

STATE OF GEORGIA DEPARTMENT OF BANKING AND FINANCE



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*SPECIAL EDITION
IMPORTANT NOTICE
FINAL RULEMAKING*

June 15, 2015

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF BANKING AND FINANCE STATE OF GEORGIA

Adopted June 15, 2015

To all interested persons:

Notice is hereby given that pursuant to the provisions of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., and by the authority of O.C.G.A. §§ 7-1-61, 7-1-1012, 7-9-13, and other cited statutes, the following attached Rules of the Department of Banking were adopted on June 15, 2015. The Rules were filed with the Secretary of State on June 15, 2015 and, pursuant to O.C.G.A. § 50-13-6, will be effective on July 15, 2015, 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 12, 2015. The Department received two (2) written comments regarding the proposed Rules. The Department fully considered the comments it received and made the following substantive revision:

- Rule 80-2-6-.01 was revised to remove the requirement that the independent accountant or firm of accountants be licensed in this state and instead to provide that the independent accountant or firm of accountants simply be licensed.
- Rule 80-12-4-.05 was revised to reflect that employee criminal background checks for an MALPB must be completed and found satisfactory prior to employment as required by the express terms of House Bill 184.

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

FINAL RULES
FINANCIAL INSTITUTIONS
CHAPTER 80-1-1

APPLICATIONS, REGISTRATIONS AND NOTIFICATIONS

- 80-1-1-.01 Applications, Registrations and Notifications, Generally.
- 80-1-1-.09 Standards for Consideration of Applications Generally; Applications Manual and Statement of Policies; Trust Production Office Criteria.

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

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

(2) Where forms are required, they may be obtained from the Department.

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

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

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

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

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

80-1-1-.09 Standards for Consideration of Applications Generally; Applications Manual and Statement of Policies; Trust Production Office Criteria.

(1) Standards for consideration of applications whether covered under this Rule Chapter or otherwise, shall in most cases include: evaluations of financial history and condition of the applicant; adequacy of applicant capital; future earnings prospects for applicant; character, capacity and ability of applicant management; consistency of corporate powers; convenience and needs of the public; and effects on competition. Department policies in regard to such evaluations are discussed in greater detail in the Department’s Statement of Policies (“Policies”), Applications Manual (“Manual”), and in instructions accompanying applications. The Manual and Policies can be obtained from the Department.

(2) If the Department of Banking and Finance notifies the applicant of deficiencies in the application, the applicant must complete the application by curing the deficiencies within thirty (30) days after receipt of such notification.

(3) An application will not be deemed to have been filed and received until such time as the required application fee, and any other unpaid fee or fine owed to the Department, has been paid and all portions of the application have been completed to the satisfaction of the Department of Banking and Finance.

(4) Decisions on applications may be conditioned and may be nullified should the Department determine that circumstances are substantially different from those upon which the decision was based.

(5) Standards for approval of a trust production office shall include stability and financial condition of the bank or trust company with the trust powers; level of regulation by the state or federal regulator of bank or trust company in its home state; and consumer comment.

Authority Ga. L. 1970, p. 954; Ga. L. 1974, pp. 724, 733, 825; O.C.G.A. § 7-1-590.

CHAPTER 80-2-6

SUPERVISORY AUDIT

80-2-6-.01 Supervisory Audits

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

80-2-6-.03 Applicable Auditing Standards

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) Upon completion of the annual audit, one copy of the audit and the engagement letter shall be forwarded to the Department. The engagement letter should clearly define the extent of the audit work including, the scope of the audit, the objectives, the resource requirements, and the audit timeframes.

(a) If the audit is performed by a licensed independent accountant or firm of accountants, the individual or firm must forward both documents directly to the Department.

(b) If the audit is performed by the internal auditors of any sponsoring group, concern, or association of credit unions, the Supervisory Committee must forward both documents to 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) At frequent intervals, the Supervisory Committee shall also make 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.

Authority Ga. L. 1974, pp. 705, 733, 904; 1981, pp. 1245, 1250.

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

- (1) In the event a credit union does not render statements on all share, deposit, and loan accounts at least annually, the Supervisory Committee shall confirm 100% of all such accounts annually in accordance with Paragraph (3) of this section.
- (2) If statements of all share, deposit, and loan accounts are rendered to members either through the mail or hand delivered by the treasurer, other officers, or employees of the credit union at least annually, the Supervisory Committee shall confirm 100% of all such accounts at least every two years. In lieu of regular confirmations, the Supervisory Committee may elect to mail out regular statements of such accounts.
- (3) All confirmations performed by the Supervisory Committee including the mailing of statements of share, deposit, and loan accounts shall be under controlled conditions, as follows: The Supervisory Committee shall be responsible for determining that share, deposit and loan ledgers are in balance with the general ledger preparatory to mailing copies of such statements of accounts to the members. The treasurer, assistant treasurer, bookkeeper, or any other person normally assigned to the task of posting member ledger accounts shall not participate in the preparation or mailing of such statement of accounts. The members shall be advised by either a notation on the statement or by an enclosure that: "If the amount shown on the statement does not agree with your records, please notify the chairman of the Supervisory Committee of any difference." A self-addressed envelope should be enclosed for the member's convenience.

Authority Ga. L. 1974, pp. 705, 733, 904; 1981, pp. 1245, 1250.

80-2-6-.03. Applicable Auditing Standards.

An audit of a credit union by an independent accountant or firm of such accountants or the internal auditors of any sponsoring group, concern, or association of credit unions shall be made in accordance with generally accepted auditing standards as set forth in pronouncements of the American Institute of Certified Public Accountants.

Authority Ga. L. 1974, pp. 705, 733, 904; 1981, pp. 1245, 1250.

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 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 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 must confirm that internal routines and controls were evaluated and no exceptions were found or that certain listed exceptions were noted; and
- (c) The audit must set forth in sufficient detail the general scope of the audit performed.

Authority Ga. L. 1974, pp. 705, 733, 904; 1981, pp. 1245, 1250.

CHAPTER 80-2-8

FIELD OF MEMBERSHIP

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

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

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

(2) Definitions for residential groups:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Authority Ga. L. § 7-1-3; § 7-1-61; § 7-1-70; § 7-1-630; § 7-1-634; § 7-1-663.

MONEY TRANSMISSION

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-.01 Payment Instrument Sellers and Money Transmitters.

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

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

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

(4) Authorized Agents.

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

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

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

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

(7) Audit; quarterly reports.

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

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

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

(10) Minimum Books and Records.

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

1. A record of each payment instrument sold;
2. A general ledger which shall be posted at least monthly containing all assets, liabilities, capital, and income and expense accounts;
3. Settlement sheets received from authorized agents;
4. Bank statements and bank reconciliation records;
5. Records of outstanding payment instruments;
6. Records of each payment instrument paid;
7. A list of the names and addresses of all of the licensee's authorized agents;
8. A copy of all currency transaction reports that are required to be filed by the licensee;
9. For money transmitters, records of all money transmissions sent or received as well as all outstanding money transmissions; and
10. Supporting documentation for all reports required to be prepared or filed with the Department or the Nationwide Multistate Licensing System and Registry.

(b) Each licensee shall maintain a principal location at which its books and records are maintained and which is accessible to the Department for examination during normal

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

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

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

80-3-1-.02 Check Cashers.

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

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

(3) Every licensee shall maintain an original written authorization or other evidence of verification attesting to the fact that each specific corporation or other business association has authorized its officers and employees or specific officers or employees to present payment instruments, drawn by the corporation or other business association payable to cash or drawn by any party payable to the corporation or other business association, to a licensee for cashing. A check casher shall not cash a payment instrument payable to persons other than natural persons unless the check casher has on file such written authorization or verification indicating that the payee has authorized the presentation of such payment instruments on behalf of the payee.

(4) Every licensee shall post in prominent view of each teller window or other customer service station a copy of its license. Advertising material related to the cashing of payment instruments and distributed within this state shall bear the legend "LICENSED BY THE

GEORGIA DEPARTMENT OF BANKING AND FINANCE" in letters at least one-quarter inch high and contain the licensee's unique identifier.

(5) Minimum Books and Records.

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

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

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

(c) A daily cash reconciliation statement shall be maintained summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business. Such reconciliation statement shall separately reflect cash received from the sale of payment instruments (if licensed as a seller of payment instruments or an authorized agent of such licensee), redemption of returned items, bank cash withdrawals, cash disbursed in cashing of payment instruments, and bank cash deposits.

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

or more locations under the same license may be maintained provided books of original entry are separately maintained for each location.

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

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

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

(7) Each licensee shall maintain a principal location at which its books and records are maintained and which is accessible to the Department for examination during normal business hours. If the records are maintained outside of the state, then the licensee must have all required records delivered to the Department's main office within ten (10) days of the Department's request. The Department may examine any person that purports to satisfy the exemption from licensure set forth in O.C.G.A. § 7-1-701.1 to verify that the person qualifies for the exemption from licensure. A licensee that refuses to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department), that withholds material information or makes a misrepresentation shall have its license revoked.

(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 ownership, change in control, or change in executive officer as required by O.C.G.A. § 7-1-705.1 at least thirty (30) days prior to the proposed change.

(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; §7-1-702.1; § 7-1-706.1; § 7-1-701.1.

FINANCIAL INSTITUTIONS

CHAPTER 80-5-1

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

80-5-1-.01 General

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

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

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

80-5-1-.01 General.

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

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

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

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

institution.

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

(6) Assessment fees for a state institution that fails and is acquired by a federal or national institution after July 1, but prior to the date that assessments are due and payable, will be prorated based on the number of full and partial months the institution operated as a state institution. Assessment fees for a state institution that fails and is acquired by a state institution after July 1, but prior to the date that assessments are due and payable, will be assessed on the combined total assets and combined offices of the merged institutions as of June 30. State institutions that fail after the date the assessments are due and payable, will pay the full assessment for each institution.

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

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

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

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

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

(1) Payment instrument sellers and money transmitters.

(a) The annual license fee is one thousand nine hundred dollars (\$1,900) for payment instrument sellers and nine hundred dollars (\$900) for money transmitters.

(b) The annual renewal license fee is one thousand nine hundred dollars (\$1,900) for payment instrument sellers and nine hundred dollars (\$900) for money transmitters and shall be due and must be received by the Department on or before the first day of December of each year. Where the person or corporation engages in both the sale of payment instruments and money

transmission, the higher of the two fees shall be due and payable. A licensee whose renewal application and annual license renewal fee is not received by the Department on or before December 1 will be assessed a late fee of three hundred dollars (\$300) and cannot be assured of renewal of its license prior to January 1.

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

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

(2) Check Cashers.

(a) The annual license fee is three hundred dollars (\$300).

(b) The annual renewal license fee is three hundred dollars (\$300).

(c) An initial investigation and supervision fee shall be five hundred fifty dollars (\$550) for the first year. It is not refundable, but if the license is granted it shall satisfy the annual fee for the first license period.

(d) Initial and renewal license fees shall also include an additional thirty dollars (\$30) for the second and each additional location, plus a fee in an amount as directed by the Department to cover the cost of the required number of fingerprints for each individual background check.

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

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

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

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

(3) Registrants of representative offices, trust production offices, business production offices, and loan production offices shall file a registration statement, as prescribed by the Department, and shall pay a registration fee of one hundred fifty dollars (\$150) on or before January 31 of each year. Such fee is intended to cover the costs of responding to questions or complaints from consumers with regard to these entities doing business in Georgia and is in lieu of registration under O.C.G.A. § 16-14-15, as provided in O.C.G.A. § 7-1-11. Registrants of international bank representative offices shall pay a registration fee of one thousand dollars (\$1,000).

(4) Mortgage licensees and registrants.

(a) Lenders. The initial and renewal application and license fee for mortgage lenders shall be nine hundred dollars (\$900). The initial fee of nine hundred dollars (\$900) covers the main office. Any branch offices included in the initial application shall be assessed a fee of three hundred thirty dollars (\$330) each. A fee of three hundred thirty dollars (\$330) will be assessed for each additional office not initially registered, if such office is located in Georgia, and if mortgage lending activity is conducted at the office. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and license fees, must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and license fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.

(b) Brokers. The initial and renewal application and license fee for mortgage brokers shall be four hundred dollars (\$400). The initial four hundred dollar (\$400) fee covers the main office. Any branch offices located in Georgia shall be assessed a fee of three hundred thirty (\$330) each. Brokers include loan processors. Processors are defined in Rule 80-11-4-.07. Such a processor may have a separate main office and other branch offices where mortgage loan processing is done. The offices will be treated the same as brokers' offices. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and license fees must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and license fee that is not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.

(c) Mortgage Loan Originators. The initial and renewal application and license fee for mortgage loan originators shall be one hundred dollars (\$100). Subsequent renewal application fees must be received by the Department on or before December 1 of each year or the applicant will be assessed a late fee of one hundred dollars (\$100). A renewal application is not deemed received until all required information, including a renewal fee in the appropriate amount and

documentation showing that the requisite continuing education hours have been obtained, has been provided by the licensee. A renewal application, containing all of the required information along with the correct fees and proof of required continuing education that is not received by the Department on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Effective August 1, 2010, applicants may not conduct mortgage loan origination activity without a current license.

(d) Lender Registrants. The initial and renewal application and registration fee for mortgage lenders required to register but not be licensed with the Department shall be nine hundred dollars (\$900), due on or before December 1 of each year. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and registration fees must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and registration fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.

(e) Broker Registrants. The initial and renewal application and registration fee for mortgage brokers required to register but not be licensed with the Department shall be four hundred dollars (\$400), due on or before December 1 of each year. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and registration fees must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and registration fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.

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

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

(h) Applicants for approval to acquire directly or indirectly ten percent (10%) or more of the voting shares of a corporation or ten percent (10%) or more of the ownership of any other entity licensed to conduct business as a mortgage lender and/or a mortgage broker under O.C.G.A.

Article 13 (otherwise called change of control) shall pay a nonrefundable investigation, application and processing fee of five hundred dollars (\$500).

(i) Application for an additional office of a licensee shall be accompanied by a nonrefundable fee of three hundred thirty dollar (\$330), as provided in O.C.G.A. §7-1-1006.

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

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

(6) Any fees or charges imposed by the Nationwide Multistate Licensing System and Registry (“NMLSR”) shall be independent of any fees charged by the Department. Applicants, licensees, and registrants will be responsible for any and all fees or charges imposed by NMLSR.

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

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

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

(a)

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

* Minimum assessment is \$350.

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

(b) All other financial institutions, including credit card banks, bankers banks, central credit unions, and related corporations not covered elsewhere in this Section, licensees under Article 4 (Payment Instrument Sellers and Money Transmitters) and 4A (Check Cashers) of Chapter 1 of Title 7, licensees and registrants under Article 13 of Chapter 1 of Title 7(Georgia Residential Mortgage Act), and trust departments shall pay an examination fee at the rate of \$65 per examiner-hour but not less than \$500 unless such examination is conducted in conjunction with another ongoing examination in which case there shall be no minimum charge. The above per

hour charge shall be compensation for the work of Department examiners as well as any necessary, qualified outside assistance. The examination fee shall be due and payable immediately upon receipt of documentation from the Department setting forth the total amount of the fee. The \$500 minimum charge may be waived by the Commissioner or his/her designee when such charge clearly exceeds the hours spent on an examination.

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

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

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

(2) Banking applications:

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

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

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

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

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

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

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

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

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

(j) If a bank satisfies the banking factors set out in the Department's Statement of Policies, the fee to exercise a single trust power is \$250 and the processing is expedited to 7 days. A completed letter form application to exercise limited trust powers will be reviewed in 15 days; the fee is \$750. A bank that desires to exercise full trust powers files a regular application including a copy of the FDIC application. A complete application will be reviewed in 30 days; the fee is \$1,250. A new trust company, which must be affiliated with a Georgia bank, requires an investigation fee of \$20,000.

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

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

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

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

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

Authority O.C.G.A. Secs. 7-1-41, 7-1-61.

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

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

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

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

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

(e) 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.

HOLDING COMPANIES CHAPTER 80-6-1

HOLDING COMPANIES

80-6-1-.01 Holding Companies, Generally.

80-6-1-.02 Applications.

80-6-1-.16 Qualifying Criteria for Expedited Processing: Establishment of a De Novo Wholly Owned Bank Subsidiary By a Holding Company Lawfully Operating in Georgia.

80-6-1-.01 Holding Companies, Generally.

(1) Georgia's holding company statutes (Code Sections 7-1-605 through 7-1-612) govern all holding companies which have or wish to acquire, by purchase or formation, banks with banking locations in Georgia. Once a holding company acquires a Georgia bank or a bank with Georgia banking locations, it shall be registered annually with the Department. Subsequent acquisitions by that holding company may require approval, a letter form notification, or after the fact notification, depending upon the relationship of the acquisition to Georgia banks or banking locations. The Department requires the submission of certain reports from Georgia bank holding companies and from holding companies that own Georgia banks.

(2) Interstate acquisitions by holding companies are dealt with in Part 19 of Article 2 of Title 7; related mergers of the banks in Part 20 of Article 2 of Title 7. Definitions in those Parts should be applied to interstate transactions.

(3) Expedited processing is available to holding companies which qualify under the criteria in Department of Banking and Finance Rule 80-6-1-.13 or 80-6-1-.16, depending on the transaction. A letter form application with a copy of the federal application may be used and public notice may be coordinated so long as the Department is referenced in the notice as a regulator to whom comments should be submitted. A holding company lawfully owning a bank in Georgia, or lawfully owning a branch of a bank in Georgia which was formed by the acquisition and subsequent merger of a Georgia bank, that meets the criteria in Rule 80-6-1-.16 may qualify for expedited processing for formation of a de novo bank, provided the de novo bank is to be wholly owned by the holding company.

(4) A bank holding company with its principal place of business in Georgia which acquires any bank, and a bank holding company which acquires a bank in Georgia must apply and seek approval from the Department pursuant to Code Section 7-1-622. Approval to become a bank

holding company of a Georgia bank as defined in Code Section 7-1-605 is similarly required. A bank holding company lawfully owning a bank in Georgia, or lawfully owning a branch of a bank in Georgia which was formed by the acquisition and subsequent merger of a Georgia bank, may form a de novo bank with Department approval pursuant to Code Section 7-1-608(b)(3).

(5) A bank holding company with only bank branches in Georgia which does not have its principal place of business here need only notify the Department at least thirty (30) days ahead of its purchase of a bank with no Georgia offices.

(6) An Applications Manual and a Statement of Policies are available from the Department. Details of and policies underlying all required applications, notifications and registrations are contained in these manuals.

(7) Fees for all transactions are provided in Department and Banking and Finance Rule Chapter 80-5-1.

(8) A Georgia bank holding company for the purposes of this Chapter shall be defined as in Code Section 7-1-621.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-607.

80-6-1-.02 Applications.

(1) A state bank must follow procedures and meet the criteria of the Federal Reserve Bank to become a financial holding company. No state application is necessary. Regular applications for permission to become a bank holding company as defined in O.C.G.A. § 7-1-605, or to acquire control of a banking subsidiary, or to continue to be a holding company after becoming a holding company under circumstances contemplated by Section 7-1-605 which are beyond the control of the company, shall be in letter form accompanied by the following exhibits:

(a) A copy of any form or documents filed with the Board of Governors of the Federal Reserve System;

(b) A letter from the applicant's legal counsel containing a definitive statement concerning whether any securities to be issued in the proposed transactions are subject to registration under State and/or Federal Securities Laws and stating that, in the opinion of such counsel, the applicant is taking the necessary action to comply with the applicable State and Federal Securities Laws and Regulations;

(c) A draft copy of any proposed proxy statements or offering circulars or letters prepared in connection with the applicant's proposed bank acquisition;

(d) A copy of the most recent independent audit, if any and if not already on file with the Department, of the applicant's books and records, performed by independent public accountants; and

(e) Proof of publication of the notice described in Rule 80-6-1-.03, if notice is required.

(2) Applicants desiring expedited processing for formation of a one-bank holding company for an existing bank with no publication requirement must meet the qualifying criteria in Department of Banking and Finance Rule 80-6-1-.13, and submit a letter application describing the transaction and support for qualification under the Department's criteria. Completed applications will be processed in 30 days.

(3) Regular applications for permission for a holding company to acquire shares of stock in a bank including a savings bank or savings and loan association which will result in the holding company having direct or indirect control of five (5) percent to twenty-five (25) percent of the voting shares of the acquired bank shall be in letter form accompanied by the following exhibits:

(a) Material requested in subparagraphs (a) through (e) of Paragraph (1) of this Rule.

(4) Interstate and intrastate holding company acquisitions requiring approval may qualify for expedited processing. A letter form application describing the transaction shall be filed together with support for qualification under the Department's criteria and a copy of the federal form or documents. Publication may be done according to Department of Banking and Finance Rule 80-6-1-.03 or in conjunction with the federally required notice, provided the reference to the Department of Banking and Finance is included as provided in the notice regulation, Rule 80-6-1-.03.

(5) Regular applications for permission for a holding company or a subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank, or to merge two or more holding companies, shall be in letter form accompanied by the following exhibits:

(a) Material requested in paragraphs (a) through (e) of Paragraph (1) of this Rule.

(6) Expedited processing for acquisitions or mergers described in Paragraph (5) of this rule is available to qualifying institutions under the same terms as in Paragraph (4).

(7) Expedited processing may be allowed for a qualifying bank holding company lawfully owning a bank or branch office in Georgia, to form a de novo bank. The procedure is outlined in the Applications Manual.

(8) No application filed pursuant to Paragraphs (3), (5) or (7) of this Rule shall request approval to acquire shares of more than one bank. In general, applications will be considered by the Department in order of receipt; simultaneous applications by a single applicant will be considered in the order requested by the applicant. No application filed pursuant to Paragraph (5) of this Rule shall request approval of more than one merger or acquisition.

(9) Final copies of written materials to be transmitted to shareholders to consummate any transaction which has been the subject of an application under this Rule, marked to indicate changes from the preliminary materials filed pursuant to Paragraphs (1)(c), (3)(b) and (5)(b) of

this Rule, shall be filed with the Department prior to the actual transmission thereof to the shareholders. The Department may, in the event changes in such materials necessitate additional review, require that transmission to shareholders be delayed until such time as its review shall have been completed. This section shall not be applicable to an application which is subject to registration under the provisions of The Securities Act of 1933, as amended, or the Georgia Uniform Securities Act of 2008, as amended.

(10) Approval of an application filed pursuant to this Rule shall be valid for a period of twelve (12) months and shall expire at that time unless the acquisition has been completed prior to such expiration or unless extended by the Department.

(11) Any material additions or changes in the method of acquisition by purchase or formation or in the representations set forth in an application must be approved by the Department, and could delay processing. The Department may examine, investigate, and evaluate facts related to any filing as necessary to reach an informed decision.

Authority Ga. L. 1976, pp. 168, 175, Act 762.

80-6-1-.16 Qualifying Criteria for Expedited Processing: Establishment of a De Novo Wholly Owned Bank Subsidiary By a Holding Company Lawfully Operating in Georgia.

(1) Only a holding company which has lawfully purchased or acquired a bank in Georgia may qualify under this Rule to form a de novo bank, pursuant to provisions of Code Section 7-1-608(b)(3). A holding company not already doing a banking business in Georgia may not enter Georgia by forming a new bank here. The holding company must wholly own the proposed bank to qualify for expedited processing.

(2) An eligible holding company must have:

(a) An assigned composite rating of 2 or better at its most recent state or federal examination; and

(b) At least seventy-five (75) percent of its consolidated depository institution assets comprised of eligible depository institutions.

(3) An eligible depository institution, for the purposes of this Rule, shall be one that:

(a) Received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS) as a result of its most recent federal or state examination;

(b) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary federal regulator at its most recent examination, if the depository institution is subject to such examination;

(c) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination;

(d) Is well-capitalized as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator; and

(e) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary federal regulator or chartering authority.

(4) An application may be removed from expedited processing for reasons including the following:

(a) Safety and soundness concerns of the Department dictate a more comprehensive review;

(b) Any material adverse comment is received by the Department;

(c) Other supervisory concerns, legal issues, or policy issues come to the attention of the Department;

(d) If applicable, any acquisition of fixed assets would cause the institution to exceed the state fixed asset limitation; or

(e) Any other good cause exists for denial or removal.

Authority O.C.G.A. § 7-1-61, §7-1-606, § 7-1-607, and § 7-1-608.

CHAPTER 80-8-1

AGENCY ORGANIZATION, METHODS, ETC.

80-8-1-.02 Methods

80-8-1-.03 Requests and Inquiries

80-8-1-.02 Methods.

(1) The DBF fulfills its responsibilities under Title 7 of the Official Code of Georgia Annotated through direct examination and investigation of financial institutions and other licensees, applications submitted by such institutions, and through administrative analysis of data submitted by such institutions.

(2) Direct examination and investigation of financial institutions and other licensees is conducted by a staff of professional examiners knowledgeable in financial analysis, credit evaluation, applicable law, and operating practices and controls of regulated entities.

Examinations and investigations of financial institutions are coordinated with appropriate federal financial regulatory authorities having concurrent jurisdiction. Forms and methods utilized in carrying out examination activities are standardized with federal agencies; however, DBF may have supplementary forms and procedures as circumstances and regulatory requirements demand. Coordination of examination activities with federal regulatory agencies is designed to minimize unnecessary duplication of activities while providing all agencies the data necessary to fulfill their separate responsibilities. The Department publishes a Statement of Policies which details guidelines and interpretations in a number of areas relating to its examination, supervision and investigative duties. The Statement of Policies is updated and revised from time to time as required by industry and economic changes and is available from the Department. The Department also publishes an Applications Manual, which details requirements for all applications and refers to relevant code sections.

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

80-8-1-.03 Requests and Inquiries.

Specific information and inquiries concerning the activities of the DBF may be obtained by writing the Department of Banking and Finance, Suite 200, 2990 Brandywine Road, Atlanta, Georgia 30341. Requests for forms for submission of applications for approval to establish or expand a financial institution are governed by provisions of Chapter 80-1-1. Forms are available from the Department. Information concerning the internal affairs of a financial institution and the results of the examination and investigation activities of DBF are confidential as provided by Code Section 7-1-70 of the Official Code of Georgia Annotated.

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

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 date the Department's records were reviewed to verify eligibility for employment; and

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

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

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

RESIDENTIAL MORTGAGE BROKERS AND LENDERS
CHAPTER 80-11-4
LICENSING

80-11-4-.01 Initial Experience and Education Requirements; Continuing Education.

80-11-4-.05 Knowing Purchase, Sale or Transfer of Loan or Loan Application from Unlicensed Entity, Mortgage Loan Originator Sponsorship Excluded.

80-11-4-.08 Restrictions on Employment and Licensing.

80-11-4-.01 Initial Experience and Education Requirements; Continuing Education.

(1) Subject to the exceptions below, any mortgage broker license issued, reinstated or renewed after July 1, 2000 to an applicant, shall be subject to the requirements for experience or education. Such requirements shall apply to natural person applicants, or if to other entities or persons, to the operating manager who administers the operations in this state (collectively, “applicant”).

(2) Applicants for a new license or for reinstatement of a previous license shall elect and meet either the experience or the education requirements before a license will be issued or reinstated.

(3) Exception for certain licensees for initial education or experience requirements.

(a) Any mortgage broker license issued to an applicant prior to July 1, 2000, which license remains continuously valid without interruption until renewed on July 1, 2001, shall be subject to either one year of verifiable experience or applicant must meet the education requirements in this rule.

(b) Applicants for renewal eligible for this exception, in the case of a natural person, need only state on the application that the license was issued on or before July 1, 2000 and has remained continuously valid without interruption since July 1, 2000. In the case of other entities or persons, applicant must demonstrate that the current operating manager has completed either one year of experience, verified according to this rule, or the education requirements.

(4) Experience Requirements:

(a) Applicant must complete two (2) years of verifiable experience working full time for a licensed mortgage broker or lender.

(b) Experience shall consist of directly soliciting, processing, placing and negotiating mortgage loans for others.

(c) The following information must be submitted at the time of application or renewal by an applicant who wishes to qualify by using experience:

1. Letter on letterhead from previous or current employer certifying completion of two (2) years work experience directly soliciting, processing, placing, and negotiating mortgage loans for others. Telephone number of employer must be provided;

2. Copy of IRS form W-2 for the tax years covering the experience requirement;

3. Completed and signed IRS form 4506 which enables the Department to verify the W-2, and;

4. Other documents or information required by the Department necessary to verify completion of the experience requirement. Experience requirement may be verified by the Department directly with the employer and tax authorities.

(d) If applicant's experience is received from an employer not required to be a Georgia Residential Mortgage Act licensee, such applicant must also complete four (4) hours of education provided by an approved school in Georgia, which education specifically covers the Georgia Residential Mortgage Act and rules and regulations of the Department.

(5) Initial Education Requirements:

(a) An applicant for a mortgage broker's license must complete a minimum of forty (40) hours of prescribed courses from a Department or Nationwide Mortgage Licensing System and Registry (NMLSR) approved provider of mortgage training. A mortgage broker that is also making an application for a mortgage loan originator's license may apply the twenty (20) hours of required mortgage loan originator pre-licensing education towards its mortgage broker license.

(b) Course work taken pursuant to this rule shall pertain to basic technical mortgage terms, elements of the mortgage brokering process, federal law, applications and required documentation, and shall include a minimum of four (4) course hours on Georgia law, rules and regulations; fraud detection; and the prevention of fraud in the mortgage industry.

(c) Applicant must submit proof of completion of the required education courses in the form of a certificate of completion issued by a Department approved provider of mortgage education courses. This requirement may be verified by the Department directly with the provider. The Department will make available a list of such providers.

(6) Experience requirements must have been completed within the three (3) calendar year period immediately prior to the date of approval of the license. Initial education requirements must have been completed within the one (1) calendar year period prior to the date of approval.

(7) Continuing Education. Applicants for renewal of a broker's license that are not subject to the mortgage loan originator's license requirements shall meet the continuing education requirements set forth in subparts (a) through (i) of this rule. Mortgage broker/processor licensees who maintain a mortgage loan originator's license must meet the continuing education requirements set forth in Rule 80-11-5-04(1)(b).

(a) Applicant must complete on an annual basis and by October 31 each year a minimum of eight (8) hours of continuing education dealing with elements of the mortgage brokering process, federal law, federal rules and regulations, Georgia law, Georgia rules and regulations, applications and required documentation, fraud, ethics or other topics pertinent to the operation of a mortgage brokering business in Georgia. At least one (1) hour shall be concentrated on fraud detection and prevention. A mortgage broker that is also a mortgage loan originator may apply the eight (8) hours of annual continuing education required by O.C.G.A. § 7-1-1004(g) to the continuing education requirement contained in this rule.

(b) Except as provided in this rule, continuing education must be completed with a Department or NMLSR approved provider of mortgage education classes and be timely reported to the NMLSR pursuant to NMLSR requirements.

(c) Seminars, courses or classes sponsored and approved by mortgage-related state and federal regulatory agencies, a NMLSR approved provider, the National Association of Mortgage Brokers (NAMB), state and federal regulated lenders and their affiliates or professional associations, all of which must be recognized by the Department as proper providers of education requirements ("approved providers"). Requirements may be satisfied at monthly association meetings, conventions, seminars or through electronic means provided the subject meets the requirements of this Rule. For purposes of continuing education, instructors and speakers at seminars, conventions or classes sponsored by approved providers will not be required to seek Department approval as approved providers of mortgage education classes. Education providers shall assign a certificate number to each attendee of a seminar, course or class. In state providers must keep lists of attendees for at least two (2) years.

(d) Each licensed broker must maintain a listing of the courses completed or seminars attended, the date attended, the name of the instructor or speaker, the name of the sponsoring association, the course agenda and the credit hours earned for each course or seminar. Credit hours may not be earned or approved in less than one (1) hour increments. Such information may be requested as part of the renewal application.

(e) The Department will not be required to verify that each applicant has completed the required Department continuing education hours prior to issuance of a renewal license. However, the Department may at any time and at its discretion select any number of renewal applications to verify that the continuing education requirements have been met. Verification of continuing education hours may be performed as a part of the examination process. Licensees

must maintain documentation for five (5) years that verifies the continuing education hours attained. The Department may request proof of attendance or verification from the applicant, sponsor, instructor or speaker.

(f) The Department may at its discretion accept continuing education hours completed between November 1 and December 31 of each year as part of the license renewal requirement. However, licensees/applicants that fail to attain at least eight (8) continuing education hours by October 31 of each year will be subject to a one thousand dollars (\$1,000) fine.

(g) Upon submitting an application to renew a license, failure to complete eight (8) continuing education hours by October 31 together with failure to complete the hours by December 31 with payment of the one thousand dollars (\$1,000) fine shall result in inability to renew the license, or other administrative action.

(h) For purposes of continuing education requirements “applicant” shall mean an individual owner of the licensee, or a person designated and employed by the licensee as the primary supervisor or manager of the licensee’s mortgage business. The intent of the rule is that the continuing education for a mortgage broker’s license must be obtained by a person who directs the affairs of the mortgage business.

(i) Newly licensed brokers who obtain their license between January 1 and October 31 of any year will be required to have eight (8) hours of continuing education credits in order to qualify to renew their license for the next license renewal period. Newly licensed brokers who obtain their license between November 1 and December 31 of any year will be required to complete continuing education credits prior to license renewal. Provisions in subsection (f) and (g) of this rule also apply to such newly licensed brokers.

Authority O.C.G.A. § 7-1-1012; § 7-1-1004.

80-11-4-.05 Knowing Purchase, Sale or Transfer of Loan or Loan Application from Unlicensed Entity, Mortgage Loan Originator Sponsorship Excluded.

(1) It is prohibited for any person to knowingly purchase, sell or transfer a mortgage loan or loan application to or from an unlicensed mortgage loan originator, mortgage lender or broker, unless that entity is exempt from licensing. It is expected that all persons who purchase loans use reasonable diligence to determine whether the entities they do business with are licensed. To that end, the department has provided various means to determine whether an entity is licensed.

(a) A list of current licensees is provided by the Department. It is updated nightly with the exception of weekends and holidays.

(b) The Department also provides information pertaining to all denied, revoked and sanctioned licenses. It is updated weekly.

(c) The Department responds to telephone inquiries from 8:00 a.m. to 4:30 p.m. each weekday (except holidays) and provides current information to callers.

(2) Obtaining a copy of an entity's annual license shall not be sufficient evidence of a current license since revocation proceedings occur throughout the year.

(3) Failure by a licensee to exercise reasonable diligence to determine whether an entity is licensed may result in a fine or other administrative action, including, but not limited to, license revocation.

(4) The mere act of sponsoring an employee seeking licensure from the Department as a mortgage loan originator through the Nationwide Mortgage Licensing System and Registry shall not be regarded in and of itself as engaging in the mortgage business with an unlicensed person as long as the applicant is not performing for the sponsoring licensee or registrant those regulated activities set forth in O.C.G.A. § 7-1-1000(22).

Authority O.C.G.A. § 7-1-1012; § 7-1-1002.

80-11-4-.08 Restrictions on Employment and Licensing.

(1) No person who has been an officer, director, partner or ultimate equitable owner of a licensee that has had its license revoked, denied or suspended, may perform any of those roles at another licensee or registrant for five years from the date of the final order.

(2) Felony convictions; restrictions on the employee and the licensee:

(a) O.C.G.A. § 7-1-1004 provides that no person employed by or directing the affairs of any licensee may be a convicted felon. Licensees are obligated by that statute to do their own background checks on covered employees. Licensees, however, are responsible to see that no convicted felons are employed or direct the affairs of their business. The department administers fingerprint checks on officers and directors and others where needed.

(b) O.C.G.A. § 7-1-1004 provides for remedies to "cure" a felony conviction. These remedies must be completed and in place prior to employment. Hiring or continuing to employ a person with an unremedied felony conviction subjects a licensee to revocation of its license.

(c) If a licensee discovers that an employee or director/officer is a felon who has not satisfactorily "cured" the conviction, the violation of O.C.G.A. § 7-1-1004 must be immediately corrected or the license will be subject to revocation. Such individuals with felony convictions are ineligible for an employee exemption and are in violation of O.C.G.A. § 7-1-1019, also a felony, and O.C.G.A. §§ 7-1-1004 and 7-1-1002. The licensee employer is in violation of O.C.G.A. §§ 7-1-1004 and 7-1-1002.

(d) A cease and desist order to a person for failure to meet the employee exemption due to a violation of the felony provisions of O.C.G.A. § 7-1-1004 shall become final in 30 days without a hearing. Such a person must show within those 30 days, by certified court documents that the

record is erroneous, or, that the “cure” provisions in O.C.G.A. § 7-1-1004 were completed prior to employment, in order to stop the order from becoming final. In the event such proof is provided, the order will be rescinded.

(3) Cease and desist orders may be issued against persons required to be licensees or registrants or against employees of those parties. All of the provisions of O.C.G.A. § 7-1-1018, including injunction, apply to actions against all such persons.

(4) The Department may regularly publish information identifying persons and natural persons to whom final administrative actions have been issued.

Authority O.C.G.A. §§ 7-1-61; 7-1-1004; 7-1-1012, and 7-1-1018.

MERCHANT ACQUIRER LIMITED PURPOSE BANKS

CHAPTER 80-12-1

DEFINITIONS

80-12-1-.01 Definitions

80-12-1-.01 Definitions.

(1) As used in Chapters 80-12-1, 80-12-2, 80-12-3, 80-12-4, 80-12-5, 80-12-6, 80-12-7, 80-12-8, 80-12-9, 80-12-10, 80-12-11, and 80-12-12, the terms that are defined in O.C.G.A. § 7-9-2 shall have the identical meaning.

(2) As used in Chapters 80-12-1, 80-12-2, 80-12-3, 80-12-4, 80-12-5, 80-12-6, 80-12-7, 80-12-8, 80-12-9, 80-12-10, 80-12-11, and 80-12-12, the below terms shall be defined as follows unless the term is otherwise defined in a specific rule:

(a) “Act” means the Georgia Merchant Acquirer Limited Purpose Bank Act promulgated at O.C.G.A. § 7-9-1 et seq.

(b) “Affiliate” means any corporation, business trust, association, or other similar organization:

1. Of which an MALPB, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percent of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions;

2. Of which control is held, directly or indirectly, through stock ownership or in any other manner by the shareholders of an MALPB who own or control either a majority of the shares of such MALPB or more than 50 percent of the number of shares voted for the election of directors

of such MALPB at the preceding election or by trustees for the benefit of the shareholders of any such MALPB;

3. Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of any one MALPB; or

4. Which owns or controls, directly or indirectly, either a majority of the shares of an MALPB or more than 50 percent of the number of shares of an MALPB voted for the election of directors of an MALPB at the preceding election or controls in any manner the election of a majority of the directors of an MALPB or for the benefit of whose shareholders or members all or substantially all the capital stock of an MALPB is held by trustees.

(c) “Annual Attestation Report” or “AAR” means the standard annual report filed by an MALPB that will disclose information required by the Department. This report will consist of information on specific matters of compliance with applicable laws, regulations, rules, policies, and charter conditions and contain affirmative attestations by the MALPB’s chief executive officer.

(d) “Average Total Assets” means an average of the MALPB’s end of day total assets, excluding goodwill, intangible assets and merchant funds deposited in compliance with Rule 80-12-7-.02, for the previous month. Average total assets is the denominator of the leverage capital ratio.

(e) “Capital Letter of Credit” means an irrevocable letter of credit made payable to the Department for the benefit of merchants in the event of the bankruptcy - either voluntary or involuntary - receivership, or insolvency of the MALPB, which can be treated as tier 1 capital. Such letter of credit shall be continuously maintained, shall be for a term of not less than one (1) year, have a remaining term of no less than three (3) months, be in a form satisfactory to the Department, and shall be issued by a financial institution authorized to do business in this State and approved by the Department.

(f) “Capital Maintenance Guaranty” means an unlimited, unconditional, continuous guaranty by the holding company to maintain in its MALPB subsidiary at least the minimum capital levels required by law, regulation, rule, or administrative order. The guaranty must be in a form acceptable to the Department.

(g) “Capital Stock” means the sum of the par value of the authorized shares which have been issued and remain outstanding of an MALPB.

(h) “Chargeback” means a transaction that is returned to an MALPB through the payment card network.

(i) “Dispute processing” means all activities associated with the dispute resolution process including exchange of information, reporting, and funding.

(j) “Executive Officer” means a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company or MALPB,

whether or not: the officer has an official title; the title designates the officer as an assistant; or the officer is serving without salary or compensation. The chief executive officer, chief information officer, chief risk officer, chief accounting officer, chief financial officer, chief compliance officer, president, every vice president and treasurer of a company or an MALPB are considered executive officers, unless the officer is excluded, by resolution of the board of directors or by the bylaws of the MALPB or company from participation (other than in the capacity of a director) in major policymaking functions of the MALPB or company, and the officer does not actually participate in major policymaking functions.

(k) “Financial Crime” means a crime involving conversion, theft, money laundering, bribery, dishonesty, breach of trust, forgery, counterfeiting, embezzlement, insider trading, tax evasion, kickbacks, identity theft, cyber attacks, social engineering, fraud, including, but not limited to check fraud, credit card fraud, mortgage fraud, medical fraud, corporate fraud, bank account fraud, payment (point of sale) fraud, currency fraud, bank fraud, and securities fraud, or a felony directly related to the financial services business.

(l) “Incidental Activities” means other activities that may be necessary, convenient, or incidental to effecting transactions within a payment card network and are not specifically enumerated as “merchant acquiring activities” in O.C.G.A. § 7-9-2.

(m) “Leverage Capital Ratio” means the MALPB’s ratio of tier 1 capital to average total assets.

(n) “Main Office” means the single physical location in this State where the MALPB is authorized to take deposits permitted by O.C.G.A. § 7-9-12.

(o) “MALPB” means a merchant acquirer limited purpose bank as defined in O.C.G.A. § 7-9-2.

(p) “Membership” means any agreements between an MALPB and a payment card network that allows access to and/or participation in a payment card network.

(q) Reserved

(r) “Monthly Activity Report” or “MAR” means the standard monthly report filed by an MALPB that will disclose information required by the Department. The information requested will include, but not be limited to, transaction volume levels and composition by dollar and number, chargeback and disputed transaction numbers, regulatory capital calculations, exception reporting, liquidity levels, funding sources, and merchant and/or industry concentrations.

(s) “Paid-in-Surplus” means the sum of the considerations received in the sale or exchange of shares of an MALPB in excess of the amount of the capital stock.

(t) “Payment Card” means a credit card, debit card, prepaid card, or any other payment device issued to a consumer that enables access to a consumer’s funding source and is used to make payments to merchants.

(u) “Payment Volume or “PV” means the greater of one twelfth of the total dollar amount of payment transactions executed by the MALPB in the preceding twelve (12) months or forecast for the next twelve (12) months.

(v) “Principal Shareholder” means a person that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than ten (10) percent of any class of voting securities of an MALPB or holding company.

(w) “PV Capital” means the amount of tier 1 capital required to be maintained by the MALPB based on payment volume.

(x) “Public Company” means any company that is required to file reports under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, has a market capitalization in excess of \$3,000,000,000, and whose equity securities are listed on the New York Stock Exchange (“NYSE”), the National Association of Securities Dealers Automated Quotations (“NASDAQ”), or other stock market approved by the Department in writing and located in the United States.

(y) “Quarterly Financial Report” or “QFR” means the standard quarterly report filed by an MALPB that will contain financial statements, which shall include, but not be limited to, a balance sheet and an income statement, required by the Department.

(z) “Receivership Letter of Credit” means an irrevocable letter of credit made payable to the Department in order to cover the costs and expenses associated with a receivership of the MALPB. Such letter of credit shall be continuously maintained, shall be for a term of not less than one (1) year, have a remaining term of no less than three (3) months, be in a form satisfactory to the Department, and shall be issued by a financial institution authorized to do business in this State and approved by the Department.

(aa) “Risk Capital” means the amount of tier 1 capital required to be maintained by the MALPB based on the dollar volume of chargebacks.

(bb) “Standardized Regulatory Reports” or “SRRs” means the monthly activity report, the quarterly financial report, and the annual attestation report that must be filed with the Department by each MALPB.

(cc) “Statutory Capital” means the sum of capital stock and paid-in-surplus of the MALPB, which, at all times, must be no less than \$3 million.

(dd) “Support Organization” means a legal entity that is not an eligible organization but performs administrative support, information technology support, financial support, or tax and finance support for an MALPB pursuant to the terms of a contract.

(ee) “Tier 1 Capital” means the sum of statutory capital, retained earnings, noncumulative perpetual preferred stock, the secured portion of a capital maintenance guaranty, and a capital letter of credit, less any loans or accounts payable by an affiliate or holding company to the MALPB, goodwill, and intangible assets. To be considered for inclusion in tier 1 capital, the

collateral securing the capital maintenance guaranty must be of a type approved by the Department, subject to discounting as approved by the Department, and properly assigned.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

MERCHANT ACQUIRER LIMITED PURPOSE BANKS

CHAPTER 80-12-2

APPLICATION PROCESS

80-12-2-.09 Special Examiners Assisting in Application Process

80-12-2-.10 Approval of Executive Officers, Directors, Principal Shareholders, and Control Persons

80-12-2-.09 Special Examiners Assisting in Application Process.

(1) To aid it in evaluating an MALPB charter application, the Department, after consulting with the applicant, may determine that the applicant needs to retain a third-party expert, approved in writing by the Department, as a special examiner to assist the Department with the review and analysis of the charter application. The third-party expert will analyze the data or information requested by the Department and provide the results to the Department and the applicant simultaneously. Any fees or costs associated with a third-party expert retained to aid the Department with the review and analysis of the application will be paid by the MALPB charter applicant. The general provisions that must be contained in the agreement between the third-party expert and the MALPB charter applicant are set forth in Rule 80-12-6-.04.

(2) An MALPB charter applicant is required to cooperate with and provide all information and documentation requested by a third-party expert retained to assist the Department with the review and analysis of the charter application. The failure to cooperate with the third-party expert will result in the denial of an application.

Authority O.C.G.A. §§ 7-1-66, 7-9-3, 7-9-13.

80-12-2-.10 Approval of Executive Officers, Directors, Principal Shareholders, and Control Persons of MALPB Applicant and Proposed Holding Company of Applicant.

(1) As part of the MALPB charter application process, the Department must approve the ownership and/or control of the applicant and the character and fitness of the directors and proposed executive officers, which includes, but is not limited to, the required positions of chief executive officer, chief information officer, and chief risk officer of the applicant. In order to make these determinations, the executive officers, directors, principal shareholders, and control persons of the MALPB will provide the Department any information or documents requested by the Department including, but not limited to: an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15

U.S.C. Section 1681a(f); fingerprint cards for submission to the Federal Bureau of Investigation, the Georgia Crime Information Center, and/or any other government agency or entity authorized to receive such information in order to perform a state, national, and international criminal history background check along with the applicable fees and any other required information in order that the Department may submit the fingerprints; personal financial statements; and filed state, federal, and, if applicable, international income tax returns, including any amendments, for the previous two completed taxable years.

(2) As part of the MALPB charter application process, the Department must approve the ownership and/or control of the holding company and the character and fitness of the directors and proposed executive officers of the holding company. In order to make these determinations, the principal shareholders, executive officers, directors, and control persons of the MALPB's holding company, if any, will provide the Department any information or documents requested by the Department including, but not limited to, an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. Section 1681a(f).

(3) The requirements of Paragraph 2 of this Rule shall not apply to the principal shareholders, executive officers, directors, and control persons of a holding company that is a public company.

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

MERCHANT ACQUIRER LIMITED PURPOSE BANKS

CHAPTER 80-12-3

IN ORGANIZATION PERIOD

80-12-3-.02 Notification Requirements Prior to Operation

80-12-3-.02 Notification Requirements Prior to Operation.

(1) After approval of a charter, but prior to engaging in any merchant acquiring activities, as set forth in Rule 80-12-4-.01, an MALPB shall, in addition to the requirements in O.C.G.A. § 7-9-9, provide the Department with: written notification of any material changes to any of the representations made in the approved application or supporting documentation; copies of the agreements in place with various payment card networks; a compliant receivership letter of credit and, if applicable, a compliant capital letter of credit; and a copy of the certificate of insurance or similar documentation establishing the existence of fidelity insurance coverage and data breach coverage as required by Rules 80-12-7-.03 and 80-12-7-.04.

(2) The MALPB shall provide the Department with written notice of the date it intends to begin engaging in merchant acquiring activities. This notice shall be provided to the Department no later than ten (10) business days prior to the proposed beginning date for operations. In addition, the MALPB shall also provide the Department with written notice when it begins

engaging in merchant acquiring activities. This notice shall be provided to the Department on the date operations have begun.

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

MERCHANT ACQUIRER LIMITED PURPOSE BANKS

CHAPTER 80-12-4

OPERATIONS OF MALPB

80-12-4-.05 Restrictions on Employment and Ownership

80-12-4-.05 Restrictions on Employment and Ownership.

(1) An MALPB shall not employ an individual that has been convicted of a felony in any jurisdiction. An MALPB shall not have a director, executive officer, or control person that has been convicted of a felony in any jurisdiction.

(2) An MALPB shall not knowingly have a principal shareholder that has been convicted of a felony in any jurisdiction that involves a financial crime. A holding company of an MALPB or an affiliate of an MALPB shall not knowingly have an executive officer, director, control person, or principal shareholder that has been convicted of a felony in any jurisdiction that involves a financial crime.

(3) As required by O.C.G.A. §7-9-7(e), every applicant and MALPB must complete background checks on all employees. Background checks on all employees must be completed and found satisfactory by the applicant or MALPB prior to the initial date of hire. This provision does not apply to officers, directors, and control persons of applicants or MALPBs whose background has been investigated through the Department and approved by the Department before taking office, beginning employment, or securing ownership.

(4) Applicant's and MALPB's requests for background checks are handled by the Georgia Crime Information Center ("GCIC"). Background checks must be full GCIC checks following that agency's rules and regulations and must not have any time period limitations or restrictions in the search criteria. Any fees charged by GCIC for processing background checks must be paid by the applicant or MALPB. The background checks may be arranged through a local law enforcement office, so long as the background check is conducted by GCIC.

(a) If the information from the background check is unclear or incomplete, appears to address or makes reference to a felony conviction, or indicates that the employee has a criminal record in any state other than Georgia ("multi-source offender"), the applicant or MALPB must immediately submit two sets of fingerprints of the person, along with the applicable processing fee and any additional information the Department may require to complete an expanded background investigation. Payment, in the amount and form directed by the Department, shall

be submitted with the cards in order to have the cards processed. Applicants and MALPBs shall discuss the Act's legal requirements for employment with the subject employee.

(b) An employee may remain employed by the applicant or MALPB pending results of a fingerprint follow up investigation if no felony convictions appear on the GCIC report. If the employee is found to have disqualifying conviction data according to O.C.G.A. §7-9-7, or if the applicant or licensee knows that a disqualifying conviction is present, the applicant or MALPB must immediately take action to comply with O.C.G.A. §7-9-7.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

MERCHANT ACQUIRER LIMITED PURPOSE BANKS

CHAPTER 80-12-6

MALPB LOCATIONS AND EXAMINATIONS

80-12-6-.03 Examinations and Investigations

80-12-6-.04 Third-Party Expert Agreement

80-12-6-.03 Examinations and Investigations.

(1) The Department shall examine or investigate all MALPBs at least once each year and may examine or investigate any MALPB more frequently at any time it deems such action necessary or desirable. At least once annually, the examination shall consist of a comprehensive review of the accounts, records, and affairs of the MALPB. To aid in its examination or investigation of an MALPB, the Department may conduct an examination or investigation of the MALPB's holding companies, affiliates, eligible organizations, or support organizations.

(2) Notwithstanding Paragraph 1, the Department may, consistent with the purposes of the Act and the rules enacted pursuant to the Act, alter the examination frequency and scope in order to: assure that appropriate time and attention are devoted to the supervision of troubled entities regulated by the Department; or minimize the examination burden on well-managed MALPBs which have consistently been operated with safe and sound practices.

(3) To aid the Department in examining or investigating an MALPB, its holding companies, affiliates, eligible organizations, or support organizations, the Department may determine that it needs to retain a third-party expert to assist with the examination or investigation. The third-party expert will analyze the accounts, records, affairs, systems, data, or information requested by the Department and provide the results to the Department and the MALPB simultaneously. Any fees or costs associated with a third-party expert retained to aid the Department with the examination or investigation of the MALPB will be paid by the MALPB. The general provisions that must be contained in the third-party expert agreement are set forth in Rule 80-12-6-.04.

(4) An MALPB is required to cooperate with and provide access to all accounts, records, affairs, systems, data or information requested by a third-party expert retained to assist the

Department with the examination or investigation. The failure to cooperate with the third-party expert will result in an enforcement action.

Authority O.C.G.A. §§ 7-1-64, 7-1-66, 7-9-3, 7-9-13.

80-12-6-.04 Third-Party Expert Agreement.

(1) In the event the Department enters into an agreement with a third-party expert for the purpose of aiding the Department in evaluating an MALPB charter application or examining or investigating an MALPB, the agreement may provide, among other items, that:

- (a) All fees and costs incurred by the third-party expert will be paid by the MALPB;
- (b) The fees can vary depending on the service provided by the third-party expert but as set forth in a general fee schedule;
- (c) The purpose of the agreement is to aid the Department in determining if the MALPB, its holding companies, and affiliates have complied with the Act, the rules promulgated pursuant to the Act, and are operating in a safe and sound manner;
- (d) The Department will direct the focus and scope of the third-party expert's analysis including, but not limited to, the accounts, records, affairs, data, or information to be reviewed;
- (e) The third-party expert shall produce at least one detailed report to the Department and the MALPB which shall reach conclusions about its review and provide the support for the conclusions in the report;
- (f) The third-party expert shall have access to all of the records of the MALPB, its holding companies and affiliates that the Department can review;
- (g) All information reviewed by the third-party expert shall be confidential and not subject to disclosure other than to the Department or as may otherwise be required by law; and
- (h) All services shall be performed in accordance with applicable professional standards.

Authority O.C.G.A. §§ 7-1-66, 7-9-3, 7-9-13.

MERCHANT ACQUIRER LIMITED PURPOSE BANKS

CHAPTER 80-12-11

HOLDING COMPANY

80-12-11-.02 Change in Director, Executive Officer, Principal Shareholder, or Control Person of Holding Company

80-12-11-.02 Change in Director, Executive Officer, Principal Shareholder, or Control Person of Holding Company.

(1) The Department must approve in writing any new director, executive officer, principal shareholder, or control person of the holding company, prior to any such appointment or change taking effect, for the purpose of considering the character and fitness of such person. In order to make these determinations, such persons will provide the Department any information or documents requested by the Department including, but not limited to, an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. Section 1681a(f).

(2) The Department shall be given at least sixty (60) days written notice prior to the proposed appointment or change of director, executive officer, principal shareholder, or control person taking effect. If the Department does not issue a notice disapproving the proposed director, executive officer, principal shareholder, or control person within sixty (60) days of receipt of the required written notice or extend the period during which a disapproval may be issued for another thirty (30) days, such person shall stand approved. The period for disapproval may be further extended if the Department determines that the holding company or proposed director, executive officer, principal shareholder, or control person has not furnished all the information required by this Rule or, in the Department's judgment, inaccurate information has been submitted. An appointment or proposed change may be made prior to expiration of the disapproval period if the Department issues a written notice of its intent not to disapprove the proposed director, executive officer, principal shareholder, or control person.

(3) The requirements of Paragraphs 1 and 2 of this Rule shall not apply to the principal shareholders, executive officers, directors, and control persons of a holding company that is a public company.

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

CHAPTER 80-12-12

FINES AND FEES

80-12-12-.01 Administrative Fines and Penalties

80-12-12-.01 Administrative Fines and Penalties.

(1) In addition to all other enforcement actions available to it, the Department establishes the following fines and penalties for violation of the Act or its rules:

(a) Deposit taking. An MALPB that takes or holds a deposit from an individual or entity other than a corporation that owns a majority of the shares of the MALPB in violation of O.C.G.A. § 7-9-12 shall be subject to a fine of \$10,000 for each day that a prohibited deposit is held.

(b) Unapproved incidental activities. An MALPB that engages in incidental activities without prior written approval from the Department in violation of Rule 80-12-4-.01(2) shall be subject to a fine of \$5,000 for each day the unapproved incidental activity is engaged in by the MALPB.

(c) Unauthorized activities. An MALPB that engages in unauthorized activities in violation of Rule 80-12-4-.01(3) or 80-12-4-.01(4) shall be subject to a fine of \$10,000 for each individual occasion the MALPB engaged in the unauthorized activity.

(d) Self-acquiring activities. An MALPB that engages in self-acquiring activities in violation of O.C.G.A. § 7-9-12 or Rule 80-12-4-.02(1) shall be subject to a fine of \$1,000 for each impermissible transaction.

(e) Control by a merchant. An MALPB or MALPB holding company that is controlled by a merchant in violation of Rule 80-12-4-.02 shall be subject to a fine of \$10,000 per day until the merchant no longer exercises control over the MALPB or the MALPB holding company.

(f) Minimum number of employees. An MALPB that fails to continuously employ the number of required employees that reside in Georgia in violation of Rule 80-12-4-.04 shall be subject to a fine of \$10,000 per day that the MALPB fails to satisfy this requirement.

(g) Hiring a felon. An MALPB that hires or retains an employee that has been convicted of a felony shall be subject to a fine of \$10,000 per employee or former employee found to be convicted of a felony.

(h) Advertising. An MALPB that fails to comply with the advertising limitations in violation of Rule 80-12-4-.06 shall be subject to a fine of \$1,000 for each violation.

(i) Untimely SRRs. An MALPB that fails to make or file its SRRs within the appropriate period of time in violation of Rule 80-12-5-.04 shall be subject to a fine of \$1,000 per day that each SRR is not filed.

(j) Untimely reports. An MALPB that fails to make or file a report within the appropriate period of time in violation of Rule 80-12-5-.04, other than an SRR, shall be subject to a fine of \$500 per day that the report is not filed.

(k) Books and records violations. If the Department finds that an MALPB has failed to maintain its books and records as required by Rules 80-12-5-.05 or 80-12-5-.06, the MALPB shall be subject to a fine of \$5,000 for each violation of the books and records requirements set forth in the Department's rules.

(l) Relocation of main office. An MALPB that relocates its main office without the Department's prior written approval in violation of Rule 80-12-6-.01 shall be subject to a fine of \$5,000.

(m) Unapproved office. An MALPB that operates an unapproved location in violation of Rule 80-12-6-.02 shall be subject to a fine of \$5,000 per unapproved location.

(n) Refusal to submit to examination. An MALPB that refuses to permit an investigation or examination of its books and records by the Department or a third-party expert shall be subject to a fine of \$20,000 for each day the refusal continues.

(o) False statements. An MALPB that makes false statements or material misrepresentations to the Department or any of its agents, including, but not limited to any third-party expert retained to assist the Department, in connection with any examination, investigation, or records or reports made available to the Department shall be subject to a fine of \$10,000 for each false statement or material misrepresentation.

(p) Minimum capital requirements. An MALPB that fails to continuously maintain the minimum leverage capital ratio, PV capital, risk capital, or statutory capital requirement in violation of Rule 80-12-7-.01 shall be subject to a fine of \$10,000 for each day it is below the minimum capital requirement.

(q) Eligible organization. An MALPB that enters into a contract or amends a contract with an eligible organization without obtaining prior written approval from the Department in violation of Rule 80-12-8-.01 shall be subject to a fine of \$1,000 for each day the contract is in effect.

(r) Support organization. An MALPB that enters into a contract or amends a contract with a support organization and fails to provide the Department with timely notice in violation of Rule 80-12-8-.02 shall be subject to a fine of \$5,000.

(s) Intercompany dealings. An MALPB that engages in unauthorized intercompany dealings in violation of Rule 80-12-9-.01 shall be subject to a fine of \$5,000 per each unauthorized transaction.

(t) Control person and principal shareholders of MALPB. An MALPB has a new control person or principal shareholder without complying with the notice provisions set forth in Rules 80-12-10-.01 or 80-12-11-.02, shall be subject to a fine of \$25,000.

(u) Directors and executive officers of MALPB. An MALPB that appoints a new director or employs a new executive officer without complying with the notice provisions set forth in Rule 80-12-10-.01, shall be subject to a fine of \$5,000.

(v) Directors and principal shareholders of holding company. An MALPB holding company that appoints a new director or has a new principal shareholder without complying with the notice provisions set forth in Rule 80-12-11-.02 shall be subject to a fine of \$5,000.

(w) Acquisition. An MALPB that is acquired without first obtaining the Department's prior written approval in violation of Rules 80-12-10-.02 or 80-12-11-.03 shall be subject to a fine of \$100,000 each day until the transaction is unwound.

(x) Unapproved activities. Unless otherwise addressed in this regulation, an MALPB that takes any action that requires Department approval without first obtaining the Department's prior written approval shall be subject to a fine or \$5,000 for each such occurrence.

(y) Merchant funds. An MALPB that fails to deposit and account for merchant funds as required by Rule 80-12-7-.02 shall be subject to a fine of \$50,000 for each day that merchant funds are not properly accounted for or deposited.

(2) The Department, in its sole discretion, may waive or modify a fine based upon the gravity of the violation, history of previous violations, willfulness of the violation, and the facts and circumstances of the violation.

(3) All fines levied by the Department are due within thirty (30) days after the date of assessment.

(4) All fines paid to the Department are nonrefundable.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.