

(k) Identification Requirements for Cashing Payment Instruments. No licensee shall cash payment instruments without identification of the bearer of such check. Failure to comply with the requirements of O.C.G.A. § 7-1-707(e) shall subject the licensee to a fine of one thousand dollars ($1,000) per occurrence.

(l) Failure to Submit to Exam. The penalty for the refusal of a licensee to permit the Department to conduct an investigation or examination of its books, accounts, and records, shall be the revocation of its license and a five thousand dollar ($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 or Obtain Approval from the Department of Change in Ownership, Change in Control, or Designation of Executive Officer. Any licensee or other person who fails to obtain the Department's prior approval of a change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control 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. Any licensee or other person who fails to timely notify the Department of a change in executive officer not resulting from a change in control or ownership in compliance with O.C.G.A. § 7-1-705 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 of 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 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "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.

(s) Prohibited Acts. Any licensee or other person who violates the provisions of O.C.G.A. § 7-1-708 shall be subject to a fine of one thousand dollars ($1,000) per violation or transaction that is in violation and its license will be subject to suspension or revocation.

(t) 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 and a five thousand dollar ($5,000) fine. Refusal shall require at least two attempts by the Department to schedule an examination or investigation.

(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(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 Rules 80-3-1-.01(4) and 80-3-1-.01(6), 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(4), 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 or Obtain Approval from the Department of Change in Ownership, Change in Control, or Designation of Executive Officer. Any licensee or other person who fails to obtain the Department's prior approval of a change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control 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. Any licensee or other person who fails to timely notify the Department of a change in executive officer not resulting from a change in control or ownership in compliance with O.C.G.A. § 7-1-687 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 of 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 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "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. 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 shall be subject to a fine of five hundred dollars ($500) for each instance of non-compliance.

(q) Prohibited Acts. Any licensee or other person who violates the provisions of O.C.G.A. § 7-1-692 shall be subject to a fine of one thousand dollars ($1,000) per violation or transaction that is in violation and its license will be subject to suspension or revocation.

(r) 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 and a five thousand dollar ($5,000) fine. Refusal shall require at least two attempts by the Department to schedule an examination or investigation.

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

CHAPTER 80-9-1

SUSPICIOUS ACTIVITIES: STATE FINANCIAL INSTITUTIONS

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

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

Financial institutions must comply with federal requirements for detecting and reporting any suspicious activities. A copy of any suspicious activity report ("SAR") filed by a financial institution shall be provided to the Department upon request.

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

CHAPTER 80-10-1

RECORDS RETENTION

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

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

(1) Financial institutions are required to maintain the following records for the minimum period of time set forth below:

(a) Permanent:

1. Minute books, including supporting documents utilized during meetings, of the financial institutions' shareholders or members, Board of Directors, and Board Committees.

2. Capital stock ownership, including the names and addresses of all shareholders and the number, class, and series, if any, of the shares, and transfer records.

(b) 20 years:

1. Copies of regulatory reports of examination, targeted reviews and responses to such reports of examination or targeted reviews.

2. Regulatory actions including, but not limited to, consent orders, memoranda of understanding, and Board resolutions.

(c) 5 years:

1. All general ledger and subledger accounts that comprise the daily income statement and balance sheet.

2. Internal and external audit reports, including supporting work papers.

(d) 5 years after payout or disposition:

1. For loans and discounts, all records applicable to full credit documentation including evidence of collateral security and underwriting support of the credit relationship to include modifications, renewals, extensions, and collections.

(2) Paragraph (1) establishes the minimum period of time that each financial institution must maintain certain records in order to enable the Department to thoroughly conduct an examination of the institutions. Each financial institution has the discretion to maintain these records for a longer period of time.

(3) Nothing herein shall be construed as altering or modifying any other record retention requirement established by law, rule, or otherwise including, but not limited to, Rule 80-1-3-.01 and Rule 80-2-1-.02.

Authority: O.C.G.A. §§ 7-1-61; 7-1-63.

CHAPTER 80-11-1

DISCLOSURE REQUIREMENTS

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

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

(1) For the purposes of this Rule, "loan or finance company" refers to every person subject to the licensing requirements of the Georgia Residential Mortgage Act ("GRMA") who satisfies the definition of a loan or finance company under the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act").

(2) Every loan or finance company shall develop and implement a written anti-money laundering program and comply with the filing requirements, recordkeeping requirements, currency transaction reporting, suspicious activity reporting, and other requirements set forth in the Bank Secrecy Act.

(3) Records required to be maintained under this Rule shall be maintained in accordance with Rule Chapter 80-11-2. Loan or finance companies may consult https://www.fincen.gov/resources/financial-institutions/mortgage-co-broker for questions about the federal requirements.

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

CHAPTER 80-11-3

ADMINISTRATIVE FINES

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 financial resources of the person, gravity of the violation, history of previous violations, and such other facts and circumstances deemed appropriate by the department.

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

(3) Dealing with Unlicensed Persons. Any licensee or registrant or any employee of either who purchases, sells, places for processing or transfers (or performs activities which are the equivalent thereof) a mortgage loan or loan application to or from a person who is required to be but is not duly licensed under the GRMA shall be subject to a fine of one thousand dollars ($1,000) per transaction and the licensee or registrant shall be subject to suspension or revocation. Licensees are responsible for the actions of their employees.

(4) Permitting unlicensed persons to engage in mortgage loan originator activities. Any licensee or registrant who employs a person who does not hold a mortgage loan originator's license but engages in licensed mortgage loan originator activities as set forth in O.C.G.A. § 7-1-1000(22) shall be subject to a fine of one thousand dollars ($1,000) per occurrence and the licensee or registrant shall be subject to suspension or revocation. Licensees are responsible for the actions of their employees.

(5) Relocation of Office. Any mortgage broker or mortgage lender licensee who relocates their main office or any additional office and does not notify the Department within thirty (30) days of the relocation in accordance with O.C.G.A. § 7-1-1006(e) shall be subject to a fine of five hundred dollars ($500).

(6) Unapproved Offices. In addition to the application, fee and approval requirements of O.C.G.A. § 7-1-1006(f), any licensee who operates an unapproved branch office shall be subject to a fine of five hundred dollars ($500) per unapproved branch office operated and their license will be subject to revocation or suspension.

(7) Change in Ownership. Any person who acquires ten percent (10%) or more of the capital stock or a ten percent (10%) or more ownership of a mortgage broker or mortgage

lender licensee without the prior approval of the Department in violation of O.C.G.A. § 7-1-1008 shall be subject to a fine of one thousand dollars ($1,000) and their license or registration will be subject to revocation or suspension.

(8) Doing Business Without a License or in Violation of Administrative Order. Any person who acts as a mortgage broker or mortgage lender prior to receiving a current license or registration required under O.C.G.A. Title 7, Chapter 1, Article 13, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars ($1,000) per transaction and their mortgage lender or broker application will be subject to denial or their license or registration will be subject to revocation or suspension.

(9) Hiring a Felon. Any mortgage broker or mortgage lender licensee or registrant who hires or retains an employee who is a felon as described in O.C.G.A. § 7-1-1004(h), which employee has not complied with the remedies provided for in O.C.GA. § 7-1-1004(h), may be fined five thousand dollars ($5,000) per employee found to be in violation of such provision and their license or registration will be subject to revocation or suspension.

(10) Hiring Persons Otherwise Disqualified from Conducting a Mortgage Business. Any mortgage broker or mortgage lender licensee or registrant who employs any person against whom a final cease and desist order has been issued for a violation that occurred within the preceding five (5) years, if such order was based on a violation of O.C.G.A. § 7-1-1013 or based on the conducting of a mortgage business without a required license or exemption, or whose license was revoked within five (5) years of the date such person was hired pursuant to O.C.G.A. § 7-1-1004(o) shall be subject to a fine of five thousand dollars ($5,000) per such employee and its license or registration will be subject to revocation or suspension.

(11) Books and Records Violations. If the Department, in the course of an examination or investigation, finds that a licensee or registrant has failed to maintain their books and records according to the requirements of O.C.G.A. § 7-1-1009 and Rule Chapter 80-11-2, such licensee or registrant may be subject to a fine of one thousand dollars ($1,000) for each violation of a books and records requirement listed in Rule Chapter 80-11-2.

(12) (a) Maintenance of Loan Files. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or any lender acting as a broker who fails to maintain a loan file for each mortgage loan transaction as required by Rule 80-11-2-.04 or who fails to have all required documents in such file shall be subject to a fine of one thousand dollars ($1,000) per file not maintained or not accessible, or per file not containing required documentation.

(b) Maintenance of Service Files. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage lender who fails to maintain a servicer file for each mortgage loans it services, as required by Rule 80-11-6-.04(1)(b), or who fails to have all required documents in such file shall be subject to a fine of one thousand dollars ($1,000) per file not maintained or not accessible, or per file not containing required documentation.

(13) Payment of $10.00 fees and filing of fee statement. Pursuant to Rule 80-5-1-.04 and O.C.G.A. § 7-1-1011, any person who is the collecting agent at a closing of a mortgage loan transaction, is liable for payment of the $10.00 fee to the Department. The remittance of any $10.00 fees required to be collected after the date on which they are due shall subject the collecting agent to a late payment fee of one hundred dollars ($100) for each due date missed. If the Department finds that the collecting agent has not, through negligence or otherwise, submitted $10.00 fees within six months of the due date, the collecting agent will be subject to an additional fine of twenty (20) percent of the total amount of $10.00 fees required to be collected for the applicable period. Repeated failures to submit $10.00 fees may be grounds for revocation of license.

(14) Repealed. Reserved.

(15) Failure to Timely Report Certain Events. Any person required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage lender or broker, who fails to report any of the events enumerated in O.C.G.A. § 7-1-1007(d), shall be subject to a fine of one thousand dollars ($1,000) per act not reported in writing to the Department within 10 days of knowledge of such act.

(16) Prohibited Acts. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or mortgage lender who violates the provisions of O.C.G.A. § 7-1-1013 shall be subject to a fine of one thousand dollars ($1,000) per violation or transaction that is in violation and his or her license shall be subject to suspension or revocation. Misrepresentations also subject the person making them to a fine. Misrepresentations include but are not limited to the following:

(a) inaccurate or false identification of applicant's employer;

(b) significant discrepancy between applicant's stated income and actual income;

(c) omission of a loan to applicant, listed on loan application, which was closed through same lender or broker;

(d) false or materially overstated information regarding depository accounts;

(e) false or altered credit report; and

(f) any fraudulent or unauthorized document used in the loan process.

A fine of one thousand dollars ($1,000) shall be assessed for any other violation of O.C.G.A. § 7-1-1013. The Department shall upon written request provide evidence of the violation.

(17) Branch Manager Approval. Any person who is required to be licensed or registered as a mortgage broker or mortgage lender shall be subject to a fine of five hundred dollars ($500) for operation of a branch with an unapproved branch manager and the license will be subject to revocation or suspension. No such fine shall be levied while Department approval is pending if timely application for approval is made pursuant to Rule 80-11-1-.04.

(18) Repealed. Reserved.

(19) Failure to Fund. O.C.G.A. § 7-1-1013(3) prohibits failure "to disburse funds in accordance with a written commitment or agreement to make a mortgage loan." If the Department finds, either through a consumer complaint or otherwise, that a lender or a broker acting as a lender has failed to disburse funds in accordance with closing documents, which include legally binding executed agreements indicating a promise to pay and a creation of a security interest, a fine of five thousand dollars ($5,000) per transaction may be imposed and its license or registration may be subject to revocation or suspension.

(20) Advertising. Any person who is required to be licensed or registered as a mortgage broker or mortgage lender who violates the regulations relative to advertising contained in O.C.G.A. § 7-1-1004.3 and § 7-1-1016 or the advertising requirements of department Rule 80-11-1-.02 shall be subject to a fine of five hundred dollars ($500) for each violation of law or rule.

(21) Failure to Submit to Examination or Investigation. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department) shall be revocation of the license or registration and a five thousand dollar ($5,000) fine. Refusal shall require at least two attempts by the Department 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 dollar ($1,000) fine.

(28) Failure to File Timely or Accurate Call Reports. Any licensee or registrant who fails to file a timely Call Report as required through the Nationwide Multi-State Licensing System and Registry or fails to file an accurate Call Report shall be subject to a fine of one hundred dollars ($100) per occurrence. Repeated failure to file timely or accurate Call Reports may subject the license or registration to revocation or suspension.

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

(30) Failure to Timely Update Information on the Nationwide Multi-State Licensing System and Registry. Any licensed mortgage broker, mortgage lender, or registrant that fails to update its information on the Nationwide Multi-State Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions on an application or a licensee's or registrant's NMSLR MU-1, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars ($1,000) per occurrence. In addition, the failure of a control person of a licensed mortgage broker, mortgage lender, or registrant to update the individual's information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions on the control person's NMSLR MU-2, within ten (10) business days of the date of the event necessitating the change, shall subject the licensed mortgage broker, mortgage lender, or registrant to a fine of one thousand dollars ($1,000) per occurrence.

(31) Bank Secrecy Act. If the Department in the course of an examination or investigation, finds that a licensee that satisfies the definition of loan or finance company has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the “Bank Secrecy

Act") or the requirements referred to in Rule 80-11-1-.06, such licensee shall be subject to a fine of one thousand dollars ($1,000) for each instance of non-compliance.

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

CHAPTER 80-11-6

MORTGAGE SERVICING

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

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

(1) The standards set forth in this Rule apply only to persons licensed, registered, or required to be licensed or registered under Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated.

(2) Except as set forth in paragraph (7) of this Rule, any person who services a closed-end mortgage loan ("servicer"):

(a) Shall act with reasonable skill, care, and diligence;

(b) Shall not charge fees for:

1. Handling borrower disputes;
2. Facilitating routine borrower collections;
3. Arranging repayment or forbearance plans;
4. Sending borrowers notice of nonpayment;
5. Updating records to reinstate a mortgage loan; and
6. Late payment in excess of the initial late payment fee, as provided by 12 C.F.R. § 1026.36(c)(2).

(c) Except as set forth in section (d) below, shall not commence a foreclosure process while a borrower's complete loss mitigation application is pending ("dual-tracking");

(d) Shall not conduct a foreclosure sale before evaluating the borrower's complete loss mitigation application in the event the complete loss mitigation application is received after a foreclosure process has been commenced and more than 37 days before the foreclosure sale.

(e) Shall consider loss mitigation whenever possible and, at a minimum:

1. Acknowledge receipt of a borrower's initial loss mitigation application within 5 business days of receipt;

2. Upon receipt of a borrower's initial loss mitigation application, provide name, address, and a collect call or toll-free telephone number for an employee or department of the servicer that can be contacted by the borrower regarding loss mitigation application inquiries;

3. Upon receipt of a borrower's initial loss mitigation application, identify requirements for loss mitigation options, if available; and

4. (i) Evaluate a borrower's eligibility for available loss mitigation options within 30 days of receipt of loss mitigation application if a servicer receives that loss mitigation application more than 37 days before a foreclosure sale or

   (ii) In the event a servicer is not required to evaluate the loss mitigation application under subsection (i), the servicer shall either notify the borrower that the loss mitigation application was not timely or evaluate the loss mitigation application.

(f) Shall have a process for borrowers to appeal loss mitigation disputes, including, but not limited to, a formal review of loss mitigation options, to personnel different than those responsible for previous evaluations or provide an option for borrowers to mediate such disputes if the loss mitigation application was received 90 days or more before a foreclosure sale;

(g) Shall have an error resolution process for all borrowers, unless expressly excluded pursuant to 12 C.F.R. § 1024.35(g), which must, at a minimum:

1. Acknowledge receipt of a borrower's notice of error within 5 business days of receipt;

2. Conduct a reasonable investigation; and

3. Within 45 days, except where prompter compliance is required by 12 C.F.R. § 1024.35(e)(3) or alternative compliance is provided in 12 C.F.R. § 1024.35(f), provide a borrower with a written notification of: (i) the correction of error or (ii) the servicer's determination that no error occurred and the reason for such determination.

(h) Shall apply payments to the principal and interest first, rather than the insurance, taxes, and fees of the mortgage loan, except where inconsistent with federal law;

(i) Shall not assess on a borrower any charge or fee related to force-placed insurance, unless the servicer has a reasonable basis to believe the borrower has failed to comply with the mortgage contract's requirements to maintain insurance; and

(j) Shall not obtain force-placed insurance for a borrower that imposes an unreasonable charge or fee related to the force-placed insurance.

(3) If the terms of a mortgage loan require the borrower to make payments to the servicer of the mortgage loan for deposit into an escrow account to pay taxes, insurance premiums, and other charges for the residential property, the servicer shall make payments from the escrow account in a timely manner, that is, on or before the deadline to avoid a penalty, as long as the borrower's payment is not more than 30 days overdue.

(4) Each servicer shall submit to the Nationwide Multistate Licensing System and Registry reports of condition in accordance with O.C.G.A. § 7-1-1004.1 containing information detailing the servicer's activities, including, but not limited to:

(a) The number of mortgage loans serviced;

(b) Delinquency status of mortgage loans serviced;

(c) The number of mortgage loan modifications; and

(d) The number of foreclosures.

(5) Each servicer shall make the following disclosures in writing to borrowers:

(a) At the time a servicer acquires the right to service the closed-end mortgage loan the following initial disclosures:

1. Complete and current schedule of servicing fees;

2. The name, address, and a collect call or toll-free telephone number for an employee or department of the servicer that can be contacted by the borrower regarding servicing; and

3. A statement of the mortgage servicer standards set forth in paragraph (2) of this Rule including a description of the servicer's appeal process as required by paragraph (2)(f). However, a small servicer as set forth in 12 C.F.R. § 1026.41(e)(4)(ii) is not required to make the disclosures set forth in paragraph (2)(c), (d), (e), and (f).

(b) As required by federal law, including, but not limited to, 12 C.F.R. § 1024.33, upon the transfer of its right to service a closed-end mortgage loan within the period of time required by federal law, the following subsequent disclosures:

1. The effective date of the transfer of servicing;

2. The name, address, and a collect call or toll-free telephone number for an employee or department of the transferee servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;

3. The name, address, and a collect call or toll-free telephone number for an employee or department of the transferor servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;

4. The date on which the transferor servicer will cease to accept payments relating to the mortgage loan and the date on which the transferee servicer will begin to accept such payments. These dates shall either be the same or consecutive days;

5. Whether the transfer will affect the terms or the continued availability of mortgage life or disability insurance, or any other type of optional insurance, and any action the borrower must take to maintain such coverage; and

6. A statement that the transfer of servicing does not affect any term or condition of the mortgage loan other than terms directly related to the servicing of the loan.

(c) The disclosure requirements set forth in section (a) of this paragraph shall not apply to any assignment, sale, or transfer of the servicing of any closed-end mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written initial disclosures of the transferee that comply with section (a) of this paragraph.

(d) The disclosure requirements set forth in section (b) of this paragraph shall not apply to any assignment, sale, or transfer of the servicing of any closed-end mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written notice of such transfer that complies with section (b) of this paragraph.

(6) If a servicer discovers a violation of these standards, the servicer:

(a) Has a duty to mitigate the harm to the borrower;

(b) Shall maintain a record of such violation in accordance with Rule 80-11-6-.04(1)(c); and

(c) Shall report to the department within 10 days of discovery any violation that, at the time of discovery, has the potential to result in aggregate financial harm to the borrower(s) in excess of $1,000.00.

(7) (a) Sections 2 (c), (d), (e) and (f) of this Rule shall not apply to a servicer that qualifies as a “small servicer” pursuant to 12 C.F.R. § 1026.41(e). However, nothing herein shall be deemed to excuse a “small servicer”, as defined in 12 C.F.R. § 1026.41(e), from complying with the requirements of applicable federal law including, but not limited to, 12 C.F.R. § 1024.41(j).

(b) Sections 2(e)(2) - (4) of this Rule shall not apply to a servicer who has previously complied with the requirements of those sections for a complete loss mitigation application submitted by the borrower and the borrower has been delinquent at all times since submitting the prior complete loss mitigation application. In the event a servicer is not required to comply with sections 2(e)(2) - (4) of this Rule, the servicer shall either notify the borrower that the loss mitigation application was duplicative or evaluate the loss mitigation application.

(8) Failure to adhere to these standards may result in revocation of the license or registration and will subject the licensee or registrant to fines in accordance with regulations prescribed by the department, including Rule Chapter 80-11-3.

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

CHAPTER 80-13-1

TRUST COMPANIES

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

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

(1) Every stand-alone trust company chartered by the Department shall obtain the following:

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

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

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

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

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

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

(a) For fidelity coverage, the safeguards or protections which will be employed to ensure the continuing sound operation of the trust company, which shall include, but not be limited to, an evaluation of potential exposures under various stress scenarios that include intentional and unintentional failures in the trust company's control environment and the sufficiency of the proposed fidelity coverage to mitigate such exposures. In addition, the trust company's justification for the proposed proper amount of fidelity coverage or its equivalent shall evaluate the potential costs to the trust company as a result of a breach.

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

party liabilities, notification requirements, remediation costs, restoration costs, and business impact.

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

Authority: O.C.G.A. §7-1-61