

STATE OF GEORGIA DEPARTMENT OF BANKING AND FINANCE



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*SPECIAL EDITION
IMPORTANT NOTICE
FINAL RULEMAKING*

July 9, 2019

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF BANKING AND FINANCE STATE OF GEORGIA

Adopted July 9, 2019

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 July 9, 2019. The Rules were filed with the Secretary of State on July 9, 2019 and, pursuant to O.C.G.A. § 50-13-6, will be effective on July 29, 2019, 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 30, 2019. The Department did not receive any written comments regarding 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-.13 Savings Promotion Raffle.

80-1-1-.13 Savings Promotion Raffle.

- (1) At least thirty (30) days prior to conducting a savings promotion raffle under O.C.G.A. § 7-1-239.10, a bank must provide the Department with written notice detailing the proposed savings promotion raffle. Such notice shall, at a minimum, contain the following information:
 - (a) A detailed description of the terms of the proposed savings promotion raffle including, but not limited to, the type of account that will be utilized to offer the savings promotion raffle, the interest rate to be paid on the account, the fees associated with the account, the fees associated with the most substantially similar account to the savings promotion raffle account offered by the bank, the amount required to be deposited in the account for a customer to be entered in the raffle and any limitations on the number of entries per customer, the frequency of drawings, and available prizes;
 - (b) Bank's policies and procedures related to the proposed savings promotion raffle;
 - (c) Sample of all disclosures provided to customers opening a savings promotion raffle account in accordance with O.C.G.A. § 7-1-239.10(c)(1);
 - (d) Identity and contact information of all third-party service providers, if any, who are contracted to manage or provide administrative support related to conducting the proposed savings promotion raffle; and
 - (e) If the savings promotion raffle is conducted in whole or in part by a third-party service provider, a document from the third-party service provider identifying the number and location of all other financial institutions whose customers and members are eligible to participate in the savings promotion raffle.
- (2) A bank's directors, officers, employees, and the members of such persons' immediate family, as defined by O.C.G.A. § 20-2-58.1, are prohibited from participating in a savings promotion raffle conducted by that bank. A bank's directors and officers are prohibited from participating in a savings promotion raffle at any financial institution if the savings promotion raffle is administered by the same third-party service provider that administers the savings promotion raffle at the bank.

Authority: O.C.G.A. §§ 7-1-61; 7-1-239.10.

CHAPTER 80-1-3

BOOKS AND RECORDS

80-1-3-.03 Notice of Unauthorized Access to Customer Information.

80-1-3-.03 Notice of Unauthorized Access to Customer Information.

Pursuant to 15 USC § 6801 et seq., 12 CFR Part 364, and 12 CFR Part 208, banks are required to develop and implement a response program that will be utilized in the event unauthorized access to customer information has taken place. Customer information is any record containing nonpublic information about a customer, whether in paper, electronic, or other form maintained by or on behalf of a bank. Federal law and regulations require disclosure to federal regulators of unauthorized access of customer information in certain circumstances. If disclosure of such unauthorized access is required under federal law, then a duplicate of such disclosure will simultaneously be submitted to the Department.

Authority: O.C.G.A. § 7-1-61.

CHAPTER 80-1-5

LOANS AND DISCOUNTS

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

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

- (1) A real estate loan (including a leasehold) within the meaning of Part 365 of the Federal Deposit Insurance Corporation's rules and regulations, including 12 C.F.R. 365.1 and 365.2 and the Interagency Guidelines for Real Estate Lending Policies in Appendix A, and 12 C.F.R. 208.51 and the guidelines contained in 12 C.F.R. Part 208 in the case of Federal Reserve member banks, shall comply with the Real Estate Lending Standards of the above laws.
- (2) If a loan could be made without real estate as security, a bank will not be penalized for adding real estate as collateral in an abundance of caution. A notation in the loan file must indicate this lack of reliance on the real estate and must meet general safety and soundness standards for credit risk. This does not constitute a waiver of O.C.G.A. § 7-1-285, related Department rules and regulations, or requirements of federal law, and the soundness of the loan should always be considered.
- (3) Except as provided herein or otherwise according to statute, banks may not acquire directly or indirectly an ownership interest in real estate without the prior written approval of the Department. No approval is necessary for a bank to acquire an interest in real estate, where acting pursuant to policies adopted by its board, a bank agrees by written commitment to participate in the financing of the purchase, development, or improvement of such real estate, provided:

- (a) The written commitment provides for termination through sale or otherwise of the bank's ownership interest upon the earlier of substantial repayment of the underlying financing or ten (10) years;
- (b) The bank's ownership interest in the real estate does not exceed the lesser of
 - 1. The equity interest of the borrower, or
 - 2. Twenty-five percent (25%) of the appraised value of the completed project upon which the lending commitment is based;
- (c) Where the bank's interest is in the form of stock in a corporation which owns the real estate, the investment in the stock shall not exceed the lesser of
 - 1. Fifty percent (50%) of the stock of the corporation, or
 - 2. Twenty-five percent (25%) of the appraised value of the real estate owned by the corporation which is subject to the written commitment to finance. Provided, the foregoing shall not prohibit any bank from taking an ownership position through a wholly owned subsidiary, except that the subsidiary's interest shall be limited as set forth in subsections (a) and (b) of this section;
- (d) Where the financing associated with the direct investment in real estate is subject to participation with other lenders, the aggregate direct investment by all such lenders may not exceed the limitations set forth in subparagraph (b)(2) of this section;
- (e) The bank's ownership participation as provided herein is approved by its board of directors prior to the execution of any written commitment or is otherwise consistent with a previously adopted provision of the bank's loan policies governing such participation;
- (f) The bank's ownership investment involving any single borrowing entity, when aggregated with investments through any lending transaction with such borrowing entity, is otherwise subject to the provisions of this regulation and the provisions of O.C.G.A. § 7-1-285 and O.C.G.A. § 7-1-286, to the same extent as would be applicable if such equity investment were itself an extension of credit; and
- (g) The aggregate direct or indirect investment in such real estate for all such purposes set forth herein shall not exceed the statutory capital base of the bank.

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

CHAPTER 80-1-6

BANK FINANCIAL AND OTHER REPORTS

80-1-6-.01 Reports to Department.

80-1-6-.01 Reports to Department.

Every bank shall within ten (10) days after knowledge thereof report:

- (a) The election of any new chief executive officer or president;
- (b) The resignation or removal of the chief executive officer, president, or any director, giving the reason for such action; and
- (c) The transfer of any common stock of the bank aggregating fifteen (15) percent of the outstanding shares of common stock of the bank or any smaller transfer resulting in the new owner holding in the aggregate more than twenty-five (25) percent of the outstanding common stock of the bank.

Authority: O.C.G.A. § 7-1-61.

CHAPTER 80-1-10

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

80-1-10-.05 Organization of Real Estate Holding Subsidiaries.

80-1-10-.05 Organization of Real Estate Holding Subsidiaries.

- (1) With the prior approval of the Department of Banking and Finance, any bank may invest in all of the outstanding capital stock of a subsidiary corporation organized for the purpose of owning bank premises which might be legally owned by such bank and such investment shall be included as fixed assets in determining whether the bank's total investment in fixed assets is within the limitations prescribed by law.
- (2) Such real estate holding subsidiaries shall not be permitted to own or otherwise invest its funds in Other Real Estate, furniture and fixtures other than for its own use, securities, or any other assets inconsistent with the purpose for which it was originally organized.
- (3) Such real estate holding subsidiaries shall be subject to all of the limitations, prohibitions, and requirements with respect to the purchase, ownership, and expansion of bank premises that the bank would be subject to, except the limitation imposed on fixed asset investment, but provided that the Department of Banking and Finance may set such limitations on the total investment in fixed assets, the total authorized borrowings, the total capitalization, and the annual rental charges of the real estate holding subsidiary as it considers necessary to the sound operation of the company.

- (4) Banks may invest in the stock of such corporations and such investments shall be included in determining the bank's legal limitation on investment in fixed assets.
- (5) Such real estate holding subsidiaries shall be subject to examination by the Commissioner of Banking and Finance on the same basis as the parent corporation.

Authority: O.C.G.A. §§ 7-1-61; 7-1-262.

CHAPTER 80-1-14

AUDITS

80-1-14-.02 Internal Audit Program.

80-1-14-.02 Internal Audit Program.

- (1) An institution shall have an internal audit program that is appropriate to the size of the institution and the nature and scope of its activities. An appropriate internal audit program consists of qualified persons and provides for effective:
 - (a) Monitoring and reporting on the system of internal controls;
 - (b) Testing and review of controls over information systems;
 - (c) Documenting of testing activities, findings, and corrective actions;
 - (d) Verifying and reviewing of management actions to address material weaknesses; and
 - (e) Engagement and oversight by the institution's Board of Directors.
- (2) The Board of Directors shall name an internal auditor or designate an officer to act as a liaison with third parties engaged to perform the internal audit program.
- (3) The Board of Directors shall review and approve the scope of the internal audit program to include the operational areas targeted for review, the proposed timeline of reviews, testing procedures to be used, the qualifications of personnel for the subject matter to be reviewed, and the independence of personnel from operational responsibilities over areas to be reviewed. Alternatively, a committee formed in compliance with O.C.G.A. § 7-1-483(b)(2), is authorized to act in lieu of the Board of Directors. The scope of the internal audit will be documented – via an engagement letter when third parties are engaged - and provided to the Department upon request.
- (4) The internal auditor or designated liaison shall:
 - (a) Implement or oversee implementation of the institution's internal audit program;

- (b) Monitor the implementation of corrective actions; and
 - (c) Report to the Board of Directors at least annually on the status of the internal audit program to include audit activities, findings, and corrective actions.
- (5) The internal audit shall be appropriate to the size of the institution and the nature and scope of its activities. In determining the nature and scope of the internal audit, the financial institution shall take into consideration the auditing standards formulated by The Auditing Standards Board of the AICPA, the Public Company Accounting Oversight Board (“PCAOB”), and/or the Institute for Internal Auditors.
- (6) Unless pre-approved by the Department in writing, the external audit obtained pursuant to O.C.G.A. § 7-1-487 and Rule 80-1-14-.01 will not satisfy the internal audit program requirement.
- (7) In the event the Department determines that an internal audit program is deficient, the Department may require the institution to:
- (a) Replace the internal auditor with an individual acceptable to the Department;
 - (b) Perform additional reviews by personnel acceptable to the Department with subject matter expertise on, and independence from, the areas targeted for review; and
 - (c) Engage a third-party acceptable to the Department to perform a comprehensive review of the adequacy of the institution’s internal control environment in accordance with a standard acceptable to the Department.

Authority: O.C.G.A. § 7-1-61.

CHAPTER 80-1-15

EXTENSIONS OF EXISTING OFFICES AND FACILITIES

80-1-15-.02 Mobile Banking Units.

80-1-15-.02 Mobile Banking Units.

- (1) Financial institutions may provide unlimited banking services through mobile banking units provided such units stop at predetermined locations where the institution is authorized to operate.
- (2) During each stop, the mobile banking unit shall be accessible to banking customers for intervals of not less than two hours and each such stop shall be utilized at least once each week in accordance with a published schedule. Such schedule may be altered or amended as provided for in regulations concerning operating hours of branch offices.

- (3) Each financial institution providing mobile banking unit services shall carry adequate fidelity, robbery, and hazard insurance coverage commensurate with the risks associated with the operation of such units.
- (4) Disclosures shall be given to all customers regarding when deposits will be credited and when checks or other withdrawals will be debited.
- (5) Since a mobile unit will function as a branch, application should be made by letter as prescribed in the Applications Manual. Expedited processing will be available in most cases.
- (6) Financial institutions may seek a waiver to provide mobile banking unit services outside of the required frequency in paragraph 2 of this Rule by submitting a written waiver request to the Department. The waiver request shall include the proposed schedule and reason for the waiver request. The Department shall take into consideration competitive, financial, managerial, safety and soundness, and other concerns in evaluating any waiver request. The Department is authorized to impose conditions on the grant of any request for a waiver. The Department's waiver may be rescinded if the mobile banking unit is operated in a manner inconsistent with the approval or if other violations of law occur as a result of the mobile banking unit's operation.

Authority: O.C.G.A. § 7-1-602.

CHAPTER 80-2-1

BOOKS AND RECORDS

- 80-2-1-.02 Minimum Requirements for Books and Records.
- 80-2-1-.05 Notice of Unauthorized Access to Customer Information.

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

- (1) In addition to the requirements otherwise set forth herein, the following subsidiary records must be maintained:
 - (a) Securities Register - shall contain a record of all securities, certificates of deposit, commercial paper, acceptances, and other investments bought or sold, showing date of transaction, proper name of the security, interest rate, maturity date, par value, purchase price, book value, schedule of amortization of premium and accretion of discounts, and location where the security is held.
 - (b) Loan Ledgers -
 1. credit unions shall maintain a record of the direct and indirect liability of each member;

2. where a credit union elects to maintain installment loans separately from other direct loans of a borrower and does not include them on the Liability Ledger above, they may be maintained in a separate ledger with payments being posted directly thereto. Such ledger must reflect any and all modifications to the terms of the original note contract which may be granted from time to time, i.e., adjustments of the due date or amount of payments;
 3. such record may be maintained in whatever order desired by management, i.e., alphabetical, numerical, class of loan, except where they are not maintained alphabetically, a cross-reference file must be maintained.
- (c) Deposit Ledgers - credit unions must maintain separate deposit records for each general ledger segregation of deposits. Such record must contain a continuing itemized record of all deposits and withdrawals. Deposits will be segregated into no fewer than the following categories: Transaction or Share Draft Accounts, Savings Deposits, Christmas Savings, and Member Deposit Certificates. Deposit records must be posted daily wherever the credit union offers transaction or share draft accounts; provided, a credit union may defer business conducted on Saturday for posting on the next business day. Such record may be maintained in whatever order desired by management; i.e., alphabetical, numerical, class of deposit, except where they are not maintained alphabetically, a cross-reference file must be maintained.
- (d) Income and Expense Register - a detailed record of income and expenses must be maintained. Expenses are to be recorded in such detail as to clearly describe each expense; i.e., supplies, rent, salaries, etc.
- (e) Cash Items Register - a daily listing must be maintained of all cash items held which shows the maker on the item, last endorser, date acquired, amount, and reason held.
- (f) Charged-Off Assets - all charge-offs, including loans, must be approved by the Board of Directors and such approvals recorded in the minute book. A permanent record of all charge-offs and recoveries thereon must be maintained. When a recovery is made on an asset that has been charged off, the funds are to be credited to the regular reserve and applied to the account that was charged off.
- (g) Safekeeping Register - a register must be maintained of all items held for safekeeping by a credit union for its members other than items maintained in a safe deposit box under the sole control of the member. The register should describe the item fully, show the name of the owner, date received, and the number of the receipt given to the member. When the item is returned to the member, the receipt must be secured by the credit union, signed by the member stating that he has received the item that was held for safekeeping. The receipt must then be maintained with the safekeeping register.
- (h) Reconciliation Records - the Audit Committee shall reconcile correspondent account statements monthly or shall verify for accuracy reconciliements made by others.

A copy of each reconciliation shall be filed in chronological order and kept as a record. The Audit Committee may delegate this responsibility to an internal auditor provided such person has no authority to sign on the account or to initiate or post entries to the general ledger.

- (i) Overdrafts - a record of all overdrawn deposit accounts shall be maintained. Such record shall contain the name of the account holder, the amount of the overdraft, and the date the overdraft originated. The most current record shall be approved by the Credit Committee or, in lieu thereof, by the board of directors of the credit union at least monthly, and such approval shall be recorded in the minutes of the meeting at which the action was taken. Overdrafts of less than \$1,000, other than overdrafts on the accounts of officers, and directors may be aggregated and reported in lump sum;
- (2) All subsidiary records maintained in support of General Ledger accounts must be balanced back to the General Ledger control balance at least monthly. After balancing at the end of each month on all accounts segregated in the general ledger, the balances and the amounts shown in the general ledger of those accounts and the reconciliation of differences, if any, must be recorded in the Trial Balance Log. The date and the initials of the person running the trial balance must be entered in the log.
- (3) Information required to be maintained pursuant to this Rule may be in written form or available subject to access upon computer query. If available, subject to query access, a written record of such information shall be produced at least monthly.
- (4) Where a credit union has net worth of \$5,000,000 or more, review by the Board of Directors as required in paragraphs (1)(f) and (1)(i) above, may be delegated to a specific officer or department of the credit union where such delegation is recorded in the minutes of the Board of Directors. A properly constituted member of the Board of Directors may perform this function for the full Board of Directors regardless of the size of the credit union.

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

80-2-1-.05 Notice of Unauthorized Access to Customer Information.

Pursuant to 15 USC § 6801 et seq. and 12 CFR Part 748, credit unions are required to develop and implement a response program that will be utilized in the event unauthorized access to member information has taken place. Member information is any record containing nonpublic information about a member, whether in paper, electronic, or other form maintained by or on behalf of a credit union. Federal law and regulations require disclosure to federal regulators of unauthorized access of customer information in certain circumstances. If disclosure of such unauthorized access is required under federal law, then a duplicate of such disclosure will simultaneously be submitted to the Department.

CHAPTER 80-2-3

SHARES, DEPOSITS AND DIVIDENDS

80-2-3-.02 Savings Promotion Raffle.

80-2-3-.02 Savings Promotion Raffle.

- (1) At least thirty (30) days prior to conducting a savings promotion raffle under O.C.G.A. § 7-1-239.10, a credit union must provide the Department with written notice detailing the proposed savings promotion raffle. Such notice shall, at a minimum, contain the following information:
 - (a) A detailed description of the terms of the proposed savings promotion raffle including, but not limited to, the type of account that will be utilized to offer the savings promotion raffle, the interest rate to be paid on the account, the fees associated with the account, the fees associated with the most substantially similar account to the savings promotion raffle account offered by the credit union, the amount required to be deposited in the account for a member to be entered in the raffle and any limitations on the number of entries per member, the frequency of drawings, and available prizes;
 - (b) Credit union's policies and procedures related to the proposed savings promotion raffle;
 - (c) Sample of all disclosures provided to members opening a savings promotion raffle account in accordance with O.C.G.A. § 7-1-239.10(c)(1);
 - (d) Identity and contact information of all third-party service providers, if any, who are contracted to manage or provide administrative support related to conducting the proposed savings promotion raffle; and
 - (e) If the savings promotion raffle is conducted in whole or in part by a third-party service provider, a document from the third-party service provider identifying the number and location of all other financial institutions whose members and customers are eligible to participate in the savings promotion raffle.
- (2) A credit union's directors, officers, employees, and the members of such persons' immediate family, as defined by O.C.G.A. § 20-2-58.1, are prohibited from participating in a savings promotion raffle conducted by that credit union. A credit union's directors and officers are prohibited from participating in a savings promotion raffle at any financial institution if the savings promotion raffle is administered by the same third-party service provider that administers the savings promotion raffle at the credit union.

CHAPTER 80-2-4

INVESTMENT OF CREDIT UNION FUNDS

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

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

- (1) Unless otherwise precluded by law or regulations, a credit union may acquire and hold for its own account shares of stock or interest in a subsidiary or affiliate corporation or limited liability company engaged in the following functions or activities that do not pose undue risk to the safety and soundness of the credit union and that are consistent with the objectives of O.C.G.A. § 7-1-3. The functions or activities that the credit union subsidiary or affiliate is authorized to conduct include, but are not limited to:
 - (a) offering third-party payment services as provided in O.C.G.A. § 7-1-670;
 - (b) holding real estate;
 - (c) acting as a financial planner or investment adviser;
 - (d) offering a full range of investment products;
 - (e) exercising powers incidental to financial activities as provided in O.C.G.A. § 7-1-650; and
 - (f) exercising powers granted by Department rules or powers determined by the Commissioner to be financial in nature or incidental to the provision of financial services.
- (2) O.C.G.A. § 7-1-650(6) contemplates that a credit union can have a separate subsidiary or affiliate to exercise powers that are express or incidental to the credit union's authority with the approval of the Department. Subject to certain investment limitations for credit unions, the subsidiary or affiliate can conduct such powers as may be financial in nature or incidental or complimentary to the provision of financial services. Prior to the subsidiary or affiliate engaging in any functions or activities that a credit union is authorized to engage, the credit union must submit a letter form application to the Department describing the proposed activity, detailing the activity's relationship to the business of the credit union, and setting forth the provisions that will be implemented in order to mitigate any related risks. Upon review of the application, the Department may request additional information if it determines such additional information is necessary in order to fully and completely evaluate the application. After completion of its review, the Department shall either approve, conditionally or otherwise, or deny such application in writing.

- (3) If more than one credit union has an ownership interest in such subsidiary or affiliate, the credit union that has the largest percentage ownership in the subsidiary or affiliate must submit the application to the Department. In the event the largest credit union percentage ownership in the subsidiary or affiliate is held by multiple credit unions, then only one credit union is required to submit an application to the Department.
- (4) For purposes of this rule only, “affiliate” means a corporation or limited liability company, that a credit union has less than a majority ownership interest.

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

CHAPTER 80-2-6

SUPERVISORY AUDITS

80-2-6-.01 Audits.

80-2-6-.05 Internal Audit Program.

80-2-6-.01 Audits.

- (1) Every Audit 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 Audit Committee may elect to have the annual audit conducted by the internal auditors of any sponsoring group, concern, or association of credit unions approved by the Department in writing.
- (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 Audit 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 Audit 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 Audit Committee shall also have supplementary audits performed upon request of the Department.
- (7) At frequent intervals, but under no circumstances less than annually, the Audit 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-.05 Internal Audit Program

- (1) An institution shall have an internal audit program that is appropriate to the size of the institution and the nature and scope of its activities. An appropriate internal audit program consists of qualified persons and provides for effective:
- (a) Monitoring and reporting on the system of internal controls;

- (b) Testing and review of controls over information systems;
 - (c) Documenting of testing activities, findings, and corrective actions;
 - (d) Verifying and reviewing of management actions to address material weaknesses; and
 - (e) Engagement and oversight by the institution's Board of Directors.
- (2) The Board of Directors shall name an internal auditor or designate an officer to act as a liaison with third parties engaged to perform the internal audit program.
- (3) The Board of Directors shall review and approve the scope of the internal audit program to include the operational areas targeted for review, the proposed timeline of reviews, testing procedures to be used, the qualifications of personnel for the subject matter to be reviewed, and the independence of personnel from operational responsibilities over areas to be reviewed. Alternatively, an audit committee formed in compliance with O.C.G.A. § 7-1-656(b)(2), is authorized to act in lieu of the Board of Directors. The scope of the internal audit will be documented – via an engagement letter when third parties are engaged - and provided to the Department upon request.
- (4) The internal auditor or designated liaison shall:
- (a) Implement or oversee implementation of the institution’s internal audit program;
 - (b) Monitor the implementation of corrective actions; and
 - (c) Report to the Board of Directors at least annually on the status of the internal audit program to include audit activities, findings, and corrective actions.
- (5) The internal audit shall be appropriate to the size of the institution and the nature and scope of its activities. In determining the nature and scope of the internal audit, the financial institution shall take into consideration the auditing standards formulated by The Auditing Standards Board of the AICPA, and/or the Institute for Internal Auditors.
- (6) Unless pre-approved by the Department in writing, the external audit obtained pursuant to O.C.G.A. § 7-1-657 and Rule 80-2-6-.01 will not satisfy the internal audit program requirement.
- (7) In the event the Department determines that an internal audit program is deficient, the Department may require the institution to:
- (a) Replace the internal auditor with an individual acceptable to the Department;
 - (b) Perform additional reviews by personnel acceptable to the Department with subject

matter expertise on, and independence from, the areas targeted for review; and

- (c) Engage a third-party acceptable to the Department to perform a comprehensive review of the adequacy of the institution's internal control environment in accordance with a standard acceptable to the Department.

Authority: O.C.G.A. § 7-1-61.

CHAPTER 80-2-8

FIELD OF MEMBERSHIP

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

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) Reserved;
 - (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: O.C.G.A. §§ 7-1-61; 7-1-663.

CHAPTER 80-2-12

CREDIT UNION LOANS

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

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

- (1) Credit unions may invest in loans made by other lenders. Credit unions may purchase one hundred percent or less of a loan as part of a participation. Alternatively, credit unions may purchase one hundred percent of a loan as a whole loan. Loans purchased must conform to all laws and regulations applicable to that category of loan to the same extent as if the purchasing credit union had originated the loan itself. Applicable statutory and regulatory requirements, including, but not limited to, collateral documentation requirements, loan to collateral value requirements, and loan limitations must be met. The purchasing credit union shall obtain from the selling lender copies of all pertinent collateral and credit documents or, solely in the case of a loan participation, a summary of information sufficient to conclude that all legal and regulatory requirements have been met.
- (2) A credit union that purchases a loan has the responsibility of conducting loan underwriting procedures on the loan to determine that it complies with the policies of the credit union and meets the credit union's credit standards.
- (3) The following additional requirements apply to a participation purchase in pools of loans and, those that are applicable, apply to a whole loan purchase in pools of loans:
 - (a) Loans in the pool or discount line must be specifically identifiable on the records of the selling financial institution.
 - (b) The participation agreement must call for the participant to share pro rata in losses experienced by the pool.
 - (c) The participation agreement must provide for a periodic, at least quarterly, report by the seller to the purchaser to account for settlement for losses incurred and to provide information on past due status of loans contained in the pool or discount line.
 - (d) Where the purchase exceeds the purchasing credit union's unsecured lending limit, the purchase must be accorded prior written approval from the Board or the Board-approved credit committee.
 - (e) The purchase in the pool must satisfy safety and soundness. In determining whether a participation in a pool of loans is safe and sound, the department will consider:
 1. The credit union's understanding of the selling financial institution's organization, business model, financial health, and the related risks of the participation;

2. The credit union's due diligence in monitoring and protecting against participation risks;
 3. If contracts between the credit union and the selling financial institution grants the credit union sufficient control over the seller's actions and provides for replacing an inadequate servicer; and
 4. Other factors relevant to safety and soundness.
- (4) Where agreements exist for the seller to repurchase or indemnify loss, participation and whole loan purchases shall be treated as loans to the seller by the purchasing credit union and the amount of the purchase shall be considered to be remaining on the seller's books for the purposes of the seller's loan limitations.
- (5) The purchasing credit union shall be deemed in compliance with the documentation requirements of this Rule so long as the credit union may electronically access, on demand, the required pertinent documentation required by this Rule.

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

CHAPTER 80-3-1

MONEY TRANSMISSION AND RELATED FINANCIAL SERVICES

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

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, unless such authorized agent is a financial institution whose deposits are federally insured, 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 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, 7-1-690.

CHAPTER 80-5-1

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

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

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

- (a) Applicants for approval by the department for the addition of a single geographic common bond group shall pay an investigation fee of \$1,000.
- (b) Applicants for department approval of merger of two credit unions where neither is considered financially or otherwise unsafe or unsound shall pay an investigation fee of \$1,000.
- (c) Applicants for department approval of conversion from a federal or out of state credit union to a state credit union shall pay an investigation fee of \$1,000.
- (d) Applicants for department approval of a credit union subsidiary shall pay a processing fee of \$500.

- (e) Applicants for department approval of conversion of a financial institution, other than a credit union, to a state credit union shall pay an investigation fee of \$1,000.
- (f) The department may in its discretion waive or reduce a fee based on the circumstances of the application.

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

CHAPTER 80-11-1

DISCLOSURE, ADVERTISING, BRANCH MANAGERS

80-11-1-.01 Disclosure Requirements.

80-11-1-.01 Disclosure Requirements.

- (1) The disclosures and all other provisions of this Rule only apply 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) Every mortgage lender or mortgage broker shall make the following disclosures in writing to applicants for residential mortgage loans:
 - (a) within three business days of receipt of the application but no later than seven business days before settlement or closing of the loan, a Loan Estimate, as required by federal law, including but not limited to 12 CFR § 1026.19 and 12 CFR § 1026.37;
 - (b) no later than three business days before settlement or closing of the loan, a Closing Disclosure, as required by federal law, including but not limited to 12 CFR § 1026.19 and 12 CFR § 1026.38;
 - (c) prior to the acceptance of a fee, including, but not limited to, an application fee, credit report fee, property appraisal fee, and all other third-party fees, the amount of the fee;
 - (d) prior to the acceptance of a fee, whether all or any part of the fee or charge is refundable prior to settlement of the mortgage loan, and the terms and conditions for obtaining a refund if all or any part of the fee or charge is refundable;
 - (e) prior to the acceptance of any fees, the specific services which will be provided or performed for the application fee; and

- (f) in cases where the fees are being accepted by a mortgage lender or mortgage broker that such lender or broker cannot guarantee approval of the loan application or acceptance into a particular loan program.
- (3) Mortgage lenders or mortgage brokers shall provide applicants for a home equity line of credit, a residential mortgage loan not secured by real property, such as a mobile home, or a residential mortgage loan related to a reverse mortgage, all disclosures required by federal law instead of the specific disclosures set forth in paragraph (2)(a) and (b).
- (4) (a) For purposes of this Rule, the term "settlement" or "closing" means the process of executing legally binding documents regarding a lien on residential property.

(b) For purposes of this Rule, the term "business day" has the same definition as set forth in 12 CFR §1026.2.

(c) For purposes of paragraph (2) of this Rule, "application fee" means any fee advanced prior to settlement by the applicant to the mortgage broker or mortgage lender in connection with an application for a mortgage loan, including any charge for soliciting, processing, placing or negotiating a mortgage loan. The term does not include payments to be remitted to third party service providers, such as appraisal fees or fees for credit reports.
- (5) Some or all of the disclosures required by paragraphs (2), (3), (7), (8), and (9) of this Rule may appear on forms used to comply with otherwise applicable state or federal laws, including but not limited to 12 CFR § 1026.37 and 12 CFR § 1026.38.
- (6) The disclosures required in paragraphs (2), (3), and (9) of this Rule shall be acknowledged in writing by the applicant and a copy of the acknowledgment maintained by the mortgage lender or mortgage broker required to make the disclosure, and a copy of the acknowledgment shall be given to the applicant. In instances of mail applications, the disclosures required by paragraphs (2), (3), and (9) must be included in the mail application package with a request that a signed acknowledgment form be returned to the mortgage broker or lender required to make the disclosure. A copy of this request shall be kept by the mortgage broker or mortgage lender. In instances of applications taken by telephone, the disclosures required by paragraphs (2), (3), and (9) must be mailed or delivered to the applicant with a request that a signed acknowledgment form be returned to the mortgage broker or lender required to make the disclosure. A copy of this request shall be kept by the mortgage broker or mortgage lender.
- (7) To the extent required by federal law including, but not limited to 12 CFR § 1026.20, a mortgage lender shall provide the borrower an Escrow Closing Notice no later than three business days before the borrower's escrow account is cancelled.
- (8) In the event that the residential mortgage loan is transferred, the transferee mortgage lender shall provide the borrower with a Mortgage Transfer Disclosure on or before the thirtieth

calendar day following the date of the transfer, to the extent required by federal law including, but not limited to, 12 CFR § 1026.39.

(9) Foreclosure Disclosure.

- (a) Every mortgage lender, and every mortgage broker who closes mortgage loans in the broker's own name with funds provided by others and which loans are assigned within 24 hours of the funding of the loan to the mortgage lender providing the funding of such loans (i.e. table funding), shall disclose in writing to each applicant for a mortgage loan that failure to meet every condition of the mortgage loan may result in the loss of the applicant's property through foreclosure. The disclosure shall be made at or before the time of settlement. The disclosure shall include the following language in at least ten-point bold-faced type:

"O.C.G.A. § 7-1-1014(3) requires that we inform you that if you fail to meet any condition or term of the documents that you sign in connection with obtaining a mortgage loan you may lose the property that serves as collateral for the mortgage loan through foreclosure."

- (b) The applicant shall be required to sign the disclosure and the lender or broker, as applicable, shall keep a copy of the signed disclosure.

- (10) A mortgage lender or mortgage broker may not use the terms "closing" or "settlement" to refer to a transaction unless the transaction meets the definition of settlement in paragraph (4) of this Rule.

Authority: O.C.G.A. §§ 7-1-61; 7-1-261.

CHAPTER 80-11-2

BOOKS AND RECORDS REQUIREMENTS; AUDITS

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

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

- (1) Any mortgage broker or lender required to be licensed or registered under Article 13 of Chapter 1 of Title 7 ("licensee" or "registrant") must maintain the following books, accounts and records:
- (a) Copies of all disclosure documents required by Rule 80-11-1-.01;
 - (b) Samples of advertisements as required by Rule 80-11-1-.02;
 - (c) Copies of all written complaints by customers and written records of disposition;

- (d) Copies of examination reports prepared by any agency, division or corporate instrumentality of the United States, the State of Georgia or any other state, which reports pertain to the mortgage brokerage and/or lending business of the licensee or registrant and are not prohibited from being disclosed to the Department of Banking and Finance by state or federal law;
- (e) Copies of reports required to be prepared and/or submitted by the licensee or registrant to any agency, division, or corporate instrumentality of the United States, the State of Georgia or any other state, which reports pertain to the mortgage brokerage and/or lending business of the licensee or registrant and are not prohibited from being disclosed to the Department of Banking and Finance by state or federal law;
- (f) Copies of all payroll records, including federal and state withholding tax forms, W-2's, and 1099 forms filed with the Internal Revenue Service by the licensee or registrant, or its agent on behalf of individuals employed by the licensee or registrant or on behalf of individuals acting as independent contractors in the mortgage brokerage and/or lending business of the licensee or registrant;
- (g) A general ledger and subsidiary records sufficient to produce, when requested by the department, an accurate monthly statement of assets and liabilities and a cumulative profit and loss statement for the current operating year;
- (h) All checkbooks, bank statements, deposit slips and canceled checks which pertain to the mortgage brokerage and/or lending business of the licensee or registrant;
- (i) Supporting documentation for all expenses and fees paid by the mortgage broker on behalf of the customer, which documentation indicates the amount paid and the date paid;
- (j) Copies of all credit report bills received from all credit reporting agencies for the most recent five year period;
- (k) Documentation to indicate a consumer had a choice of attorney, if attorneys' fees are intended to be excluded from a points and fees calculation under the Georgia Fair Lending Act;
- (l) An indication of whether each loan has points and fees of 5% or more, as calculated under the Georgia Fair Lending Act;
- (m) Documentation to support the source and purpose for each receipt of monies in any form in an amount greater than \$100 and documentation to identify the recipient and purpose of each payment of monies in any form in an amount greater than \$100 by the licensee or registrant in its mortgage brokerage and/or lending business in order that the receipts may be reconciled to bank deposits and to books of the licensee or registrant;
- (n) Employee file for each employee. The employee file must contain all documents related to hiring the employee, including criminal background check, date employment began, and a print out or screenshot confirming that the Department's public records were reviewed on the Department's website and NMLS Consumer Access to verify eligibility

for employment with such review of the Department's public records and NMLS consumer access taking place prior to the date of hire; and

- (o) Copies of all submitted mortgage call reports, including any amended reports, for the previous five (5) years and all related work papers and supporting documentation that support the accuracy of the information contained in the mortgage call reports.
- (2) Failure to maintain the books, accounts and records required under paragraph (1) above may result in suspension of the license or registration or other appropriate administrative action and will subject the licensee or registrant to fines in accordance with regulations prescribed by the department.

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

CHAPTER 80-11-3

ADMINISTRATIVE FINES AND PENALTIES

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.G.A. § 7-1-1004(h), may be fined five thousand dollars (\$5,000) per employee found to be in violation of such provision and their license or registration will be subject to revocation or suspension.
- (10) Hiring Persons Otherwise Disqualified from Conducting a Mortgage Business. Any mortgage broker or mortgage lender licensee or registrant who employs any person against whom a final cease and desist order has been issued for a violation that occurred within the preceding five (5) years, if such order was based on a violation of O.C.G.A. § 7-1-1013 or based on the conducting of a mortgage business without a required license or exemption, or whose license was revoked within five (5) years of the date such person was hired pursuant to O.C.G.A. § 7-1-1004(o) shall be subject to a fine of five thousand dollars (\$5,000) per such employee and its license or registration will be subject to revocation or suspension.
- (11) Books and Records Violations. If the Department, in the course of an examination or investigation, finds that a licensee or registrant has failed to maintain their books and records according to the requirements of O.C.G.A. § 7-1-1009 and Rule Chapter 80-11-2, such

licensee or registrant may be subject to a fine of one thousand dollars (\$1,000) for each violation of a books and records requirement listed in Rule Chapter 80-11-2.

- (12) (a) Maintenance of Loan Files. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or any lender acting as a broker who fails to maintain a loan file for each mortgage loan transaction as required by Rule 80-11-2-.04 or who fails to have all required documents in such file shall be subject to a fine of one thousand dollars (\$1,000) per file not maintained or not accessible, or per file not containing required documentation.
- (b) Maintenance of Service Files. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage lender who fails to maintain a servicer file for each mortgage loans it services, as required by Rule 80-11-6-.04(1)(b), or who fails to have all required documents in such file shall be subject to a fine of one thousand dollars (\$1,000) per file not maintained or not accessible, or per file not containing required documentation.
- (13) Payment of \$10.00 fees and filing of fee statement. Pursuant to Rule 80-5-1-.04 and O.C.G.A. § 7-1-1011, any person who is the collecting agent at a closing of a mortgage loan transaction, is liable for payment of the \$10.00 fee to the Department. The remittance of any \$10.00 fees required to be collected after the date on which they are due shall subject the collecting agent to a late payment fee of one hundred dollars (\$100) for each due date missed. If the Department finds that the collecting agent has not, through negligence or otherwise, submitted \$10.00 fees within six months of the due date, the collecting agent will be subject to an additional fine of twenty (20) percent of the total amount of \$10.00 fees required to be collected for the applicable period. Repeated failures to submit \$10.00 fees may be grounds for revocation of license.
- (14) Repealed. Reserved.
- (15) Failure to Timely Report Certain Events. Any person required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage lender or broker, who fails to report any of the events enumerated in O.C.G.A. § 7-1-1007(d), shall be subject to a fine of one thousand dollars (\$1,000) per act not reported in writing to the Department within 10 days of knowledge of such act.
- (16) Prohibited Acts. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or mortgage lender who violates the provisions of O.C.G.A. § 7-1-1013 shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation and his or her license shall be subject to suspension or revocation. Misrepresentations also subject the person making them to a fine. Misrepresentations include but are not limited to the following:
 - (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) Failure to Review Public Records Prior to Hiring. Any licensee who fails to examine the Department's public records on the Department's website and NMLS Consumer Access to determine if a job applicant is subject to an order set forth in O.C.G.A. § 7-1-1004(o) prior to hiring such individual shall be subject to a fine of one thousand dollars (\$1,000) for each employee on whom the public records were not timely examined.
- (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 Executive Officers. Any licensee who fails to notify the Department of a change in executive officers of the company 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 NMLSR 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 NMLSR 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; 7-1-1012.

CHAPTER 80-13-1

TRUST COMPANIES

80-13-1-.13 Dividends.

80-13-1-.13 Dividends.

- (1) The Board of Directors of any trust company may declare and the trust company may pay dividends on its outstanding capital stock without any requirement to notify the Department or request the approval of the Department if the aggregate amount of dividends declared or anticipated to be declared in the calendar year does not exceed fifty (50) percent of the net profits, after taxes but before dividends, for the previous calendar year; provided, however, a trust company that files federal income taxes as a Subchapter S-Corporation may pay an additional amount of dividends without Department approval equivalent to fifty (50) percent of the income taxes which the trust company would have had to pay in the prior year as a Subchapter C-Corporation.
- (2) Any proposed dividend to be declared by the Board of Directors of a trust company in excess of the amount authorized by section (1) of this Rules must be approved, in writing, by the Department prior to the payment thereof pursuant to the provisions of Section 7-1-460(a)(3) of the Official Code of Georgia. Requests for approval of dividends shall be on forms prescribed by the Department.

Authority: O.C.G.A. § 7-1-61.