Rules and Regulations of the State of Georgia

Department 80 RULES OF DEPARTMENT OF BANKING AND FINANCE

Current through Rules and Regulations filed through April 4, 2023

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Rule 80-12-11-.01. Books and Records of Holding Company.
Rule 80-12-11-.02. Change in Director, Executive Officer, Principal Shareholder, or Control Person of Holding Company.
Rule 80-12-11-.03. Lawful and Unlawful Acquisitions by a Company.
Rule 80-12-11-.04. Source of Strength.
Subject 80-12-12. FINES AND FEES.
Rule 80-12-12-.01. Administrative Fines and Penalties.
Rule 80-12-12-.02. Application, Examination, and Other Fees.
Chapter 80-13. TRUST COMPANIES.
Subject 80-13-1. TRUST COMPANIES.

Rule 80-13-1-.01. Definitions.
Rule 80-13-1-.02. Minimum Capital Requirements for Trust Companies.
Rule 80-13-1-.03. Trust Company Independent Audits.
Rule 80-13-1-.04. The Internal Auditor of a Trust Company.
Rule 80-13-1-.05. Audit Committee.
Rule 80-13-1-.06. Insurance Coverage for Trust Companies.
Rule 80-13-1-.07. Review of Fiduciary Accounts.
Rule 80-13-1-.08. Custody of Fiduciary Assets.
Rule 80-13-1-.09. Receivership of Trust Company.
Rule 80-13-1-.10. Collective Investment Funds.
Rule 80-13-1-.11. Permissible Investments and Limitations of Trust Companies.
Rule 80-13-1-.12. Self-dealing and Conflicts of Interest.
Rule 80-13-1-.13. Dividends.
Chapter 80-14. INSTALLMENT LOANS.
Subject 80-14-1. PLACE OF BUSINESS, ADVERTISING, AND OTHER REQUIREMENTS.
Rule 80-14-1-.01. Place of Business Requirements; Convenience and Advantage of Community.
Rule 80-14-1-.02. Location Managers.
Rule 80-14-1-.03. Employee Background Checks; Covered Employees.
Rule 80-14-1-.04. Advertising Requirements.
Rule 80-14-1-.05. Notice of Unauthorized Access to Personal Information.
Rule 80-14-1-.06. Information Security Safeguards for Consumer Financial Information.
Subject 80-14-2. BOOKS AND RECORDS.
Rule 80-14-2-.01. Location Requirement; Examinations.
Rule 80-14-2-.02. Minimum Requirements for Books and Records.
Rule 80-14-2-.03. Installment Loan Transaction Journal.
Rule 80-14-2-.04. Installment Loan Files.
Subject 80-14-3. ADMINISTRATIVE FINES AND PENALITIES.
Rule 80-14-3-.01. Administrative Fines.
Subject 80-14-4. LICENSING.
Rule 80-14-4-.01. Licensing Requirements and Exemptions.
Rule 80-14-4-.02. Restrictions on Employment and Licensing.
Rule 80-14-4-.03. Verification of Lawful Presence Affidavit.
Rule 80-14-4-.04. Nationwide Multistate Licensing System and Registry.
Rule 80-14-4-.05. Transition to Department.
Subject 80-14-5. DISCLOSURE, CHARGES, AND MISCELLANEOUS.
Rule 80-14-5-.01. Loan Contract, Disclosures, and Limitations.

Rule 80-14-5-.02. Maintenance Charges.
Rule 80-14-5-.03. Closing, Convenience, and Other Fees.
Rule 80-14-5-.04. Unsolicited Live Checks.
Rule 80-14-5-.05. Debt Collection.

ADMINISTRATIVE HISTORY

The **Administrative History** following each Rule gives the date on which the Rule was originally filed and its effective date, as well as the date on which any amendment or repeal was filed and its effective date. Principal abbreviations used in the Administrative History are as follows:

f. - filed

eff. - effective

R. - Rule (Abbreviated only at the beginning of the control number)

Ch. - Chapter (Abbreviated only at the beginning of the control number)

ER. - Emergency Rule

Rev. - Revised

Chapter 80-1-1, entitled "Establishment of Bank Office and Bank Facility" was filed and effective on June 30, 1965.

Chapter 80-1-2, entitled "Authority for Bank Services" was filed and effective on June 30, 1965.

Chapter 80-1-3, entitled "Books and Records" was filed and effective on June 30, 1965.

Chapter 80-1-4, entitled "Investment Securities" was filed and effective on June 30, 1965.

Chapter 80-1-5, entitled "Georgia Code Relating to Loans" was filed and effective on June 30, 1965.

Chapter 80-1-6, entitled "Real Estate Loans" was filed and effective on June 30, 1965.

Chapter 80-1-7, entitled "Legal Reserves" was filed and effective on June 30, 1965.

Chapter 80-2-1, entitled "Retention of Records of Credit Unions," containing Rule 80-2-1-.01, was filed and effective on June 30, 1965.

Chapter 80-2-2, entitled "Credit Union's Membership as a Part of a Cooperative Purchasing Group," containing Rule 80-2-2-.01, was filed and effective on June 30, 1965.

Chapter 80-3-1, entitled "Sale of Money Orders at Non-Banking Outlets," containing Rules 80-3-1-.01 through 80-3-1-.03, was filed and effective on June 30, 1965.

Chapter 80-1-8, entitled "Service Charges: Dormant Accounts, Cashiers Checks," containing Rules 80-1-8-.01 through 80-1-8-.04, has been adopted. Filed April 21, 1966; effective May 10, 1966.

Chapter 80-1-9, entitled "Retention of Records," containing Rule 80-1-9-.01, has been adopted. Filed May 9, 1967; effective May 28, 1967.

Rule 80-1-4-.01 has been repealed and a new Rule 80-1-4-.01 adopted. Filed August 21, 1967; effective September 10, 1967.

By Georgia Laws 1972, pp. 1015, 1045, the functions of the Department of Banking were transferred from the Office of Secretary of State to the Department of Banking and Finance, created by Georgia Laws 1972, pp. 1015 and 1045.

Chapter 80-1-1 has been repealed and a new Chapter 80-1-1, entitled "Application for Bank Charters, Offices, Facilities," containing Rules 80-1-1-.01 through 80-1-1-.03, adopted. Filed June 9, 1972; effective June 29, 1972.

Chapter 80-1-2, has been repealed and a new Chapter 80-1-2, entitled "Bank Service Contracts," containing Rules 80-1-2-.01 through 80-1-2-.03, adopted. Filed June 9, 1972; effective June 29, 1972.

Chapter 80-1-4 has been repealed and a new Chapter 80-1-4, of the same title, containing Rules 80-1-4-.01 through 80-1-4-.07, adopted. Filed June 9, 1972; effective June 29, 1972. Chapter 80-1-5, has been repealed and a new Chapter 80-1-5, entitled "Loans and Discounts", containing Rules 80-1-5-.01 and 80-1-5-.02, adopted. Filed June 9, 1972; effective June 29, 1972.

Chapter 80-1-6 has been repealed and a new Chapter 80-1-6, of the same title, containing Rules 80-1-6-.01 through 80-1-6-.06, adopted. Filed June 9, 1972; effective June 29, 1972.

Chapter 80-1-7 has been repealed and a new Chapter 80-1-7, of the same title, containing Rules 80-1-7-.01 through 80-1-7-.03, adopted. Filed June 9, 1972; effective June 29, 1972.

Chapter 80-1-8 has been repealed and a new Chapter 80-1-8, entitled "Disposition of Dormant Accounts and Abandoned Property," containing Rules 80-1-8-.01 through 80-1-8-.04, adopted. Filed June 9, 1972; effective January 1, 1973, as specified by the Agency.

Chapter 80-1-10, entitled "Fixed Assets," containing Rules 80-1-10-.01 through 80-1-10-.08, has been adopted. Filed June 9, 1972; effective June 29, 1972.

Chapter 80-1-3 has been repealed and a new Chapter 80-1-3, of the same title, containing Rules 80-1-3-.01 through 80-1-3-.04, adopted. Filed April 11, 1973; effective May 1, 1973.

Chapter 80-1-5 has been repealed and a new Chapter 80-1-5, of the same title, containing Rules 80-1-5-.01 and 80-1-5-.02, adopted. Filed July 5, 1973; effective July 25, 1973.

Rule 80-1-7-.01 has been amended by the repeal of paragraph (2) and by the adoption of a new paragraph (2). Filed July 5, 1973; effective July 25, 1973.

Rule 80-1-7-.03 has been amended by the adoption of paragraph (7). Filed July 5, 1973; effective July 25, 1973.

Rule 80-1-8-.02 has been amended by the repeal of paragraph (1) and by the adoption of a new paragraph (1). Filed July 5, 1973; effective July 25, 1973.

Rule 80-1-8-.04 has been amended by the repeal of paragraph (2) and by the adoption of a new paragraph (2). Filed July 5, 1973; effective July 25, 1973.

Chapter 80-1-9 has been repealed and a new Chapter 80-1-9, entitled "Borrowed Money," containing Rules 80-1-9-.01 and 80-1-9-.02, adopted. Filed July 5, 1973; effective July 25, 1973. Rule 80-1-10-.03 has been repealed and a new Rule 80-1-10-.03 adopted. Filed July 5, 1973; effective July 25, 1973.

Chapter 80-4-1, entitled "Building and Loan Associations Generally," containing Rules 80-4-1-.01 through 80-4-1-.13, has been adopted. Filed July 5, 1973; effective July 25, 1973. Emergency Rule 80-2-3-0.1-.01 has been adopted. Filed and effective on August 1, 1973 for 120 days, as specified by the Agency.

Permanent Chapter 80-2-3, entitled "Member Deposit Certificates," containing Rule 80-2-3-.01, has been adopted replacing Emergency Rule 80-2-3-0.1-.01 which expired on November 28, 1973. Filed November 27, 1973; effective December 17, 1973.

Emergency Rule 80-2-3-0.2-.01(2) (a) 5. (iii) (VI) has been adopted. Filed and effective on April 8, 1974 for a period of 120 days, as specified by the Agency.

Permanent Rule 80-2-3-.015.(iii) (VI) has been adopted superseding Emergency Rule 80-2-3-0.2-.01(2) (a) 5. (viii) (VI). Filed April 29, 1974; effective May 19, 1974. Subparagraph (c) of Rule 80-4-1-.06 has been amended. Filed May 3, 1974; effective May 23, 1974.

Chapter 80-1-1 has been repealed and a new Chapter 80-1-1, entitled "Applications for Establishment or Relocation of Banks, Bank Offices and Facilities," containing Rules 80-1-1-.01 through 80-1-1-.06, adopted. Filed July 12, 1974; effective August 1, 1974.

Chapter 80-1-11, entitled "Public Disclosure of Information," containing Rules 80-1-11-.01 through 80-1-11-.05, has been adopted. Filed July 12, 1974; effective August 1, 1974.

Rule 80-1-9-.01 has been amended by the repeal of subparagraph (g) and by the adoption of a new subparagraph (g). Filed September 3, 1974; effective September 23, 1974.

Rule 80-2-3-.01 has been amended by the repeal of subparagraph (2) (a) 2., and by the adoption of a new subparagraph (2) (a) 2. Filed November 15, 1974; effective December 5, 1974.

Chapter 80-1-12, entitled "Dividends," containing Rule 80-1-12-.01, has been adopted. Filed May 1, 1975; effective May 21, 1975.

Emergency Rule 80-1-13-0.3 has been adopted. Filed and effective on June 27, 1975 for 120 days, as specified by the Agency.

Rule 80-1-1-.01 has been amended and Authority changed; Rules 80-1-1-.02 through 80-1-1-.05 have been amended by changing the Authority. Filed August 28, 1975; effective September 17, 1975.

Rule 80-1-1-.06 has been adopted. Filed August 28, 1975; effective September 17, 1975.

Rules 80-1-2-.01 through 80-1-2-.03 have been amended by changing the Authority. Filed August 28, 1975; effective September 17, 1975.

Rule 80-1-3-.01 has been amended and Authority changed: Rules 80-1-3-.02 through 80-1-3-.04 have been amended by changing the Authority. Filed August 28, 1975; effective September 17, 1975.

Chapter 80-1-4 has been repealed and a new Chapter 80-1-4, of the same title, containing Rule 80-1-4-.01, adopted. Filed August 28, 1975; effective September 17, 1975.

Chapter 80-1-5 has been repealed and a new Chapter 80-1-5, of the same title, containing Rules 80-1-5-.01 through 80-1-5-.05, adopted. Filed August 28, 1975; effective September 17, 1975.

Chapter 80-1-6 has been repealed and a new Chapter 80-1-6, of the same title, containing Rules 80-1-6-.01 through 80-1-6-.03, adopted. Filed August 28, 1975; effective September 17, 1975.

Chapter 80-1-7 has been repealed and a new Chapter 80-1-7, of the same title, containing Rules 80-1-7-.01 through 80-1-7-.03, adopted. Filed August 28, 1975; effective September 17, 1975.

Rules 80-1-8-.01 through 80-1-8-.04 have been amended by changing the Authority. Filed August 28, 1975; effective September 17, 1975.

Rule 80-1-8-.05 has been repealed. Filed August 28, 1975; effective September 17, 1975.

Rule 80-1-9-.01 has been amended by the adoption of subparagraph (j) and by changing the Authority. Filed August 28, 1975; effective September 17, 1975.

Rule 80-1-9-.02 has been amended by changing the Authority. Filed August 28, 1975; effective September 17, 1975.

Chapter 80-1-10 has been repealed and a new Chapter 80-1-10, of the same title, containing Rules 80-1-10-.01 through 80-1-10-.08, adopted. Filed August 28, 1975; effective September 17, 1975.

Rules 80-1-11-.01 and 80-1-11-.02 have been amended and Authority changed; Rules 80-1-11-03, 80-1-11-.04, and 80-1-11-.05 have been amended by changing the Authority. Filed August 28, 1975; effective September 17, 1975.

Chapter 80-1-13, entitled "Correspondent Funds," containing Rules 80-1-13-.01 and 80-1-13-.02, has been adopted superseding Emergency Rule 80-1-13-0.3. Filed August 28, 1975; effective September 17, 1975.

Chapter 80-1-14, entitled "Audits," containing Rules 80-1-14-.01 through 80-1-14-.03, has been adopted. Filed August 28, 1975; effective September 17, 1975.

Paragraph (2) of Rule 80-1-1-.02 has been amended. Filed November 4, 1975; effective November 24, 1975.

Paragraph (2) of Rule 80-1-6-.02 has been amended. Filed November 4, 1975; effective November 24, 1975.

Rule 80-1-6-.03 has been adopted. Filed November 4, 1975; effective November 24, 1975.
Chapter 80-5-1, entitled "Supervision, Examination and Investigation Fees," containing Rules 80-5-1-.01 through 80-5-1-.03, has been adopted. Filed November 4, 1975; effective November 24, 1975.

Chapter 80-3-1 has been repealed and a new Chapter 80-3-1, of the same title, containing Rules 80-3-1-.01 through 80-3-1-.03, adopted. Filed November 19, 1975; effective December 9, 1975.

Chapter 80-2-4, entitled "Investment of Credit Union Funds," containing Rule 80-2-4-.01, has been adopted. Filed May 10, 1976; effective May 30, 1976.

Chapter 80-2-5, entitled "Surety Bond Coverage," containing Rule 80-2-5-.01, has been adopted. Filed May 14, 1976; effective June 3, 1976.

Subparagraph (2) (b) of Rule 80-5-1-.02 has been amended; paragraph (3) of Rule 80-5-1-.02 has been renumbered as (5) and new paragraphs (3) and (4) adopted. Filed June 8, 1976; effective June 28, 1976.

Rule 80-5-1-.03 has been amended by the adoption of subparagraphs (2) (f) and (2) (g). Filed June 8, 1976; effective June 28, 1976.

Chapter 80-6-1, entitled "Bank Holding Companies," containing Rules 80-6-1-.01 through 80-6-1-.09, has been adopted. Filed June 8, 1976; effective June 28, 1976.

Chapter 80-2-1 has been repealed and a new Chapter 80-2-1, entitled "Books and Records," containing Rules 80-2-1-.01 through 80-2-1-.04, adopted. Filed June 17, 1976; effective July 7, 1976.

Chapter 80-2-6, entitled "Supervisory Audits," containing Rules 80-2-6-.01 through 80-2-6-.04, has been adopted. Filed October 26, 1976; effective November 15, 1976.

Emergency Rule 80-2-3-0.4, relating to individual retirement maintained pursuant to provisions of the Employee Retirement Security Act of 1974, was filed and effective on December 9, 1976, to remain in effect for a period of 120 days or until the adoption of a permanent Rule superseding this Emergency Rule, as specified by the Agency.

Emergency Rule 80-2-3-0.4 has been repealed and in lieu thereof permanent subparagraphs 560-2-3-.012.(ii) and (2) (a) 5. (iii) (V) adopted. Filed January 21, 1977; effective February 10, 1977.

Rule 80-3-1-.04 has been adopted. Filed June 2, 1977; effective June 22, 1977.

Chapter 80-2-2 has been repealed and a new Chapter 80-2-2, entitled "Group Sales Promotions," containing Rules 80-2-2-.01 and 80-2-2-.02, adopted. Filed September 9, 1977; effective September 29, 1977.

Rule 80-1-5-.01 has been amended by the repeal of paragraphs (10) and (11) and by the adoption of new paragraphs (10) and (11); said Rule has been further amended by the adoption of paragraph (12). Filed January 31, 1978; effective February 20, 1978.

Rule 80-1-5-.02 has been amended by the repeal of paragraph (5), subparagraphs (5) (e) and (5) (f) and by the adoption of a new paragraph (5) and new subparagraphs (5) (e) and (5) (f); said Rule has been further amended by the adoption of subparagraph (5) (j). Filed January 31, 1978; effective February 20, 1978.

Rule 80-1-5-.03 has been amended by the repeal of subparagraph (1) (d) and by the adoption of a new subparagraph (1) (d). Filed January 31, 1978; effective February 20, 1978.

Rule 80-1-9-.02 has been repealed and a new Rule 80-1-9-.02 adopted. Filed January 31, 1978; effective February 20, 1978.

Chapter 80-1-10 has been amended by changing the title from "Fixed Assets" to "Fixed Assets and Assets Acquired D.P.C." Filed January 31, 1978; effective February 20, 1978. Paragraph (2) of Rule 80-1-10-.08 has been amended. Filed January 31, 1978; effective February 20, 1978.

Rule 80-1-10-.09 has been adopted. Filed January 31, 1978; effective February 20, 1978.

Chapter 80-1-15, entitled "Emergency Acquisitions and Consolidations," was filed on June 30, 1978, as Emergency Rule 80-1-15-0.5, containing Rule 80-1-15-0.5-.01, entitled "Emergency Acquisitions and Consolidations Involving a Financial Institution in Danger of Failing or a Failed Financial Institution;" effective June 29, 1978, the date of adoption, to remain in effect for a period of 120 days or until the adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency. (Said Emergency Rule will not be published; copies may be obtained from the Department of Banking and Finance.) (Emergency Rule 80-1-15-0.5-.01 expired on October 27, 1978.)

Emergency Rule 80-2-3-0.6 was filed and effective on August 31, 1978, to remain in effect for a period of 120 days or until the adoption of a permanent Rule covering the same subject matter superseding said Emergency Rule, as specified by the Agency; said Emergency Rule repealed subparagraph 80-2-3-.015.(iii) and adopted a new subparagraph of the same number relating to a higher rate of interest for state-chartered credit unions not to exceed the maximum amounts allowed to be paid federally insured savings and loan associations and mutual savings banks.

Emergency Rule 80-2-3-0.6 has been repealed and subparagraph 80-2-3-.015.(iii) adopted.

Filed November 8, 1978; effective November 28, 1978.

Chapter 80-2-7, entitled "Credit Union Service Contracts," containing Rules 80-2-7-.01 through 80-2-7-.03 has been adopted. Filed November 8, 1978; effective November 28, 1978. Emergency Rule 80-1-15-0.7, containing Rule 80-1-15-0.7-.01, "Emergency Acquisitions and Consolidations Involving a Financial Institution In Danger of Failing or a Failed Financial Institution," and Rule 80-1-15-0.7-.02, "Procedures," was filed on January 9, 1979, having become effective January 4, 1979, the date of adoption, to remain in effect for a period of 120 days or until the adoption of permanent Rules superseding said Emergency Rule, as specified by the Agency. (This Emergency Rule will not be published; copies may be obtained from the Agency.) (Emergency Rule 80-1-15-0.7 expired on May 1, 1979.)

Chapter 80-4-1 has been repealed and a new Chapter 80-4-1 of the same title, containing Rules 80-4-1-.01 through 80-4-1-.13, adopted. Filed June 18, 1979; effective July 8, 1979.

Rule 80-2-1-.05 has been adopted. Filed March 18, 1980; effective April 7, 1980. Rule 80-2-3-.01 has been amended by: the repeal of subparagraph 80-2-3-.01 2. and the adoption of a new subparagraph 80-2-3-.01 2.; the repeal of subparagraphs 80-2-3-.012.(i), (ii). Subparagraph 80-2-3-.015.(iii) has been amended. Filed March 18, 1980; effective April 7, 1980.

Rule 80-5-1-.02 has been repealed and a new Rule 80-5-1-.02 adopted. Filed June 9, 1980; effective July 1, 1980, as specified by the Agency.

Rule 80-5-1-.03 has been amended by the repeal of subparagraphs (2)(c), (2)(e) and (2)(f) and by the adoption of new subparagraphs (2)(c), (2)(e), (2)(f) and (2)(h); Rule 80-5-1-.03 has been

further amended by the repeal of paragraph (3) and by the adoption of a new paragraph (3). Filed June 9, 1980; effective July 1, 1980, as specified by the Agency.

Chapter 80-1-7 has been repealed and a new Chapter of the same title, containing Rules 80-1-7-.01 through 80-1-7-.03, adopted. Filed June 9, 1980; effective October 1, 1980, as specified by the Agency.

Paragraph (5) of Rule 80-1-5-.01 has been amended by changing the word "less" in the last sentence to "more." Filed August 22, 1980; effective September 11, 1980.

Rule 80-6-1-.02 has been amended by the repeal of subparagraphs (1)(b), (1)(c) and (1)(e) and by the adoption of new subparagraphs (1)(b), (1)(c) and (1)(e); Rule 80-6-1-.02 has been further amended by the adoption of paragraphs (5), (6), and (7). Filed December 3, 1980; effective January 2, 1981, as specified by the Agency.

Rule 80-6-1-.03 has been repealed and a new Rule 80-6-1-.03 adopted. Filed December 3, 1980; effective January 2, 1981, as specified by the Agency.

Rule 80-6-1-.04 has been amended. Filed December 3, 1980; effective January 2, 1981, as specified by the Agency.

Paragraph (2) of Rule 80-6-1-.05 has been repealed and a new paragraph (2) adopted. Filed December 3, 1980; effective January 2, 1981, as specified by the Agency.

Rule 80-6-1-.10 has been adopted. Filed December 3, 1980; effective January 2, 1981, as specified by the Agency.

Emergency Rule 80-1-15-0.8 entitled "Emergency Acquisitions and Consolidations Involving a Financial Institution in Danger of Failing or a Failed Financial Institution; Procedures," containing Rule 80-1-15-0.8-.01, entitled "Emergency Acquisitions and Consolidations Involving a Financial Institution in Danger of Failing or a Failed Financial Institution," and Rule 80-1-15-0.8-.02, entitled "Procedures," was filed and effective on March 17, 1981, to remain in effect for a period of 120 days or until the adoption of permanent Rules covering the same subject matter superseding this Emergency Rule, as specified by the Agency. (This Emergency Rule will not be published; copies may be obtained from the Agency.) (Emergency Rule 80-1-15-0.8 expired on July 14, 1981.)

The title of Chapter 80-1-1 has been changed to "Applications." Filed July 13, 1981; effective August 2, 1981.

Rules 80-1-1-.01, 80-1-1-.02, and 80-1-1-.03 have been repealed and new Rules of the same numbers adopted. Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-1-.04 has been amended by the adoption of paragraph (5). Filed July 13, 1981; effective August 13, 1981.

Rule 80-1-1-.07 has been adopted. Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-2-.02 has been amended by the repeal of subparagraph (1)(c) and paragraph (2) and by the adoption of a new subparagraph (1)(c) and paragraph (2). Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-2-.03 has been amended by the repeal of paragraph (1) and by the adoption of a new paragraph (1). Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-3-.01 has been amended by the repeal of paragraph (1) and subparagraphs (1)(e) and (1)(g) and by the adoption of a new paragraph (1) and new subparagraphs (1)(e) and (1)(g). Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-3-.02 has been amended by the repeal of subparagraphs (1)(i), (6)(a), and (6)(c) and by the adoption of new subparagraphs (1)(i), (6)(a), and (6)(c). Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-3-.03 has been amended by the repeal of paragraph (1) and by the adoption of a new paragraph (1). Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-3-.04 has been repealed and a new Rule 80-1-3-.04 adopted. Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-4-.01 has been amended by the repeal of subparagraph (1)(c) and paragraphs (2) and (5) and by the adoption of a new subparagraph (1)(c) and new paragraphs (2) and (5). Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-5-.01 has been amended by the repeal of paragraphs (3) and (11) and by the adoption of new paragraphs (3) and (11). Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-5-.02 has been amended by the repeal of subparagraphs (4)(b), (4)(c), and (5)(e) and by the adoption of new subparagraphs (4)(b), (4)(c), and (5)(e). Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-5-.06 has been adopted. Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-6-.01 has been repealed and a new Rule 80-1-6-.01 adopted. Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-6-.02 has been amended by the repeal of paragraph (2) and by the adoption of a new paragraph (2). Filed July 13, 1981; effective August 2, 1981.

The title of Chapter 80-1-8 has been changed to "Dormant Accounts." Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-8-.01 has been amended by the repeal of subparagraph (1)(c) and by the adoption of a new subparagraph (1)(c). Filed July 13, 1981; effective August 2, 1981.

Rules 80-1-8-.02, 80-1-8-.03, and 80-1-8-.04 have been repealed. Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-11-.01 has been repealed and a new Rule 80-1-11-.01 adopted. Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-11-.02 has been repealed. Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-11-.03 has been repealed and a new Rule of the same title adopted and renumbered as 80-1-11-.02. Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-11-.04 has been renumbered as 80-1-11-.03. Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-11-.05 has been amended by the repeal of paragraph (4) and by the adoption of a new paragraph (4), and Rule has been renumbered as 80-1-11-.04. Filed July 13, 1981; effective August 2, 1981.

The title of Chapter 80-1-12 has been changed to "Dividends, Management Fees, Etc." Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-12-.02 has been adopted. Filed July 13, 1981; effective August 2, 1981.

Chapter 80-1-13 has been repealed and a new Chapter 80-1-13, of the same title, containing

Rules 80-1-13-.01 through 80-1-13-.03, adopted. Filed July 13, 1981; effective August 2, 1981.

Rule 80-2-1-.01 has been amended by the repeal of subparagraph (2)(a) and by the adoption of a new subparagraph (2)(a). Filed July 13, 1981; effective August 2, 1981.

Rule 80-2-1-.02 has been amended by the repeal of subparagraph (c) and by the adoption of a new subparagraph (c). Filed July 13, 1981; effective August 2, 1981.

Rule 80-2-1-.03 has been repealed and a new Rule 80-2-1-.03 adopted. Filed July 13, 1981; effective August 2, 1981.

The title of Chapter 80-2-3 has been changed to "Shares, Deposits and Dividends." Filed July 13, 1981; effective August 2, 1981.

Rule 80-2-3-.01 has been amended by the repeal of subparagraph (2)(a) and paragraph (3) and by the adoption of a new subparagraph (2)(a) and a new paragraph (3). Filed July 13, 1981; effective August 2, 1981.

Rules 80-2-3-.02, 80-2-3-.03, 80-2-3-.04 and 80-2-3-.05 have been adopted. Filed July 13, 1981; effective August 2, 1981.

Rule 80-2-5-.01 has been amended by the repeal of paragraphs (3), (4), and (5) and by the adoption of new paragraphs (3), (4), and (5). Filed July 13, 1981; effective August 2, 1981.

Rule 80-2-7-.02 has been amended by the repeal of subparagraph (1)(c) and by the adoption of a new subparagraph (1)(c). Filed July 13, 1981; effective August 2, 1981.

Rule 80-2-7-.03 has been amended by the repeal of paragraph (1) and by the adoption of a new paragraph (1). Filed July 13, 1981; effective August 2, 1981.

The title of Division 80-3, "Money Orders," has been changed to "Sale of Checks." Filed July 13, 1981; effective August 2, 1981.

The title of Chapter 80-3-1 has been changed to "Sale of Checks." Filed July 13, 1981; effective August 2, 1981.

Rule 80-3-1-.01 has been repealed and a new Rule 80-3-1-.01 adopted. Filed July 13, 1981; effective August 2, 1981.

Rule 80-4-1-.01 has been amended by the repeal of paragraph (1) and by the adoption of a new paragraph (1). Filed July 13, 1981; effective August 2, 1981.

Rule 80-4-1-.02 has been amended by the repeal of paragraph (1) and by the adoption of new paragraphs (1) and (5). Filed July 13, 1981; effective August 2, 1981.

Rule 80-4-1-.04 has been amended by the adoption of paragraph (5). Filed July 13, 1981; effective August 2, 1981.

Rule 80-4-1-.05 has been amended by the repeal of paragraph (1) and by the adoption of new paragraphs (1) and (7). Filed July 13, 1981; effective August 2, 1981.

Rule 80-4-1-.10 has been amended by the repeal of paragraphs (1), (4), and (5) and by the adoption of new paragraphs (1), (4), and (5). Filed July 13, 1981; effective August 2, 1981.

Rule 80-4-1-.11 has been amended by the repeal of subparagraphs (1)(a) and (1)(f), and paragraph (2), and by the adoption of new subparagraphs (1)(a) and (1)(f), and a new paragraph (2). Filed July 13, 1981; effective August 2, 1981. Subparagraph (2)(a) of Rule 80-5-1-.03 has been amended; Rule 80-5-1-.03 has been amended by the adoption of paragraph (5). Filed July 13, 1981; effective August 2, 1981.

Rule 80-6-1-.01 has been repealed. Filed July 13, 1981; effective August 2, 1981.

Rule 80-6-1-.11 has been adopted. Filed July 13, 1981; effective August 2, 1981.

Chapter 80-7-1, entitled "Banking Activities in Georgia by Organizations Domiciled Outside

Georgia," containing Rules 80-7-1-.01 through 80-7-1-.05, has been adopted. Filed October 15, 1981; effective November 4, 1981.

Rule 80-2-1-.06 has been adopted. Filed October 20, 1981; effective November 9, 1981.

Rule 80-1-12-.01 has been repealed and a new Rule 80-1-12-.01 adopted. Filed March 23, 1982; effective April 12, 1982.

Rules 80-5-1-.01, 80-5-1-.02 and 80-5-1-.03 have been repealed and new Rules of the same numbers adopted. Filed May 24, 1982; effective June 13, 1982.

Chapter 80-8-1, entitled "Agency Organization, Methods, Etc.," containing Rules 80-8-1-.01 through 80-8-1-.05, was filed on June 22, 1982; effective July 12, 1982.

Paragraphs (1) and (2) of Rule 80-4-1-.01 have been amended. Filed October 12, 1982; effective November 2, 1982.

Paragraph 80-4-1-.04 has been amended. Filed October 12, 1982; effective November 2, 1982.

Rule 80-4-1-.06 has been amended by amending subparagraph (1)(e) and by the adoption of subparagraph (1)(f). Filed October 12, 1982; effective November 2, 1982.

Rule 80-4-1-.10 has been amended by amending paragraphs (2), (3), (4), and (6), and by the adoption of paragraphs (8) and (9). Filed October 12, 1982; effective November 2, 1982.

Rule 80-4-1-.14 has been adopted. Filed October 12, 1982; effective November 2, 1982. Emergency Rule 80-1-15-0.9, containing Rule 80-1-15-0.9-.01, entitled "Emergency Acquisitions and Consolidations Involving a Financial Institution in Danger of Failing or a Failed Institution," was filed on June 1, 1983; effective May 31, 1983, the date of adoption, to remain in effect for a period of 120 days or until the effective date of a permanent Rule superseding this Emergency Rule, as specified by the Agency. (Said Emergency Rule will not be published; copies may be obtained from the Agency.)

Paragraph 80-1-3-.01 and subparagraph (1)(g) have been amended. Filed August 17, 1983; effective September 6, 1983.

Rule 80-1-3-.05 has been adopted. Filed August 17, 1983; effective September 6, 1983. Subparagraph 80-1-4-.01 has been amended and subparagraph 80-1-4-.01 adopted. Filed August 17, 1983; effective September 6, 1983.

Paragraphs 80-1-5-.01,and(11) have been amended. Filed August 17, 1983; effective September 6, 1983.

Rule 80-1-5-.02 has been amended by: amending paragraph (3); repealing subparagraph (4)(b) and by amending subparagraph (4)(c) and renumbering as subparagraph (4)(b); amending subparagraph (5)(c); repealing subparagraph (5)(d) and by the adoption of a new subparagraph (5)(d); repealing subparagraph (5)(e) and amending subparagraph (5)(f) and renumbering as (5)(e); renumbering subparagraphs (5)(g) through (5)(j) as subparagraphs (5)(f) through (5)(i) respectively; and, by amending subparagraph (6)(b). Filed August 17, 1983; effective September 6, 1983.

Paragraph 80-1-5-.03 has been amended. Filed August 17, 1983; effective September 6, 1983.

Subparagraph 80-1-5-.04 has been amended. Filed August 17, 1983; effective September 6, 1983.

Paragraphs 80-1-5-.05 have been amended. Filed August 17, 1983; effective September 6, 1983.

Rule 80-1-5-.06 has been amended. Filed August 17, 1983; effective September 6, 1983.

Rule 80-1-13-.03 has been amended. Filed August 17, 1983; effective September 6, 1983.

Paragraphs 80-1-14-.02 have been amended. Filed August 17, 1983; effective September 6, 1983.

Subparagraph 80-2-1-.01 has been amended. Filed August 17, 1983; effective September 6, 1983.

Subparagraphs 80-2-1-.02 have been amended. Filed August 17, 1983; effective September 6, 1983.

Rule 80-2-3-.01 has been amended by the repeal of subparagraph (2)(a)5.(ii) and amending and renumbering subparagraph (2)(a)5.(iii) as (2)(a)5.(ii). Filed August 17, 1983; effective September 6, 1983.

Paragraph 80-2-3-.04 has been amended. Filed August 17, 1983; effective September 6, 1983.

Paragraph 80-2-3-.05 has been amended. Filed August 17, 1983; effective September 6, 1983.

Chapter 80-2-8 entitled "Field of Membership," containing Rules 80-2-8-.01 through 80-2-8-.05, has been adopted. Filed August 17, 1983; effective September 6, 1983.

Rule 80-4-1-.15 has been adopted. Filed August 17, 1983; effective September 6, 1983. Chapter 80-5-2, entitled "Temporary Changes in Operating Hours, Emergency Closings," containing Rules 80-5-2-.01 through 80-5-2-.03, was filed on December 19, 1983; effective January 8, 1984.

Subparagraph (1)(a) of Rule 80-1-3-.01 has been amended. Filed June 28, 1984; effective August 1, 1984, as specified by the Agency.

Paragraph (10) of Rule 80-1-5-.01 has been amended. Filed June 28, 1984; effective August 1, 1984, as specified by the Agency.

Subparagraph (5)(h) of Rule 80-1-5-.02 has been amended; and the authority of said Rule changed. Filed June 28, 1984; effective August 1, 1984, as specified by the Agency.

Paragraph (2) of Rule 80-1-5-.04 has been amended. Filed June 28, 1984; effective August 1, 1984, as specified by the Agency.

Rule 80-1-5-.07 has been adopted. Filed June 28, 1984; effective August 1, 1984, as specified by the Agency.

Rule 80-1-8-.01 has been amended by the adoption of subparagraph (1)(d) and by amending paragraph (2). Filed June 28, 1984; effective August 1, 1984, as specified by the Agency.

Rule 80-2-3-.06 has been adopted. Filed June 28, 1984; effective August 1, 1984, as specified by the Agency.

Paragraph (2) of Rule 80-5-1-.01 has been amended. Filed June 28, 1984; effective August 1, 1984, as specified by the Agency.

Subparagraphs (1)(a) and (1)(c) and paragraphs (2) and (3) of Rule 80-5-1-.02 have been amended. Filed June 28, 1984; effective August 1, 1984, as specified by the Agency.

Rule 80-5-1-.03 has been repealed and a new Rule 80-5-1-.03 adopted. Filed June 28, 1984; effective August 1, 1984, as specified by the Agency.

Rule 80-5-1-.04 has been amended by the adoption of paragraphs (2) and (3); and by amending paragraph (1). Filed June 28, 1984; effective August 1, 1984, as specified by the Agency.

Rule 80-6-1-.03 has been amended by the repeal of paragraph (2) and by the adoption of a new paragraph (2). Filed June 28, 1984; effective August 1, 1984, as specified by the Agency.

Rule 80-6-1-.05 has been amended by amending paragraphs (1), (2), and (3) and renumbering as paragraphs (2), (3), and (4), respectively, and by adopting new paragraphs (1) and (5). Filed June 28, 1984; effective August 1, 1984, as specified by the Agency.

Rule 80-6-1-.12 has been adopted. Filed June 28, 1984; effective August 1, 1984, as specified by the Agency.

Rule 80-7-1-.06 has been adopted. Filed December 3, 1985; effective December 23, 1985.

Rule 80-1-1-.04 has been amended by the repeal of paragraph (5) and by the adoption of a new paragraph (5). Filed July 24, 1986; effective September 1, 1986, as specified by the Agency.

Rule 80-1-5-.03 has been amended by the repeal of subparagraph (1)(b) and by the adoption of a new subparagraph (1)(b). Filed July 24, 1986; effective September 1, 1986, as specified by the Agency.

Rule 80-1-5-.08 has been adopted. Filed July 24, 1986; effective September 1, 1986, as specified by the Agency.

Rule 80-3-1-.05 has been adopted. Filed July 24, 1986; effective September 1, 1986, as specified by the Agency.

Rule 80-8-1-.02 has been amended by the repeal of paragraph (2) and by the adoption of a new paragraph (2). Filed July 24, 1986; effective September 1, 1986, as specified by the Agency.

Chapter 80-9-1, entitled "Currency Transaction Reports," containing Rule 80-9-1-.01, has been adopted. Filed July 24, 1986; effective September 1, 1986, as specified by the Agency.

Rule 80-1-14-.01 has been amended by the repeal of paragraph (1) and by the adoption of a new paragraph (1). Filed November 17, 1986; effective December 7, 1986.

Rule 80-1-14-.02 has been amended by the repeal of paragraph (1) and by renumbering paragraphs (2) and (3) as paragraphs (1) and (2), respectively. Filed September 25, 1987; effective October 15, 1987.

The Rules of Chapter 80-5-1 have been amended. Filed June 10, 1988; effective June 30, 1988.

Rule 80-1-1-.06 has been amended by the repeal of paragraphs (2) and (3) and by the amendment of paragraph (1). Filed July 7, 1988; effective July 27, 1988.

Chapter 80-1-15 entitled "Extensions of Existing Offices and Facilities" has been adopted. Rule 80-8-1-.06 has been adopted. Filed July 7, 1988; effective July 27, 1988.

Rule 80-1-14-.03 has been repealed. Filed October 18, 1988; effective November 7, 1988. Emergency Rule 80-1-16-0.10, containing Rules 80-1-16-0.10-.01 and 80-1-16-0.10-.02, entitled "Emergency Closing" was filed on September 21, 1989; effective September 20, 1989, the date of adoption, to remain in effect for 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this Emergency Rule is adopted, as specified by the Agency. (Said Emergency Rule will not be published; copies may be obtained from the Agency.)

Rule 80-1-3-.02 has been repealed and a new Rule adopted. Rules 80-1-3-.03 and .04 have been repealed. Chapters 80-1-4, 80-2-1, 80-6-1 have been repealed and new Chapters adopted. Rule 80-1-5-.02 has been amended. Rule 80-1-5-.09 adopted. Rule 80-1-11-.04 has been amended. Rule 80-1-12-.03 has been adopted. Rules 80-2-3-.01 and 80-2-3-.04 have been amended. Rule 80-2-8-.03 has been amended. Chapter 80-2-9 entitled "Investment Securities" has been adopted. Chapter 80-10-1 entitled "Records Retention" has been adopted. Filed October 12, 1989; effective November 1, 1989.

Chapter 80-3-1 has been repealed and a new Chapter entitled "Money Transmission and Related Financial Services" adopted. Rule 80-5-1-.02 has been repealed and a new Rule adopted. Rule 80-5-1-.03 has been amended. Chapter 80-9-1 has been repealed. Filed Septemter 4, 1990; effective September 24, 1990.

Rule 80-3-1-.02 has been amended. Filed September 13, 1991; effective October 3, 1991. Rule 80-1-5-.09 has been repealed. Filed December 27, 1991; effective January 16, 1992. Rule 80-7-1-.06 has been amended. Filed September 23, 1993; effective October 13, 1993. Rules 80-5-1-.02, .03 have been amended. Rule 80-5-1-.04 has been repealed and a new Rule adopted. Rule 80-5-1-.05 has been adopted. Filed October 15, 1993; effective November 4, 1993. Chapter 80-11-1 entitled "Residential Mortgage Brokers and Lenders" has been adopted. Filed October 22, 1993; effective November 11, 1993.

Rules 80-1-4-.01, .02, .03, 80-2-9-.01, .02, .03 have been amended.

Chapter 80-11-2 entitled "Books and Records" has been adopted. Filed July 11, 1994; effective July 31, 1994.

Chapter 80-11-1 has been retitled to "Disclosure and Advertising Requirements". Filed September 19, 1994; effective October 9, 1994.

Rules 80-1-5-.01 and 80-3-1-.04 have been amended. Filed November 2, 1994; effective November 22, 1994.

Rules 80-1-14-.01, .02, 80-2-8-.04 have been amended. Chapter 80-2-10 entitled "Credit Union Voting Procedures" has been adopted.

Rules 80-5-1-.04, 80-11-1-.02 have been amended. Filed January 27, 1995; effective February 16, 1995.

Rules 80-1-1-.01, .04, .05, .06, 80-1-5-.01, .02, .07, 80-1-11-.05, 80-1-15-.01, .03, 80-3-1-.01, 80-4-1-.05, .06, 80-5-1-.02, .05, have been amended. Rules 80-1-12-.03 and 80-6-1-.13 have been repealed.

Rules 80-6-1-.14, .15 have been adopted. Filed September 26, 1995; effective October 16, 1995. Chapter 80-1-2 has been repealed and a new Chapter adopted. Filed November 7, 1995; effective November 27, 1995.

Chapter 80-5-3 entitled "Regulations Regarding the Sale of Annuities by Financial Institutions" has been adopted. Filed July 18, 1996; effective August 7, 1996.

Chapter 80-5-4 entitled "Regulations Regarding the Sale of Insurance By Financial Institutions" has been adopted. Filed February 18, 1997; effective March 10, 1997.

Rules 80-1-1-.06, .07, 80-1-3-.01, 80-1-4-.01, 80-1-9-.01, .02, 80-1-10-.02, 80-1-15-.01, .02, .04, 80-3-1-.01, .02, .04, .05, .06, 80-5-1-.03, 80-6-1-.02, 80-10-1-.04 have been amended. Chapters

80-5-5 entitled "Incidental Powers" and 80-9-1 entitled "Currency Transaction Reports and Suspicious Activities: Banks" have been adopted. Filed August 26, 1997; effective September 15, 1997.

Chapters 80-1-1, 80-5-1, 80-5-2, 80-6-1, 80-8-1, 80-11-1, 80-11-2 have been amended. Chapter 80-11-3 entitled "Administrative Fines" has been adopted. Rules 80-1-5-.02, 80-1-10-.02, 80-1-12-.01, 80-1-15-.02, .05, 80-2-9-.01, and 80-3-1-.01 have been amended. Filed July 14, 1998; effective August 3, 1998.

Rules 80-1-1-.01 to .04, .06 to .10, 80-1-2-.01, .02, 80-1-4-.01, 80-1-10-.05, 80-1-11-.01, .05, 80-1-14-.01, 80-1-15-.02, .03, 80-2-9-.01, 80-3-1-.01, 80-5-1-.03, 80-5-2-.01 to .04, 80-6-1-.01, .02, .03, .15, 80-11-1-.01, 80-11-2-.04, 80-11-3-.01 have been amended. Rules 80-6-1-.16 and 80-11-2-.05 have been adopted. Filed July 12, 1999; effective August 1, 1999.

Rules 80-1-1-.06, .07, 80-1-5-.01, 80-5-1-.03, 80-5-5-.01, 80-6-1-.01, 80-8-1-.01, .02, .03, .04, .06, 80-11-1-.01, .03, 80-11-3-.01 have been amended. Rule 80-11-1-.05 has been adopted. Filed December 6, 1999; effective December 26, 1999.

Rules 80-11-1-.01, .04, 80-11-2-.02, .05, and 80-11-3-.01 have been amended. Rule 80-11-1-.05 has been repealed. Chapter 80-11-4 entitled "Licensing" has been adopted. Filed June 8, 2000; effective June 28, 2000.

Chapter 80-2-11 entitled "Credit Union Fixed Assets" has been adopted. Rules 80-1-1-.06, .08, 80-1-2-.01, .06, 80-1-4-.01, 80-1-5-.01, .02, .03, 80-1-11-.02, 80-1-12-.01, 80-2-8-.04, 80-3-1-.02, 80-5-1-.02, .03, .04, 80-6-1-.02, 80-8-1-.01, 80-11-3-.01, 80-11-4-.05 have been amended. Filed December 18, 2000; effective January 7, 2001.

Rules 80-1-1-.08, 80-1-11-.01, .02; 80-2-3-.01, .05; 80-5-1-.04, 80-11-1-.03, 80-11-2-.03, .05, 80-11-3-.01, 80-11-4-.03, .04, and Chapters 80-1-4, 80-2-4 have been amended. Rules 80-2-11-.01 has been repealed. Filed October 22, 2001; effective November 11, 2001.

Rules 80-1-2-.01 to .03, .05, .06, 80-1-5-.02, 80-1-8-.01, 80-1-15-.01, 80-2-1-.01, 80-2-7-.01, .02, 80-3-1-.01 to .04, .06, 80-5-1-.02 to .05, 80-5-5-.01, 80-11-1-.01 to .04, 80-11-2-.01, .02, .05, 80-11-3-.01, and 80-11-4-.03 have been amended. Rules 80-1-2-.07, 80-2-7-.03, 80-3-1-.05 have been repealed and the rules reserved. Rules 80-1-2-.09, 80-2-7-.04, 80-3-1-.07, .08, 80-11-1-.05, 80-11-4-.07, and .08 have been adopted. Filed July 28, 2003; effective August 17, 2003. Rules 80-1-5-.10 and 80-2-8-.06 have been adopted. Rules 80-1-15-.01, 80-2-1-.02, 80-3-1-.07, 80-5-1-.02, .03, 80-11-1-.01, .03 to .05, 80-11-2-.02, .03, 80-11-3-.01, and 80-11-4-.01 have been amended. Rules 80-2-8-.03 to .05, and 80-11-4-.03 have been repealed and new Rules adopted. Filed September 1, 2004; effective September 21, 2004.

Rules 80-1-5-.02, 80-2-3-.03, .04, 80-2-4-.03, 80-2-8-.04, 80-3-1-.01, .02, .07, 80-5-1-.02, 80-11-1-.05, 80-11-2-.01 to .03, 80-11-3-.01, 80-11-4-.02, .06, and .08 have been amended. Rules 80-2-3-.01, .02, .05, 80-2-8-.01 to .03, and 80-11-4-.01 have been repealed and new Rules adopted. Rules 80-2-8-.05 and 80-11-2-.05 have been repealed. Rule 80-5-1-.06 has been adopted. Filed August 15, 2005; effective September 4, 2005.

Rules 80-1-1-.01, .09, 80-1-5-.02, 80-1-14-.01, 80-2-5-.01, 80-2-10-.02, 80-3-1-.01 to .04, .06 to .08, 80-5-1-.02, 80-6-1-.04, 80-8-1-.01, 80-9-1-.01, .02, 80-11-1-.02, .05, 80-11-2-.04, 80-11-3-.01, and 80-11-4-.01 have been amended. Rules 80-2-3-.02 and .03 have been repealed and Rules reserved. Rule 80-11-4-.03 has been repealed and a new Rule adopted. Filed August 22, 2006; effective September 11, 2006.

Rules 80-1-4-.01, 80-1-5-.02, 80-1-6-.01, 80-1-11-.01, 80-1-15-.03, 80-2-9-.01, 80-3-1-.01 to .03, .07, 80-5-1-.02, .03, 80-11-1-.02, .05, 80-11-3-.01, 80-11-4-.02, .03, .07, and .08 have been amended. Rule 80-2-4-.03 has been repealed. Chapter 80-2-12 entitled "Credit Union Loans" and 80-5-6 entitled "Qualified Intermediary" have been adopted. Filed August 15, 2007; effective September 4, 2007.

Rule 80-1-1-.11 has been adopted. Rule 80-1-11-.01 has been amended. Filed November 20, 2007; effective December 10, 2007.

Rules 80-1-5-.02, 80-1-11-.02, 80-3-1-.02, .07, 80-5-1-.02, .03, 80-11-2-.01, .02, and 80-11-3-.01 have been amended. Filed August 4, 2008; effective August 24, 2008.

Rules 80-5-1-.02, 80-11-4-.01, and .06 have been amended. Rule 80-5-1-.07 has been adopted. Filed December 15, 2008; effective January 4, 2009.

Rules 80-1-5-.01, 80-3-1-.02, .03, 80-5-1-.02, 80-11-1-.02, .04, .05, 80-11-2-.02 to .04, 80-11-3-.01, 80-11-4-.01 to .03, .05 have been amended. Rules 80-1-5-.11 and 80-11-4-.09 have been adopted. Rules 80-5-1-.07 and 80-11-2-.01 have been repealed and new Rules adopted. Rule 80-11-4-.06 has been repealed and the rule reserved. Chapter 80-11-5 entitled "Mortgage Loan Originator Licensure and Other Requirements" has been adopted. Filed August 17, 2009; effective September 6, 2009.

Rules 80-5-1-.02, 80-5-1-.04, 80-5-1-.07, 80-11-1-.05, 80-11-3-.01, 80-11-4-.01, 80-11-4-.05, 80-11-4-.08, 80-11-5-.01, 80-11-5-.04, 80-11-5-.05, 80-11-5-.06 have been amended. F. Aug. 2, 2011; eff. Aug. 22, 2011.

Rules 80-11-5-.07 and 80-11-4-.04 have been adopted. F. Aug. 2, 2011; eff. Aug. 22, 2011.

Rule 80-1-10-.06 repealed. F. Sep. 18, 2012; eff. Oct. 8, 2012.

Rules 80-1-6-.01, 80-1-6-.02, 80-1-11-.01, 80-3-1-.06, 80-5-1-.04, 80-10-1-.01, 80-11-3-.01, and 80-11-5-.02 amended. F. Sep. 18, 2012; eff. Oct. 8, 2012.

Rules 80-1-12-.02, 80-3-1-.07, 80-5-1-.04, 80-5-1-.05, 80-10-1-.01, 80-11-1-.04, 80-11-3-.01, 80-11-4-.07, 80-11-5-.05, 80-11-5-.07 amended. Rules 80-3-1-.09, 80-11-4-.10, 80-11-4-.11 adopted. F. Nov. 7, 2013; eff. Nov. 27, 2013.

Chapters 80-12-1 entitled "Definitions," 80-12-2 entitled "Application Process," 80-12-3 entitled "In Organization Period," 80-12-4 entitled "Operations of MALPB," 80-12-5 entitled "Book and Records," 80-12-6 entitled "MALPB Locations and Examinations," 80-12-7 entitled "Solvency

and Safeguards," 80-12-8 entitled "Eligible and Support Organizations," 80-12-9 entitled "Relationships with Affiliates and Investments and Distributions," 80-12-10 entitled "Control over MALPB," 8-12-11 entitled "Holding Company,' 80-12-12 entitled "Fines and Fees" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rules 80-1-1-.01, 80-1-4-.01, 80-1-10-.01, 80-1-10-.09, 80-2-5-.01, 80-2-9-.01, 80-3-1-.01 to .04, 80-3-1-.06 to 8-3-1-09, 80-5-1-.01 to 80-5-1-.03, 80-5-1-.05, 80-5-1-.06, 80-8-1-.01, 80-9-1-.01, 80-11-2-.02, 80-11-3-.01, 80-11-5-.01, 80-12-11-.03 amended. Rules 80-2-4-.03, 80-3-1-.10, 80-11-5-.08 adopted. F. June 10, 2014; eff. June 30, 2014.

Rules 80-1-5-.01, 80-1-12-.01, 80-5-1-.02, 80-10-1-.02, 80-11-5-.05 amended. F. Aug. 29, 2014; eff. Sep. 18, 2014.

Rules 80-5-1-.02, 80-5-1-.03, 80-5-1-.04, 80-5-4-.02, 80-11-3-.01, 80-12-11-.03 amended. F. Dec. 5 2014; eff. Dec. 25, 2014.

Rules 80-1-1-.01, 80-1-1.09, 80-2-6-.01 to 80-2-6.04, 80-2-8-.04, 80-3-1-.01, 80-3-1-.02, 80-5-1-.01 to 80-5-1-.03, 80-5-1-.06, 80-6-1-.01, 80-6-1-.02, 80-6-1-.16, 80-8-1-.02, 80-8-1-.03, 80-11-2-.02, 80-11-4-.01, 80-11-4-.05, 80-11-4-.08, 80-12-1-.01, 80-12-2-.09, 80-12-2-.10, 80-12-3-.02, 80-12-4-.05, 80-12-6-.03, 80-12-6-.04, 80-12-11-.02, 80-12-12-.01 amended. F. June 15, 2015; eff. July 5, 2015.

Rule 80-6-1-.12 corrected to delete non-substantive typographical error of "No" in rule title as requested by the agency. Effective Aug. 12, 2015.

Rule 80-6-1-.12, "Note" effective Aug. 12, 2015 revised to include "...and addition of "No" at the beginning of the paragraph." Effective Sep. 1, 2015.

Rules 80-11-1-.01, 80-12-2-.09, 80-12-6-.03, 80-12-6-.04 amended. F. Oct. 27, 2015; eff. Nov. 16, 2015.

Rules 80-3-1-.01, 80-3-1-.07, 80-11-1-.01, 80-11-3-.01 amended. F. Jan. 6, 2016; eff. Jan. 26, 2016.

Rules 80-1-2-.01, 80-1-6-.01, 80-1-7-.01, 80-1-7-.02, 80-1-7-.03, 80-1-9-.01, 80-1-11-.05, 80-1-13-.01, 80-2-4-.01, 80-5-1-.02, 80-5-1-.03, 80-5-1-.07, 80-5-2-.02, 80-5-3-.01, 80-5-4-.01, 80-6-1-.01, 80-6-1-.10, 80-6-1-.16, 80-8-1-.01, 80-9-1-.02, 80-10-1-.04, 80-11-1-.02, 80-11-2-.03, 80-11-2-.04, 80-11-3-.01, 80-11-4-.05, 80-11-4-.09, 80-11-5-.01, .04 through .07 amended. Chapter 80-4-1 repealed in its entirety, Rules 80-11-4-.01, 80-11-4-.02 repealed. F. June 20, 2016; eff. July 10, 2016.

Rules 80-1-2-.05, 80-1-3-.01, 80-1-5-.01, 80-1-5-.02, 80-1-5-.04, 80-1-5-.11, 80-1-6-.03, 80-1-10-.09, 80-1-14-.01, 80-2-1-.02, 80-2-4-.02, 80-2-8-.01, 80-2-8-.04, 80-2-12-.03, 80-3-1-.07, 80-5-1-.03, 80-9-1-.02, 80-11-3-.01 amended. Rules 80-1-5-.12, 80-2-4-.04; Chapters 80-11-6 entitled "Mortgage Servicing," 80-13-1 entitled "Trust Companies" adopted. F. June 29, 2017; eff. July 19, 2017.

Note: Rule 80-2-12-.01, correction of typographical error in Rule title on SOS Rules and Regulations website. In accordance with the *Official Compilation Rules and Regulations of the State of Georgia* (as published September 4, 2007), *"Loan Generally, Interpretations and Rulings"* corrected to *"Loans Generally, Interpretations and Rulings."* Effective July 17, 2018.

Rules 80-1-1-.12, 80-1-11-.06, 80-2-1-.04, 80-2-4-.05 through .07, 80-2-12-.04, 80-11-1-.06 adopted. Rules 80-1-5-.01, 80-1-10-.09, 80-2-1-.01, 80-2-12-.01, 80-2-12-.02, 80-3-1-.01 through .04, 80-3-1-.06, 80-3-1-.07, 80-9-1-.02, 80-10-1-.01, 80-11-3-.01, 80-13-1-.06 amended. F. June 27, 2018; eff. July 17, 2018.

Rules 80-2-6-.01, 80-2-6-.04, 80-2-8-.02 through 80-2-8-.04, 80-11-6-.02 amended. Rule 80-2-6-.02 repealed. F. June 29, 2018; eff. July 19, 2018.

Rules 80-1-1-.13, 80-1-3-.03, 80-2-1-.05, 80-2-3-.02, 80-2-6-.05, 80-13-1-.13 adopted. Rules 80-1-5-.02, 80-1-6-.01, 80-1-10-.05, 80-1-14-.02, 80-1-15-.02, 80-2-1-.02, 80-2-4-.03, 80-2-6-.01 80-2-8-.03, 80-2-12-.03, 80-3-1-.01, 80-5-1-.06, 80-11-1-.01, 80-11-2-.02, 80-11-3-.01 amended. F. July 9, 2019; eff. July 29, 2019.

Rules 80-11-1-.01, 80-11-1-.02, 80-11-2-.03, 80-11-3-.01, 80-11-5-.02, 80-11-5-.05 amended. Rule 80-11-5-.09 adopted. F. Dec. 20, 2019; eff. Jan. 9, 2020.

Rules 80-5-1-.02, .03 amended. Rule 80-5-1-.08 and Chapter 80-14 entitled "Installment Loans" adopted. F. Aug. 19, 2020; eff. Sep. 8, 2020.

Rules 80-1-1-.06 through .10, 80-1-5-.02, 80-1-8-.01, 80-1-10-.09, 80-1-12-.01, 80-1-15-.01 through 80-1-15-.05, 80-2-4-.05, 80-2-12-.01 and .04, 80-3-1-.01, .02, and .07, 80-5-1-.01, .02, .03 and .06, 80-5-2-.01, .02 and .03, 80-6-1-.04, 80-11-1-.02 and .03, 80-11-2-.01 and. 02, 80-11-3-.01, 80-11-4-.03, .05, and .08, 80-11-5-.01, 80-13-1-.13, 80-14-2-.04, 80-14-4-.01, 80-14-5-.01 amended. Rules 80-1-10-.10, 80-2-4-.08, .09, 80-2-11-.01 through 80-2-11-.05, 80-2-12-.05, 80-11-4-.12 adopted. Rules 80-5-1-.07, 80-5-2-.04 repealed. Subject 80-2-11 title changed to "Extensions of Existing Offices and Facilities; Auxiliary Services." F. Jan. 8, 2021; eff. Jan. 28, 2021.

Note: Rules 80-11-1-.02 and 80-11-3-.01, the incorrect version of the Rules was inadvertently filed by the Agency (i.e., January 8, 2021; effective January 28, 2021) and appeared on the Rules and Regulations website February 5, 2021 through July 14, 2021. The correct Rules, as originally promulgated and adopted, were updated on the Rules and Regulations website July 15, 2021, with the original filed and effective date, as specified by the Agency. Effective July 15, 2021.

Rules 80-1-1-.01, .04, .05, .08, .09, 80-1-4-.01, 80-1-12-.01, 80-3-1-.01, .07, 80-5-1-.01, .03, 80-5-4-.02, 80-14-2-.02 amended. F. July 7, 2021; eff. July 27, 2021.

Note: Rules 80-11-1-.02 and 80-11-3-.01 (Supersede "Note" effective July 15, 2021.), the incorrect version of the Rules was inadvertently filed January 8, 2021 (effective January 28, 2021) and was posted on the Rules and Regulations website February 5, 2021 through August 4, 2021. The correct Rules, as originally promulgated and adopted, were updated on the Rules and

Regulations August 5, 2021; with the original filed and effective date, January 8, 2021 and January 28, 2021 respectively, as specified by the Agency. Effective August 5, 2021.

Rules 80-1-1-.01, .02, .04, .05 amended; Subject 80-3-1 title changed to "Disclosures, Locations, and Authorized Agents", Rules 80-3-1-.01, .02, .03 amended, Rules 80-3-1-.04, .06 through .10 repealed and number reserved; Subjects 80-3-2, entitled "Financial Condition, Reporting, and Control", 80-3-3 entitled "Books and Records", 80-3-4 entitled "Administrative Fines and Penalties", 80-3-5 entitled "Licensing", 80-3-6 entitled "Compliance with Federal Requirements", and Chapter 80-4 entitled "Check Cashers" adopted; Rule 80-5-1-.01 amended; Subject 80-6-1 title changed to "Applications and Acquisitions", Rules 80-6-1-.01 through .10 amended, Rules 80-6-1-.12, .13, .14, .16 repealed and number reserved; Subject 80-6-2 entitled "Operations" adopted; Rule 80-9-1-.01 amended. F. Dec. 16, 2021; eff. Jan. 5, 2022.

Chapter 80-1. BANKS.

Subject 80-1-1. APPLICATIONS, REGISTRATIONS AND NOTIFICATIONS.

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

(1) Proposed activities in Georgia by financial institutions 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-.03. Criteria for bank holding companies may be found at Rule 80-6-1-.04. 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 covers credit union activities; Chapter 80-3 covers money transmitters; Chapter 80-4-covers check cashers; Chapter 80-6 covers holding companies; Chapter 80-11 covers mortgage lenders, brokers, and loan originators; Chapter 80-13 covers trust companies; and Chapter 80-14 covers installment lenders.

(4) The Department has made available an Applications Manual and a Statement of Policy with details of the procedures required for most activities of regulated institutions in Georgia. Interested persons should consult the Applications Manual, Department's Statement of Policy, Rules, and applicable law which form the basis for Department

decisions. These materials are available electronically. The regulations provide an overview; the Applications Manual and Statement of Policy provide detailed instructions.

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

(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.

Cite as Ga. Comp. R. & Regs. R. 80-1-1-.01
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Definition" adopted. F. and eff. June 30, 1965.
Repealed: New Rule entitled "Form of Application, Request for" adopted. F. June 9, 1972; eff. June 29, 1972.
Repealed: New Rule of the same title adopted. F. July 12, 1974; eff. August 1, 1974.
Amended: F. Aug. 28, 1975; eff. Sept. 17, 1975.
Repealed: New Rule of the same title adopted. F. July 13, 1981; eff. August 2, 1981.
Amended: Rule retitled "Application Forms, Charter Application Request". F. Sept. 26, 1995; eff. Oct. 16, 1995.
Amended: Rule retitled "Applications, Registrations and Notifications, Generally." F. July 14, 1998; eff. August 3, 1998.
Amended: F. July 12, 1999; eff. August 1, 1999.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. Jun. 10, 2014; eff. Jun. 30, 2014.
Amended: F. June 15, 2015; eff. July 5, 2015.
Amended: F. July 7, 2021; eff. July 27, 2021.
Amended: F. Dec. 16, 2021; eff. Jan. 5, 2022.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-1-1-.02. Financial Institution Applications: Financial Institution Charter.

(1) An application form and package for chartering a Georgia state chartered financial institution is necessary. An organizing group should schedule an initial meeting with the Department to discuss chartering issues, at which time an application package will be distributed. An applicant holding company that has established a lawful banking business in Georgia which meets certain criteria may qualify for expedited processing. Rule 80-6-1-.04 and the Applications Manual should be consulted to determine if the applicant meets the necessary criteria.

(2) Specific requirements for documents, meetings with the Department and publication of notices are contained in the Applications Manual and the Statement of Policies of the Department.

(3) Submission and completion of application.

(a) A statement in support of an Application for Approval of a Charter shall be filed with the Department of Banking and Finance. If the Department of Banking and Finance notifies the applicant of deficiencies in the application, the applicant must complete the application within thirty (30) days after receipt of such notification.

(b) An application will not be deemed to have been officially accepted until such time as the required fee has been paid and all portions of the application have been completed to the satisfaction of the Department of Banking and Finance.

Cite as Ga. Comp. R. & Regs. R. 80-1-1-.02
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Bank Offices and Bank Facilities" was filed and effective on June 30, 1965.
Amended: Rule repealed and a new Rule entitled "Submission and Completion of Applications" adopted. Filed June 9, 1972; effective June 29, 1972.
Amended: Rule repealed and a new Rule of the same title adopted. Filed July 12, 1974; effective August 1, 1974.
Amended: Filed August 28, 1975; effective September 17, 1975.
Amended: Filed November 4, 1975; effective November 24, 1975.
Amended: Rule repealed and a new Rule of the same title adopted. Filed July 13, 1981; effective August 2, 1981.
Amended: Rule retitled "Financial Institution Applications: Financial Institution Charter" adopted. F. Jul. 14, 1998; eff. Aug. 3, 1998.
Amended: F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-1-1-.03. Order of Investigation of Charter by Department.

(1) Applications will not be considered for investigation until accorded official acceptance in compliance with Rule 80-1-1-.02(3)(b), until any appropriate application to the Federal banking agency having jurisdiction has been accepted for filing by the Federal agency, and until any required publication of Notice of Filing is completed.

(2) Investigations of conflicting applications shall be conducted by the Department of Banking and Finance in order of receipt and official acceptance of the applications, in accordance with the above, as determined by the date of acceptance recorded by the Department of Banking and Finance or the date of receipt by the appropriate Federal agency, whichever is later.

Cite as Ga. Comp. R. & Regs. R. 80-1-1-.03
Authority: Ga. L. 1974, p. 733.
History. Original Rule entitled "Expansion of Existing Banking House" was filed and effective on June 30, 1965.
Amended: Rule repealed and a new Rule entitled "Order of Investigation" adopted. Filed June 9, 1972; effective June 29, 1972.
Amended: Rule repealed and a new Rule of the same title adopted. Filed July 12, 1974; effective August 1, 1974.
Amended: Filed August 28, 1975; effective September 17, 1975.
Amended: Rule repealed and a new Rule of the same title adopted. Filed July 13, 1981; effective August 2, 1981.
Amended: Rule retitled "Order of Investigation of Charter by Department" adopted. F. Jul. 14, 1998; eff. Aug. 3, 1998.
Amended: Jul. 12, 1999; eff. Aug. 1, 1999.

Rule 80-1-1-.04. Notification of Filing and Protest.

(1) Applicants will be notified of official acceptance of a bank charter application or receipt of certain other applications for filing unless the department issues an approval of the application within seven days of receipt. For a charter application or merger application pursuant to O.C.G.A. § 7-1-532, the applicant shall cause a notice, in such form as the Department may prescribe, to be published in a newspaper of general circulation in the community in which the applicant's main office is located and in a newspaper of general circulation in any other community in which the applicant proposes to engage in business as notification to any interested parties of their right to comment or protest the application, unless otherwise provided in a rule or law pertaining to a specific transaction. The Applications Manual should be referenced for details regarding the publication requirements, if any, for other types of applications.

(2) Publication of notice for public comment on a bank charter application or merger application pursuant to O.C.G.A. § 7-1-532 may commence no sooner than five (5) days prior to the date the application is mailed or delivered to the Department. Any person desiring to comment upon or formally protest a bank charter application must notify the Department in writing within 30 days of the date of the publication of the notice in paragraph (1). The comment period may be extended if official acceptance of a bank charter application is delayed. Any person desiring to comment upon or formally protest a merger or acquisition pursuant to O.C.G.A. § 7-1-532 as set forth in Rule 80-6-1-.05 must notify the Department within 30 days of the date of the publication of the notice in paragraph (1).

(3) All comments and any notices of intent to protest pursuant to paragraph (2) and filed on a timely basis shall be reviewed and considered by the Department. The Commissioner may grant or deny a request for hearing in connection with a protest of an application. The Commissioner shall hold a hearing if he/she determines that written comments are insufficient to make an adequate presentation of the issues raised or if he/she determines that a hearing would otherwise be in the public interest. If a hearing is to be held, the protester and the applicant will be notified of a date as established by the department. Intention to appear at such hearing must be filed by the protester in writing with the Department within 15 days from date of notification of hearing date. Failure to file such intentions shall constitute grounds for canceling any scheduled hearing.

(4) Notwithstanding other provisions of this regulation, final determination to grant, conditionally or otherwise, or deny any application shall be in the sole discretion of the Commissioner of Banking and Finance or his/her legally authorized representative, and such action shall be final; provided, however, unless specified in other law or regulation, no action shall be required before the expiration of 90 days after the date of filing of the application.

Cite as Ga. Comp. R. & Regs. R. 80-1-1-.04
Authority: O.C.G.A. §§ 7-1-7; 7-1-61.
History. Original Rule entitled "Sale of Money Orders at Non-Banking Outlets" was filed and effective on June 30, 1965.
Amended: Rule repealed. Filed June 9, 1972; effective June 29, 1972.
Amended: Rule entitled "Notification of Filing, Protest" adopted. Filed July 12, 1974; effective August 1, 1974.

Amended: Filed July 13, 1981; effective August 2, 1981.
Amended: Filed July 24, 1986; effective September 1, 1986, as specified by the Agency.
Amended: F. Sept. 26, 1995; eff. Oct. 16, 1995.
Amended: Rule retitled "Notification of Filing and Protest". F. Jul. 14, 1998; eff. Aug. 3, 1998.
Amended: F. Jul. 12, 1999; eff. Aug. 1, 1999.
Amended: F. July 7, 2021; eff. July 27, 2021.
Amended: F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-1-1-.05. Public Hearing.

(1) Hearings described in this Rule are held for the purpose of giving the public an opportunity to voice protest of charter applications as well as merger and acquisition applications pursuant to Rule 80-6-1-.05 and are not intended to conform to hearings under the Georgia Administrative Procedure Act. Such hearing shall be a forum for the presentation of information which the Commissioner shall consider in ruling on an application.

(2) Hearings under this Rule shall be conducted in accordance with the following procedure:

(a) The presiding officer, who shall be appointed by the department in its sole discretion, will open the hearing with an explanation of the hearing procedure, identification of the parties, and statement of the application at issue.

(b) The applicant shall present a brief opening summary of the contents and purpose of the application.

(c) Following the applicant's statement, each person contesting the application shall present his or her data and material, oral or documentary. The contestants may agree, with the approval of the presiding officer, to have one of their number make their presentation.

(d) Following each contestant's presentation, the applicant shall have an opportunity to rebut, clarify or expand upon any information presented by the contestant with oral or documentary material.

(e) The applicant and contestants shall present their information in concise fashion and the presiding officer shall have the authority to limit such presentations if they are repetitive, inappropriate, or irrelevant.

(3) The Department shall have all of the testimony recorded, retain two copies of the transcript and each contestant and the applicant shall receive a copy. The contestants shall be jointly responsible for all the costs of the transcription of the testimony and for the hearing, unless an applicant requests the hearing, in which case the applicant shall bear the cost. No charge shall be assessed for the presiding officer unless the officer is not an employee of the Department, in which case the cost shall be borne as above.

(4) The obtaining and use of witnesses is the responsibility of the parties. All witnesses will appear voluntarily, but any person appearing as a witness may be subject to questioning by the presiding officer. The refusal of a witness to answer questions may be considered by the Department in determining the weight to be accorded the testimony of that witness. Witnesses shall not be sworn.

(5) Formal rules of evidence shall not be applicable to these hearings. Documentary material shall be of a size consistent with ease of handling, transportation, and filing. While large exhibits may be used during the hearing, copies of such exhibits must be provided by the party in reduced size for submission as evidence. Two copies of all such documentary evidence shall be furnished to the Department, and one copy shall be furnished to each contestant and the applicant during the hearing.

(6) The presiding officer or any person designated by the Department shall be the final judge of all procedural questions not governed by this rule. The presiding officer shall have the authority to limit the amount of time available to each party and to impose such other limitations as he or she shall deem reasonable.

(7) In preparation for a final determination on the application, the Department shall review the exhibits and the testimony as recorded, and the presiding officer shall make a recommendation of findings to the Commissioner.

Cite as Ga. Comp. R. & Regs. R. 80-1-1-.05
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Public Hearing" adopted. F. July 12, 1974; eff. August 1, 1974.
Amended: F. Aug. 28, 1975; eff. Sept. 17, 1975.
Amended: F. Sept. 26, 1995; eff. Oct. 16, 1995.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: F. July 7, 2021; eff. July 27, 2021.
Amended: F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-1-1-.06. Application or Notice Requirements for Additional Banking Locations.

(1) Definitions of terms used in this regulation are provided in O.C.G.A. § 7-1-600.

(2) Establishment of a branch office:

(a) New or additional branch offices may be established with the prior approval of the Department by regular application or by expedited application for certain qualified banks as provided below. The manner and criteria for establishment of branch offices is provided for in O.C.G.A. § 7-1-602.

(b) The rules for processing regular applications for branch offices are the same as those for bank charters, contained in Department of Banking and Finance Rule

numbers 80-1-1-.02 and 80-1-1-.03, with the exception of 80-1-1-.03(1). In lieu of official acceptance, the Department will notify applicants for branch offices of the date of receipt of the application.

(3) In lieu of a regular application, a bank which satisfies the qualifying criteria for expedited processing in paragraph (1) of Rule 80-1-1-.10 may submit an expedited application to establish a new branch office. The authority, manner and criteria for establishment of a branch office under this procedure are provided for in O.C.G.A. § 7-1-602 and this Rule.

(a) The expedited application must include the following:

(i) The physical address of the branch office;

(ii) A statement regarding whether or not an insider is involved in the acquisition, construction, or leasing of the property;

(iii) The anticipated fixed asset investment for this proposal, and whether the bank will be in compliance with O.C.G.A. § 7-1-262; and

(iv) A statement certifying that the applicant qualifies for the expedited application procedure under the applicable qualifying criteria.

(b) Unless it has previously issued an approval letter under subparagraph (c), the Department will use its best efforts to acknowledge a qualifying expedited application or notify the applicant that it does not qualify for expedited processing within two business days of receipt of such notice.

(c) The approval to establish the branch office will be effective at the earlier of: an approval letter from the Department, or 10 business days from the date of acknowledged receipt.

(d) The Department may remove the notice from this expedited procedure for any of the reasons set forth in paragraph (2) of Rule 80-1-1-.10.

Cite as Ga. Comp. R. & Regs. R. 80-1-1-.06
Authority: O.C.G.A. §§ 7-1-7, 7-1-61, 7-1-602, 7-1-603.
History. Original Rule entitled "Extensions of Existing Facilities" adopted. F. Aug. 28, 1975; eff. Sept. 17, 1975.
Amended: F. July 7, 1988; eff. July 27, 1988.
Amended: Rule retitled "Letter Form Application for Extension, ATM Notification" adopted. F. Sept. 26, 1995; eff. Oct. 16, 1995.
Amended: F. Aug. 26, 1997; eff. Sept. 15, 1997.
Amended: Rule retitled "Application Requirements for Additional Banking Locations". F. July 14, 1998; eff. August 3, 1998.
Amended: F. July 12, 1999; eff. August 1, 1999.
Amended: F. Dec. 6, 1999; eff. Dec. 26, 1999.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-1-1-.07. Expansion or Extension of Banking Location.

(1) No notification is necessary for an extension that is an ATM, cash dispensing machine, night depository or point of sale terminal.

(2) If any other extension is located within the boundary lines of a single contiguous area of property owned or leased by the bank and used as a banking location or if it is within 200 yards of such banking location, then the bank must provide written notice to the Department of such extension. Such notification shall be in letter form and shall specify:

   (a) Exact location of proposed extension;

   (b) The nature of service that will be provided at the extension;

   (c) Distance of extension from bank;

   (d) Ownership of the location; and

   (e) Cost of establishing the extension, and if site is to be leased, a copy of the proposed lease agreement.

(3) For all other extensions that are not addressed in paragraphs (1) and (2), a bank must obtain prior approval from the Department by submitting a letter form application.

Cite as Ga. Comp. R. & Regs. R. 80-1-1-.07
Authority: O.C.G.A. §§ 7-1-590; 7-1-603.
History. Original Rule entitled "Standards for Consideration of Applications, Statement of Policies" was filed on July 13, 1981; effective August 2, 1981.
Amended: F. Aug. 26, 1997; eff. Sept. 15, 1997.
Amended: Rule retitled "Expansion or Extension of Banking Location" adopted. F. Jul. 14, 1998; eff. Aug. 3, 1998.
Amended: F. Jul. 12, 1999; eff. Aug. 1, 1999.
Amended: F. Dec. 6, 1999; eff. Dec. 26, 1999.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Rule 80-1-1-.08. Procedures for Other Transactions, Applications and Notices.

(1) Conversion to state-chartered bank. A meeting with the Department should precede filing a letter form application, which application should include all of the information requested in the Applications Manual.

(2) Reserved.

(3) Mergers. The procedure for approval of a merger involves the filing of a letter application to the Department and, if a state bank is the surviving financial institution, the publication of Articles of Merger.

(4) Change in Control:

(a) A letter form notification to the Department is required, together with a copy of any federal filing.

(b) The board of directors of the financial institution subject to a change in control shall be notified of the filing of the notice with the Department unless the individuals involved request that such notice be withheld and, in the opinion of the Department, they give a valid reason for withholding such notice.

(5) Fiduciary Powers. A full application as detailed in the Applications Manual is required for exercise of full trust powers. Exercise of limited trust services and a single trust service requires a letter form application. Request to perform a single trust service may be expedited. No publication is required.

(6) Creation and Operation of a Subsidiary of a Bank. O.C.G.A. §§ 7-1-261, 7-1-262, and 7-1-288 provide for the ability of a bank to exercise powers incidental to banking and to create a separate subsidiary to effect such powers as may be financial in nature, incidental or complementary to the provision of financial services, subject in most cases to certain investment limitations. A letter form application to create or acquire a subsidiary shall describe the activity, how it relates to the business of banking and finance, and what protections will be in place to deal with any associated risks. An application to create and operate a subsidiary of a bank can be expedited if the requirements of Rule 80-1-1-.10 are satisfied.

(7) Relocation and Simultaneous Redesignation of two or more banking locations.

(a) Definitions:

(i) Relocation. The location of an existing banking location is to be moved to a new or additional location which is to be constructed, purchased or leased within the same immediate vicinity of the existing branch.

(ii) Redesignation. Where two existing bank locations exchange their designations, a redesignation occurs. Under a redesignation, a branch office becomes the main office and the main office, if it is not closed, becomes a branch office.

(b) Procedure for a Relocation. A bank meeting the qualifying criteria for expedited processing in paragraph (1) of Rule 80-1-1-.10 may submit a letter form notification to relocate an existing banking location. The approval to relocate an existing banking location under the notice procedure will be effective at the earlier of: an approval letter from the Department, or 10 business days from the date of

acknowledged receipt. In the event the bank does not qualify for expedited processing, a form application should be submitted to the Department, which will normally be processed within 30 days from receipt of a completed application. All relocations should include a notice to customers posted in a conspicuous place of the affected banking location as well as on the bank's website at least 30 days before relocating. In addition, if any relocation proposal involves relocation of the bank's main office, additional procedures such as amendment of the bank's Articles of Incorporation may apply.

(c) Procedure for a Redesignation. Upon receipt of a letter form request setting forth the details of the proposed redesignation, the Department will review and process such request within seven (7) days. In the event the bank intends on closing the former main office as part of a redesignation, then the closing procedures for a bank location must be followed.

(8) Changes in Capital Structure involving Stock Redemption and Conversions. O.C.G.A. §§ 7-1-414 and 7-1-419 should be consulted. A complete letter form application describing the transaction should be acted upon within 10 business days of receipt.

(9) Letter form applications are required for the following other activities of banks.

(a) Name reservation and permission is treated in O.C.G.A. §§ 7-1-130, 7-1-131, 7-1-242, and 7-1-243. The Department may approve a name for a bank holding company that is not distinguishable on the records of the Secretary of State from the name of a deposit taking financial institution wholly owned by that bank holding company. If such bank holding company subsequently sells the bank with a similar name the bank holding company may retain its name only if the subject bank's name is no longer in use.

(b) Amendment of Articles of Incorporation. Part 13 of Article 2 of Title 7. Required publication shall be made in the official organ of the county where the main office of the institution is located.

(10) A bank that meets the criteria in Rule 80-1-1-.10 and that wishes to invest in shares of stock of a bank engaged in providing banking or other financial services to depository financial institutions, which bank's ownership consists primarily of such depository financial institutions, may do so by filing a notice with the Department fully describing the transaction at least 10 days before such investment is made;

(11) A bank that meets the criteria in Rule 80-1-1-.10 and that wishes to invest in shares of stock of a bank service corporation created to provide support services for one or more financial institutions may take advantage of expedited processing as provided in the Department's Applications Manual.

(12) Opening and closing of a representative office. Prior to opening a representative office, a Georgia state-chartered bank, bank holding company, or subsidiary of a bank or bank

holding company must register the location with the Department by filing a letter form registration with the Department. Prior to closing a representative office, a bank, bank holding company, or subsidiary of a bank or bank holding company must post notice of the closing at such location at least 30 days in advance of the intended closure. The bank, bank holding company, or subsidiary of a bank or bank holding company must also disclose the fact of the closure on its website at least 30 days in advance of the intended closure and such notice shall be posted for at least 30 consecutive days. Within two days of providing the notice, the bank, bank holding company, or subsidiary of bank or bank holding company must forward to the Department a copy of the notice posted at the representative office as well as the disclosure contained on its website to the Department.

Cite as Ga. Comp. R. & Regs. R. 80-1-1-.08
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Other Transactions which Require Approval" adopted. F. July 14, 1998; eff. August 3, 1998.
Amended: F. July 12, 1999; eff. August 1, 1999.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.
Amended: Rule retitled "Procedures for Other Transactions, Expired, Letter Form and Notice Only Applications" adopted. F. Oct. 22, 2001; eff. Nov. 11, 2001.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: F. July 7, 2021; eff. July 27, 2021.
Amended: New title, "Procedures for Other Transactions, Applications and Notices." F. July 7, 2022; eff. July 27, 2022.

Rule 80-1-1-.09. Standards for Consideration of Applications Generally; Applications Manual and Statement of Policies.

(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; 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.

Cite as Ga. Comp. R. & Regs. R. 80-1-1-.09
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Standards for Consideration of Applications Generally; Applications Manual and Statement of Policies; Trust Production Office Criteria" adopted. F. July 14, 1998; eff. August 3, 1998.
Amended: F. July 12, 1999; eff. August 1, 1999.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. June 15, 2015; eff. July 5, 2015.
Amended: New title "Standards for Consideration of Applications Generally; Applications Manual and Statement of Policies." F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: F. July 7, 2021; eff. July 27, 2021.

Rule 80-1-1-.10. Qualifying Criteria for Expedited Processing for Applications by a Financial Institution Other than Charter.

(1) The following criteria, when met and certified to by an applicant financial institution, shall, where permitted, qualify the financial institution to utilize a shorter application and/or an expedited process for approval:

(a) The depository institution must be well capitalized as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator;

(b) The depository institution must have received a CAMELS composite rating of "1" or "2" as a result of the most recent state or federal examination;

(c) The depository institution must have a satisfactory or better Community Reinvestment Act rating from its primary federal regulator at its most recent examination, if the financial institution is subject to the Community Reinvestment Act; and

(d) The depository institution must not be subject to any agreements, orders, prompt corrective action directives or other enforcement or administrative agreements with the Department or its primary federal regulator or other chartering authority.

(2) The Department may deny or remove from expedited processing any institution's application where it finds that:

(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.

In this event, the institution will be notified that expedited processing is not available, the reason, and instructions as to how to proceed.

Cite as Ga. Comp. R. & Regs. R. 80-1-1-.10
Authority: O.C.G.A. §§ 7-1-61, 7-1-79.
History. Original Rule entitled "Qualifying Criteria for Expediting Processing for Bank Applications" adopted. F. July 14, 1998; eff. August 3, 1998.
Amended: Rule retitled "Qualifying Criteria for Expediting Processing for Applications by a Bank (Other than Charter)". F. July 12, 1999; eff. August 1, 1999.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: New title, "Qualifying Criteria for Expedited Processing for Applications by a Financial Institution Other than Charter." F. July 7, 2022; eff. July 27, 2022.

Rule 80-1-1-.11. Acquisition of Voting Control of Large Financial Institutions.

(1) Notice and approval to acquire voting control of a large state chartered financial institution. No person shall (a) acquire voting control of any large financial institution or (b) initiate or actively propose in opposition to the board of directors of the large financial institution any corporate action by a large financial institution, in each case without the prior approval of the Department, pursuant to the notice and approval procedures set forth in Part 10 of Title 7. The person shall provide a certification to the Department, along with a copy of the actual notification to the affected large financial institution, that it has filed an application with the Department under this Section. No application for acquisition of voting control of a large financial institution shall be considered complete until such certification and copy of the required notification are filed and accepted by the Department.

(2) Exceptions.

(a) Any person who acquires voting control of a large financial institution solely for the purpose of investment shall not be subject to the requirement set forth in subsection (1)(a) of this Rule 80-1-1-.11.

(b) Any person who acquired voting control of a large financial institution prior to November 19, 2007, shall not be subject to the requirement set forth in subsection (1)(a) of this Rule 80-1-1-.11, although subsection (1)(a) shall apply to any

subsequent acquisition of voting securities of such large financial institution by such person.

(c) Any person who is (i) registered as an "investment company" under the Investment Company Act of 1940 and (ii) eligible to report its holdings on a Schedule 13G under Rule 13d-1(c) promulgated under the Securities Exchange Act of 1934 shall not be subject to the requirement set forth in subsection (1) of this Rule 80-1-1-.11.

(d) Any person who has voting control of less than one percent of a large financial institution shall not be subject to the requirement set forth in subsection (1)(b) of this Rule 80-1-1-.11.

(3) Definitions.

(a) Acting in concert. For purposes of this Rule 80-1-1-.11, acting in concert may include, without limitation, any of the following:

1. knowing participation in a joint activity or interdependent conscious parallel action towards a common goal whether or not pursuant to an express agreement; or

2. a combination or pooling of voting or other interests in the securities for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangement, whether written or otherwise.

A person or company which acts in concert with another person or company ("other party") shall also be deemed to be acting in concert with any person or company who is also acting in concert with that other party, except that any tax-qualified employee stock benefit plan as defined in 12 CFR 563b.2(a)(39) will not be deemed to be acting in concert with its trustee or a person who serves in a similar capacity solely for the purpose of determining whether stock held by the trustee and stock held by the plan will be aggregated.

(b) Corporate action. For purposes of this Rule 80-1-1-.11, corporate action may include, without limitation, any of the following:

1. an extraordinary corporate transaction, such as a merger, reorganization or liquidation involving a large financial institution or any of its subsidiaries;

2. a sale or transfer of a material amount of assets of a large financial institution or any of its subsidiaries;

3. any change in the present board of directors or management of a large financial institution, including any plan or proposal to change the number or term of directors or to fill any existing vacancies on the board;

4. any material change in the present capitalization or dividend policy of a large financial institution;

5. any other material change to a large financial institution's business or corporate structure;

6. changes in a large financial institution's charter, bylaws or other instruments or other actions which may impede or facilitate the acquisition of control of a large financial institution by any person;

7. causing a class of securities of a large financial institution to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association;

8. a class of equity securities of a large financial institution becoming eligible for termination of registration pursuant to Section 12(g)(4) of the Securities Act of 1933; and

9. any action similar to any of those enumerated above.

(c) Large financial institution. A state-chartered financial institution or bank holding company having consolidated assets in excess of $ 5 billion in the aggregate, as determined as of the end of the most recent fiscal quarter of the financial institution or bank holding company, as applicable, and set forth in its most recent quarter end financial statements filed pursuant to the Securities Exchange Act of 1934.

(d) Person. An individual or a corporation, partnership, limited liability company, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed in this paragraph.

(e) Solely for the purpose of investment. Held by the acquirer with no intention of participating in the formulation, determination or direction of the basic business decisions of the financial institution. Any person holding shares of a financial institution in a fiduciary capacity shall be deemed to hold such shares solely for the purpose of investment unless such person is acting in concert with a person other than its beneficiary. Any person exercising voting control in connection with a proposal of corporate action shall not be deemed to have acquired voting control solely for the purpose of investment intent.

(f) Voting control. The power of any person, acting directly or indirectly or acting in concert with one or more persons, to exercise the voting rights of five percent or more of any class of voting securities whether or not such voting rights are exercised by the shareholder with the rights to dispose of the shares giving rise to such voting rights. A person shall be deemed to have the power to vote securities that it has the right to acquire in the future.

Cite as Ga. Comp. R. & Regs. R. 80-1-1-.11
Authority: Authority O.C.G.A. Sec. 7-1-61.
History. Original Rule entitled "Acquisition of Voting Control of Large Financial Institutions" adopted. F. Nov. 20, 2007; eff. Dec. 10, 2007.

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

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

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

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

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

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

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

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

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

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

(3) If the Department determines that the notice is incomplete, then the Department shall provide the bank with notice of this fact. The bank must cure any deficiencies in the notice or provide any information requested by the Department within thirty (30) days after receipt of such notification from the Department. If the bank fails to address and/or cure the deficiencies or provide the requested information to the Department within the

thirty (30) day period, the notice shall be deemed withdrawn. However, prior to the expiration of the thirty (30) day period, a bank can make a written request for an extension of time to cure the deficiencies or provide the information requested by the Department and it shall be in the Commissioner's sole discretion to approve, conditionally or otherwise, or deny the request for an extension of time. Further, the Department may provide a bank with multiple notifications of deficiencies with the notice or multiple requests for additional information.

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

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

Cite as Ga. Comp. R. & Regs. R. 80-1-1-.12
Authority: O.C.G.A. §§ 7-1-61; 7-1-296.
History. Original Rule entitled "Notification of Intent to Utilize a Federal Power" adopted. F. June 27, 2018; eff. July 17, 2018.

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

At least thirty (30) days prior to conducting a savings promotion raffle under O.C.G.A. § 7-1-239.10, a bank must provide the Department with written notice detailing the proposed savings promotion raffle. Such notice shall, at a minimum, contain the following information:

(a) A detailed description of the terms of the proposed savings promotion raffle including, but not limited to, the type of account that will be utilized to offer the savings promotion raffle, the interest rate to be paid on the account, the fees associated with the account, the fees associated with the most substantially similar account to the savings promotion raffle account offered by the bank, the amount required to be deposited in the account for a customer to be entered in the raffle and any limitations on the number of entries per customer, the frequency of drawings, and available prizes;

(b) Bank's policies and procedures related to the proposed savings promotion raffle;

(c) Sample of all disclosures provided to customers opening a savings promotion raffle account in accordance with O.C.G.A. § 7-1-239.10(c)(1);

(d) Identity and contact information of all third-party service providers, if any, who are contracted to manage or provide administrative support related to conducting the proposed savings promotion raffle; and

(e) If the savings promotion raffle is conducted in whole or in part by a third-party service provider, a document from the third-party service provider identifying the number and location of all other financial institutions whose customers and members are eligible to participate in the savings promotion raffle.

(2) A bank's directors, officers, employees, and the members of such persons' immediate family, as defined by O.C.G.A. § 20-2-58.1, are prohibited from participating in a savings promotion raffle conducted by that bank. A bank's directors and officers are prohibited from participating in a savings promotion raffle at any financial institution if the savings promotion raffle is administered by the same third-party service provider that administers the savings promotion raffle at the bank.

Cite as Ga. Comp. R. & Regs. R. 80-1-1-.13
Authority: O.C.G.A. §§ 7-1-61; 7-1-239.10.
History. Original Rule entitled "Savings Promotion Raffle" adopted. F. July 9, 2019; eff. July 29, 2019.

Subject 80-1-2. AGENCY RELATIONSHIPS OF FINANCIAL INSTITUTIONS; BANK SERVICE CONTRACTS.

Rule 80-1-2-.01. General Provisions and Definitions.

(1) A state financial institution may contract with another financial institution to provide certain services in a principal-agent relationship, provided both parties comply with the rules of the Department.

(2) Agency relationships shall comport with safety and soundness principles to protect the financial integrity of each financial institution and the accounts of its customers.

(3) Definitions:

(a) The term "agency relationship" shall be as defined in O.C.G.A. § 7-1-4(1.5).

(b) An "affiliated bank" or "affiliate" shall be as defined in O.C.G.A. § 7-1-4(1).

(c) "Bank Service Contract" shall mean a contract executed by a bank and a third party, to provide direct or indirect bank services to the bank.

(d) "Department" shall be the Department of Banking and Finance of the State of Georgia.

(e) "Direct Bank Services" shall include traditional banking functions such as taking deposits, paying checks and closing loans.

(f) "Financial institution" shall, for the purposes of this chapter, be a state bank or a national bank, a credit union, a trust company, a savings and loan association or savings bank, wherever located, and may be collectively referred to in this chapter as "bank."

(g) "Georgia Bank" shall be a financial institution organized under the laws of this state, owned by a holding company registered with the Department as a holding company, or, organized under federal law with its home state in Georgia.

(h) "Indirect Bank Services" are those back office, support or enhancement type operations potentially provided by third parties, including but not limited to check and deposit sorting and posting; electronic and video systems for recording bank functions; computation and posting of interest and other credits and charges; preparation and marking of checks, statements, notices and similar items, bill payment and other services requested by customers which are provided by the bank through a third party; loan servicing; or other clerical, bookkeeping, accounting, statistical, customer support or similar functions which may be performed by a bank, whether performed on site or elsewhere, and regardless of the method of delivery.

(i) "Third party" shall mean any provider of services to a bank.

(j) "Unaffiliated Bank" shall mean any Georgia bank which is not an affiliate.

(4) This chapter is not intended to apply to non-banking related operational or administrative functions which do not tend to impact the safety and soundness of the bank or the accessibility to the Department of its records.

Cite as Ga. Comp. R. & Regs. R. 80-1-2-.01
Authority: O.C.G.A. §§ 7-1-4(1.5), 7-1-61, 7-1-261.
History. Original Rule entitled "Bank Service Arrangement with Bank Service Corporation or Others" adopted. F. and eff. June 30, 1965.
Repealed: New Rule entitled "General Provisions and Definitions" adopted. F. June 9, 1972; eff. June 29, 1972.
Amended: F. Aug. 28, 1975; eff. Sept. 17, 1975.
Repealed: New Rule of same title adopted. F. Nov. 7, 1995; eff. Nov. 27, 1995.
Amended: F. July 12, 1999; eff. August 1, 1999.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.
Amended: F. July 28, 2003; eff. August 17, 2003.
Amended: F. June 20, 2016; eff. July 10, 2016.

Rule 80-1-2-.02. Direct Bank Services Subject to Agency Regulation.

(1) A Georgia bank may, upon compliance with this chapter and applicable law, agree by contract to act as principal or agent with an affiliated bank to receive deposits, renew time deposits, close loans, service loans, receive payments on loans and other obligations, and perform such other direct bank services as may receive the prior approval of the Department.

(2) Notwithstanding any other provision of law in this state, if a Georgia bank complies with Code Section 7-1-261 and this chapter, the agent financial institution shall not be considered a branch office of the principal, regardless of location. The following conditions must continuously exist throughout the term of the agency relationship:

(a) The provision of services is conducted as an accommodation and does not constitute a significant portion of the business of the agent financial institution;

(b) The Department concludes that each participating financial institution has separate and independent management and separate and independent boards of directors;

(c) The services are provided by employees of the agent financial institution and not by employees of the financial institution at which the customer maintains a deposit account; and

(d) Decisions regarding the operations of the agent facilities, such as staffing hours, locations and fees will generally be driven by the business interests of the agent in serving its own customers and not those of the principal.

(e) The agent bank must at all times provide sufficient information and explanation in such forms as customer transaction receipts, signage and other similar items to customers utilizing agency services to clearly distinguish which bank their account is held with and which bank is providing the agency services.

Cite as Ga. Comp. R. & Regs. R. 80-1-2-.02
Authority: O.C.G.A. Secs. 7-1-4(1.5), 7-1-61, 7-1-261.
History. Original Rule entitled "Application for Permission to Perform Bank Services" adopted. F. June 9, 1972; eff. June 29, 1972.
Amended: F. Aug. 28, 1975; eff. Sept. 17, 1975.
Amended: F. July 13, 1981; eff. August 2, 1981.
Repealed: New Rule entitled "Direct Bank Services Subject to Agency Regulation" adopted. F. Nov. 7, 1995; eff. Nov. 27, 1995.
Amended: F. July 12, 1999; eff. August 1, 1999.
Amended: F. July 28, 2003; eff. August 17, 2003.

Rule 80-1-2-.03. Application to Conduct Agency Relationship.

(1) A Georgia bank wishing to act as principal or agent for the provision of direct bank services shall apply by letter to the Department for permission, and shall pay any applicable fee. The application shall include:

(a) Notice of intention to engage in an agency relationship and the desired effective date;

(b) A description of the services proposed to be performed and at what locations;

(c) A copy of the agreement; and

(d) Relationship of principal to agent and proof of affiliation if applicable.

(2) The agreement or contract must provide in clear and conspicuous form:

(a) All of the fees to be charged for services rendered;

(b) A full description of the services;

(c) The actual physical or technological operations contemplated in reasonable detail including provisions for confidentiality and security;

(d) A procedure for resolution of customer problems with lost items or inaccuracies;

(e) Provisions for responsibility for risk of loss of items in transit or in process;

(f) A procedure for compliance with depository, privacy, funds availability and other applicable law by specific reference in reasonable detail;

(g) Methods for accounting and record keeping of items received and disbursed by agent bank; and

(h) Procedures for disclosure to customers of their rights and responsibilities under this arrangement.

Cite as Ga. Comp. R. & Regs. R. 80-1-2-.03
Authority: O.C.G.A. Secs. 7-1-4(1.5), 7-1-61, 7-1-261.
History. Original Rule entitled "Contracting to Perform or Have Performed Bank Services" adopted. F. June 9, 1972; eff. June 29, 1972.
Amended: F. Aug. 28, 1975; eff. Sept. 17, 1975.
Amended: F. July 13, 1981; eff. August 2, 1981.
Repealed: New Rule entitled "Application to Conduct Agency Relationship" adopted. F. Nov. 7, 1995; eff. Nov. 27, 1995.
Amended: F. July 28, 2003; eff. August 17, 2003.

Rule 80-1-2-.04. Review by Department of Agency Agreement.

(1) The application to the Department must be provided to it not less than thirty (30) days prior to the desired effective date of the agreement and commencement of the agency relationship.

(2) The Department shall decide whether to approve the offering of such services in the form proposed within thirty (30) days after receipt of the complete application. If the Department requests further information or amendment, the time limit shall be extended for thirty (30) days after receipt of the additional information.

(3) The decision as to whether to approve the services proposed or not, shall be based upon a consideration of applicable federal and state law and the safety and soundness of the institutions involved.

(4) A financial institution may not as agent, or as principal have its agent, conduct an activity that it would be prohibited from conducting as principal under applicable state or federal law.

(5) The Department shall employ its statutory powers to order a state institution to cease acting as principal or agent under an agency agreement if it finds that the activities are inconsistent with safe and sound banking practices.

Cite as Ga. Comp. R. & Regs. R. 80-1-2-.04
Authority: O.C.G.A. Secs. 7-1-4(1.5), 7-1-61, 7-1-261.
History. Original Rule entitled "Review by Department of Agency Agreement" adopted. F. Nov. 7, 1995; eff. Nov. 27, 1995.

Rule 80-1-2-.05. Bank and Credit Union Service Contracts: Requirements of Providers.

(1) Each entity that provides indirect or direct bank or financial services to a state financial institution subjects that person to examination and regulation by the department as if the person were a state financial institution, as authorized by Code Section 7-1-72.

(2) In the event that a third party has been examined by a federal agency that is a member of the Federal Financial Institutions Examination Council ("FFIEC"), or any successor entity, in the previous twenty-four (24) months and the department is provided a copy of the examination, the department shall accept the results of such examination in lieu of conducting its own examination. However, nothing contained herein, shall be construed as limiting or otherwise restricting the department from participating in such examination.

Cite as Ga. Comp. R. & Regs. R. 80-1-2-.05
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Bank Service Contracts" adopted. F. Nov. 7, 1995; eff. Nov. 27, 1995.
Amended: Rule retitled "Bank and Credit Union Service Contracts: Requirements of Providers". F. July 28, 2003; eff. August 17, 2003.
Amended: F. June 29, 2017; eff. July 19, 2017.

Rule 80-1-2-.06. Contracts for Direct or Indirect Bank Services.

(1) A state chartered bank that wishes to contract with a third party to provide bank services shall within 30 days of execution of such a contract, notify the department in writing or provide to the department a copy of the notification to its federal regulator. Compliant notification and recordkeeping shall constitute approval from the department to contract with a third party. Such third party must comply with any state or federal licensing requirements if applicable.

(2) A state chartered bank contracting with a third party to provide bank services must maintain the following information on file at the bank and shall not execute a contract with a third party unless this information has been obtained.

(a) A copy of the contract under which the services are provided;

(b) A schedule of fees to be charged for each type of service to be performed;

(c) Written assurance from the third party service provider that:

1. The records of the bank for which the services are to be performed will be subject to examination and regulation by the department as if the records were maintained by the bank on its own premises,

2. The records of the bank in the service provider's possession shall be available to examiners promptly upon receipt of notice; and

3. The department shall have the authority to periodically review the internal routine and controls of the servicers to ascertain that the operations are being conducted in a sound manner in keeping with generally accepted banking procedures and requirements;

(d) A listing of all reports, and printouts which the service provider is offering the bank and the time required, after receipt of notice of examination, to provide those reports or information in readable form to the examiners;

(e) Evidence of financial stability, to include a copy of the service provider's most recent audit and financial statement, both of which should be aged no more than 18 months; and

(f) Biographical information on key officers may be desirable where a provider is not a publicly traded company.

(3) A state chartered bank contracting with a third party provider must employ good faith efforts to monitor the financial condition of the service provider and must notify the department immediately when it discovers or suspects that the servicer has experienced a net operating loss or is insolvent.

(4) For the purposes of this regulation,"net operating loss" shall mean that all operating income is less than the total of:

(a) All operating expenses, and

(b) Other expenses, losses on sale of assets or investments, and any provisions established for losses on investments, loans or other assets.

Cite as Ga. Comp. R. & Regs. R. 80-1-2-.06
Authority: O.C.G.A. Sec. 7-1-61.
History. Original Rule entitled "Application for Permission to Perform Indirect Bank Services" adopted. F. Nov. 7, 1995; eff. Nov. 27, 1995.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.
Amended: Rule retitled "Contracts for Direct or Indirect Bank Services". F. July 28, 2003; eff. August 17, 2003.

Rule 80-1-2-.07. Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-1-2-.07
Authority: O.C.G.A. Sec. 7-1-61.
History. Original Rule entitled "Contracting to Perform or Have Performed Indirect Bank Services" adopted. F. Nov. 7, 1995; eff. Nov. 27, 1995.
Repealed. Rule reserved. F. July 28, 2003; eff. August 17, 2003.

Rule 80-1-2-.08. Severability.

If any provision of this chapter or the application of it to any bank, third party or circumstance is held invalid, such invalidity shall not affect the provisions or applications of the rules herein which can be given effect without the invalid portion. To that end, the provisions of this rule are declared to be severable.

Cite as Ga. Comp. R. & Regs. R. 80-1-2-.08
Authority: O.C.G.A. Sec. 7-1-61.
History. Original Rule entitled "Severability" adopted. F. Nov. 7, 1995; eff. Nov. 27, 1995.

Rule 80-1-2-.09. Debt Cancellation Contracts and Debt Suspension Agreements.

(1) State chartered banks may offer Debt Cancellation Contracts and Debt Suspension Agreements to customers, subject to this rule and policies and procedures of the Department. Policies of the Department include requirements for disclosures and certain prohibited practices. Banks are expected to comply with all these requirements. Such products will not be considered insurance products in this state when offered by banks.

(2) Definitions and Explanation:

(a) A "Debt Cancellation Contract" (DCC) is a contractual agreement modifying loan terms that is linked to a bank's extension of credit, under which the bank agrees to cancel all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event.

(b) A "Debt Suspension Agreement" (DSA) is a contractual agreement that modifies loan terms and that is linked to an extension of credit, wherein the bank agrees to suspend all or part of a customer's obligation to repay an extension of credit upon the occurrence of some specified event.

(c) Typically these products are tied to the life, injury or disability of the borrower, although some products are based on the occurrence of some other specified event, such as termination of employment.

(d) Fees are assessed to the borrower for the ability to cancel or suspend loan payments on the loan, in accordance with the terms of the agreement.

(e) To "underwrite" in the context of this rule means to directly provide for any losses resulting from the operation of the product.

(3) State chartered banks desiring to offer DCC or DSA products where the bank is not underwriting the product shall provide a letter form notification to the Department. The bank must keep on file the following information, which must be obtained before execution of a contract:

(a) A listing of the types of contracts offered and the underwriting standards for each product;

(b) A copy of the written policies and procedures developed regarding administration of debt cancellation or debt suspension products and their compliance with Department policies;

(c) Identification of any vendor or third party service provider used in conjunction with the product offerings, including a list of the products and services being provided (see also Rule 80-1-2-.06 for contracting with third parties);

(d) A copy of the bank's plan demonstrating the ability to administer claims;

(e) An analysis of the bank's risk evaluation and mitigation procedures, including any plans to obtain insurance coverage to fully or partially indemnify itself for losses resulting from the operation of the DCC or DSA product; and

(f) An analysis of the expected impact on bank staffing.

(4) If a bank intends to underwrite any part of the DCC or DSA, the following information must also be submitted to the Department in the form of a letter application. No underwriting will be permitted until such approval is granted.

(a) Analysis of management expertise, based on education and experience, in the areas of product design, underwriting, actuarial analysis, claims processing and risk reserving and accounting practices to support the ability to provide these functions in-house.

(b) An explanation of the risk management techniques the bank will undertake, including product design criteria, underwriting procedures, limitations and conditions on DCC or DSA products, and other risk mitigation procedures in order to limit risk exposure to the bank.

(c) A well-documented analysis of risk of the products being proposed, including the risks posed by catastrophic events that could result in unusually high claims upon the bank.

(d) An outline of the proposed practices for properly reserving for risks related to these products based on industry practices and Generally Accepted Accounting Principles.

(e) An analysis of the bank to support that the bank has the proper financial position, cash flow performance and capital position to sustain continued operations in the event of an unusually high claims event.

(5) State chartered banks desiring to offer DCC or DSA products where third party service providers will underwrite the products or will administer any part of the program shall provide the letter form notification described in this rule. In addition to any requirements of Rule Chapter 80-1-2 governing service providers, the following information shall also be obtained by the bank before any contract is executed, and such information will be kept on file at the bank:

(a) A description of the experience of the third party service provider in offering such DCC or DSA products;

(b) An analysis of the financial stability of the third party service provider, including but not limited to: operating or cash flow statements, analysis of capital and reserves and the use of external company ratings performed by a nationally recognized rating service;

(c) In lieu of (a) and (b) of this paragraph, the bank may provide proof of the third party's appropriate licensure with the state of Georgia Department of Insurance.

(d) A copy of the standard form contract to be utilized. The contract must contain the third party service provider's assurance that:

1. It will make its books and records available for examination by the Department; and

2. The Department shall have the authority to periodically review the internal routine and controls of the service provider to ascertain that the operations are being conducted in a sound manner in keeping with industry practices and Generally Accepted Accounting Principles.

(e) A schedule of fees to be charged for each product or service performed; and

(f) A listing of reports, printouts, schedules or program that will be provided by the third party service provider to the bank to permit management, auditors, examiners and other interested parties to monitor the services provided.

Cite as Ga. Comp. R. & Regs. R. 80-1-2-.09
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Debt Cancellation Contracts and Debt Suspension Agreements" adopted. F. July 28, 2003; eff. August 17, 2003.
Amended: F. July 7, 2022; eff. July 27, 2022.

Subject 80-1-3. BOOKS AND RECORDS.

Rule 80-1-3-.01. Minimum Requirements for Books and Records.

(1) Each bank must maintain for each business day a Daily Statement properly supported by a General Ledger showing daily activity to each asset, liability, and capital account. A "business day" shall be any day during which the main office of the bank shall be open for the purpose of conducting both a paying and receiving and a lending business; provided, however, a bank may defer business conducted on Saturday until the next business day. There shall be no fewer than five "business days" in each calendar week less any legal holidays actually observed during such week and less any Saturday for which business is properly deferred. The following subsidiary ledgers must be maintained and must be balanced to the controlling amount in the General Ledger at least monthly:

(a) Investment Register - containing a record of all stocks, bonds, certificates of deposit, and other fixed maturity investments purchased showing date of transaction, proper name of the investment, interest rate, maturity date, par value, purchase price, schedule of amortization of premium or accretion of discount taken, book value, pledge status, safekeeping location, and income receipt.

(b) Liability Ledger - containing separate listings for the direct and indirect liabilities or obligations of each of the bank's borrowing customers, excluding liabilities for

overdrafts, cash items, and loans repayable in regular installments due more frequently than quarterly.

(c) Installment Loan Ledger - although part of the liability ledger, a bank may elect to maintain installment loans separately from other direct loans of a borrower and not include them on the Liability Ledger above. In this event, they may be maintained in a separate ledger with payments being posted manually or electronically. The notes or payment record may be maintained in any order, e.g. alphabetical, numerical, class of loans desired by management, except that where they are not maintained alphabetically, an alphabetical cross-reference file must be maintained summarizing the notes of each borrower.

(d) Cash Items Register - a listing daily of all cash items held by a bank must be maintained which shows the maker of the item, last endorser, if any, date acquired by the bank, amount of the item, and reason held. The register may be maintained on a decentralized basis at each of the bank's operating offices. The current register shall be reviewed by the Board of Directors at least monthly. For purposes of this Rule, Cash Items shall include any item received by a bank and paid but for which reimbursement by the maker or endorser is not made before the end of the next business day following the date in which the item is received, except such items as are customarily held by the bank for settlement with its customer, whether maker or endorser on the item, not less frequently than weekly. Where the item is held beyond the regular settlement date, it shall be considered as a Cash Item within the definition of this Rule. In addition to the foregoing, Cash Items and the register thereof shall include such other items as the Board of Directors shall from time to time determine.

(e) Deposit Ledgers - separate deposit ledgers must be maintained for each General Ledger segregation of deposits and each ledger must contain a continuing itemized record of all deposits and withdrawals. Deposits will be segregated into no fewer than the following categories: Demand Deposits, Savings Deposits, Overdrawn Accounts, Open Accounts, Certificates of Deposit, Official Checks. In lieu of the requirement for a register of outstanding Certificates of Deposit and Official Checks, copies of the outstanding obligations may be maintained in numerical order.

(f) Income and Expense Registers - a detailed record of Income and Expenses must be maintained.

(g) Overdrafts - a record of all overdrawn deposit accounts shall be maintained. Such record shall contain the name of the account holder, the amount of the overdraft, and date the overdraft originated. The most current record shall be approved by the Board of Directors or Loan Committee at least monthly, and such approval shall be recorded in the minutes of the meeting at which the action was taken.

Overdrafts of less than $1,000, other than overdrafts on the accounts of officers and directors, may be aggregated and reported in lump sum.

(h) Charged Off Assets - all charge-offs must be approved by the Loan Committee, in the case of loans, or Board of Directors and such approval recorded in the minute book. A record of all charge-offs and recoveries thereon must be maintained.

(i) A register must be maintained of all items held for safekeeping by a bank for its customers other than items maintained in a safe deposit box under the sole control of the customer. The register should describe the item fully, show the name of the owner, date received, and number of receipts given.

(j) Each bank shall maintain a reconcilement book on each of its correspondent bank accounts with other banks, and reconcilements of each account shall be made at least monthly and recorded in the reconcilement book.

(2) Where a bank has a statutory capital base of $5,000,000 or more, review by the Board of Directors as required in paragraphs (1)(d), (1)(g), and (1)(h) above may be delegated to a specific officer or department of the bank, where such delegation is recorded in the minutes of the Board of Directors. A properly constituted Loan Committee may perform this function for the full Board of Directors regardless of the size of the bank.

Cite as Ga. Comp. R. & Regs. R. 80-1-3-.01
Authority: Ga. L. 1974, pp. 733, 849; Ga. L. 1983, Act No. 255, effective March 16, 1983.
History. Original Rule entitled "Books and Records" was filed and effective on June 30, 1965.
Amended: Rule repealed and a new Rule entitled "Minimum Requirements for Books and Records" adopted. Filed April 11, 1973; effective May 1, 1973.
Amended: Filed August 28, 1975; effective September 17, 1975.
Amended: Filed July 13, 1981; effective August 2, 1981.
Amended: Filed August 17, 1983: effective September 6, 1983.
Amended: Filed June 28, 1984; effective August 1, 1984, as specified by the Agency.
Amended: F. Aug. 26, 1997; eff. Sept. 15, 1997.
Amended: F. June 29, 2017; eff. July 19, 2017.

Rule 80-1-3-.02. Minimum Records Retention Periods.

Retention of records by state chartered banks shall be in accordance with the provisions of Regulation 80-10-1.

Cite as Ga. Comp. R. & Regs. R. 80-1-3-.02
Authority: Ga. L. 1974, pp. 733, 849.
History. Original Rule entitled "Minimum Records Retention Periods" was filed on April 11, 1973; effective May 1, 1973.
Amended: Filed August 28, 1975; effective September 17, 1975.
Amended: Filed July 13, 1981; effective August 2, 1981.
Repealed: New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.

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

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

Cite as Ga. Comp. R. & Regs. R. 80-1-3-.03
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Notice of Unauthorized Access to Customer Information" adopted. F. July 9, 2019; eff. July 29, 2019.

Rule 80-1-3-.04. Notification of Computer Security Incident.

Pursuant to 12 C.F.R. Part 304 and 12 CFR Part 225 banks and bank holding companies are required to notify the appropriate federal regulator no later than 36 hours after the financial institution determinates that a computer security incident, which rises to the level of a notification incident, has occurred. A computer security incident is an occurrence that results in actual harm to the confidentiality, integrity, or availability of an information system or the information that the system processes, stores, or transmits. If notification of a computer security incident is required to be provided under federal law, then a duplicate of such notification will simultaneously be submitted to the Department.

Cite as Ga. Comp. R. & Regs. R. 80-1-3-.04
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Applicability of Regulation to National Banks and Others" was filed on April 11, 1973; effective May 1, 1973.
Amended: Filed August 28, 1975: effective September 17, 1975.
Amended: Rule repealed and a new Rule of the same title adopted. Filed July 13, 1981; effective August 2, 1981.
Repealed: F. Oct. 12, 1989; eff. Nov. 1, 1989.
Adopted: New Rule entitled "Notification of Computer Security Incident." F. July 7, 2022; eff. July 27, 2022.

Rule 80-1-3-.05. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-1-3-.05
Authority: Ga. L. 1983, Act No . 255, effective March 16, 1983.
History. Original Rule entitled "Reimbursement for Cost of Production of Records" was filed on August 17, 1983; effective September 6, 1983.
Repealed: F. Oct. 12, 1989; eff. Nov. 1, 1989.

Subject 80-1-4. INVESTMENT SECURITIES.

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

Subject to such further restrictions and approvals as its board of directors may set forth in its investment policy, a bank may purchase, sell, and hold securities, as set forth in the following:

(1) Debt Obligations.

(a) Obligations of the United States Government or Agencies of the United States Government.

The following may be held without limitation:

1. Securities issued by the United States government or an agency of the United States government;

2. Securities guaranteed as to principal and interest by the United States government or an agency of the United States government;

3. Securities issued under the U.S. Treasury's Separate Trading of Registered Interest and Principal (STRIP's) program, which are offered in book entry form and which are direct obligations of the U.S. Government, as authorized by Subtitle III, Chapter 31 of Title 31 U.S.C.; and

4. Securities which are pre-refunded, with the redemption proceeds invested in securities issued by the United States Government or an Agency of the United States Government.

(b) Obligations of a State or Territorial Government of the United States or Agencies of State or Territorial Governments.

The following may be held without limitation:

1. General obligations of any state or territorial government of the United States or any agency of such governments;

2. Securities guaranteed as to principal and interest by such state or territorial governments or any agency thereof; and

3. Securities which are pre-refunded, with the redemption proceeds invested in securities issued by state or territorial governments or agencies thereof.

(c) Obligations of other Political Subdivisions.

1. The general obligations of a single obligor domiciled within the United States which is authorized to levy taxes may be held in an amount up to

twenty-five (25) percent of a bank's statutory capital base. This percentage limitation shall not apply where the statutory capital base is at least $10,000,000.

2. Securities which are secured by a pledge or assignment of tax receipts sufficient to pay the principal and interest of such securities as they become due may be held in an amount up to twenty-five (25) percent of the bank's statutory capital base. This percentage limitation shall not apply where the statutory capital base is at least $10,000,000.

3. Revenue obligations of a political subdivision authorized to establish utility fees, public transportation usage fees or public use fees where such levies or fees are pledged to and are sufficient to pay the principal and interest of the securities as they become due may be held in an amount up to twenty-five (25) percent of a bank's statutory capital base. This percentage limitation shall not apply where the statutory capital base is at least $10,000,000.

4. In those instances where the repayment of revenue obligations is dependent upon rentals or other fees payable to a political subdivision by a non-governmental unit, such as in the case of industrial revenue bonds, the obligor shall be deemed to be the non-governmental unit responsible for the payment of such rentals or other fees and any guarantor of such payments. Investment in such securities is limited to fifteen (15) percent of the bank's statutory capital base.

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

(d) Corporate Debt Securities.

Corporate debt securities may be purchased which are:

1. Rated in the four highest rating categories by a nationally recognized rating service;

2. Readily salable in an established market with reasonable promptness at a price which corresponds to its fair value;

3. Denominated in U.S. dollars; and

4. With respect to banks having a statutory capital of less than $20,000,000, such securities must mature within 15 years.

A bank's investment in corporate debt securities is limited to fifteen (15) percent of the bank's statutory capital base per obligor. A bank's aggregate investment in corporate debt securities shall not exceed one hundred (100) percent of the bank's statutory capital base.

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

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

1. Are taken in conformity with the bank's lending policies;

2. Are included in determining the outstanding credit for purposes of ascertaining compliance with the bank's secured and unsecured loan limitations in O.C.G.A. § 7-1-285; and

3. With respect only to banks having a statutory capital base of less than $20,000,000, mature within 15 years, and are treated by the bank in all other respects as loans.

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

(2) Equity Securities.

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

(3) Investment Funds.

A state chartered bank may invest up to fifteen (15) percent of its statutory capital base in securities of, or other interests in, any open-end or closed-end management type investment fund or investment trust which is registered under the Investment Company Act of 1940, subject to the following additional conditions.

(a) The investment portfolio of such investment fund or investment trust shall be limited to those securities in which banks or trust companies are permitted to invest directly under this rule and Title 7 of the Official Code of Georgia; and

(b) The investment fund or trust shall not:

1. Except to the extent authorized in subparagraph (1)(a)3. of this rule, acquire or hold investments in the form of stripped or detached interest obligations;

2. Engage in the purchase or sale of interest rate futures contracts;

3. Purchase securities on margin, make short sales of securities or maintain a short position; or

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

(c) On an aggregate basis, investments in such funds or trusts shall not exceed:

1. Thirty (30) percent of the bank's statutory capital base per fund/trust family or sponsor; and

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

(d) An aggregate limitation of one hundred twenty (120) percent of the bank's statutory capital base shall be allowed for all funds combined if the funds or trusts:

1. Are managed so as to maintain the fund or trust shares at a constant net asset value;

2. Are no-load; and

3. Are rated in the highest rating category by a nationally recognized rating service.

(4) Asset-Backed Securities.

A bank may purchase asset-backed securities repayable in both interest and principal which are issued under any of the following:

(a) Governmentally sponsored programs which are fully collateralized by obligations fully guaranteed as to principal and interest by a governmental entity to the same extent as direct obligations of the governmental entity which is the guarantor;

(b) Private programs which are fully collateralized by obligations fully guaranteed as to principal and interest by a governmental entity to the same extent as direct obligations of the governmental entity which is the guarantor; or

(c) Other private programs in amounts which do not exceed twenty-five (25) percent of the bank's statutory capital base for each issuer, provided the issue:

1. Is in registered form;

2. Is collateralized by assets which could be owned directly by the bank and the investing bank has analyzed and understands the underlying collateral characteristics of the investment; and

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

(d) Aggregate investment in private program issues by all issuers shall not exceed fifty (50) percent of the bank's statutory capital base unless approved by the Department.

(e) Before the purchase of any asset-backed securities, the investing bank shall perform a due diligence suitability analysis to determine whether the asset-backed securities are suitable for purchase relative to the bank's asset liability position, sensitivity to market risk, and its liquidity exposure. Further, before the purchase of any asset-backed securities under subsection (c), the investing bank shall include in the due diligence suitability analysis an evaluation of whether the asset-backed securities are suitable for purchase relative to the bank's tolerance for credit risk. A periodic update of the suitability analysis shall be performed by the bank at least as frequently as annually during the term of the investment. The initial and subsequent documentation of the suitability analysis shall be in written form and maintained in the bank's files.

(5) Interest-Only ("IO") Securities.

(a) Nothing contained herein shall permit the purchase of investments in the form of stripped or detached IO obligations. An exception to this rule is that securities issued under the U.S. Treasury's Separate Trading of Registered Interest and Principal (STRIP's) program, which are offered in book entry form and which are direct obligations of the U.S. Government, as authorized by Subtitle III, Chapter 31 of Title 31 USC, may be purchased without limitation.

(b) Purchasing or trading any other type of IO securities may receive prior written approval from the Department for institutions demonstrating technical expertise and policies sufficient to promote safe and sound use of such investments as part of prudent investment strategies.

(6) Futures, Forwards, Option Contracts and Interest Rate Swaps.

Futures, forwards, option contracts, interest rate swaps, and direct and indirect investments associated with any security which otherwise constitutes a permissible investment under provisions of this rule may be approved in writing by the Department for banks demonstrating technical expertise and policies sufficient to promote safe and sound use of such investments as part of prudent investment strategies.

(7) Trust Preferred Securities.

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

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

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

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

(d) The securities shall be of investment quality or the credit equivalent of investment quality. Credit equivalency shall be determined by the methods in subparagraph

(e) of this rule. Investment quality means that a rating in one of the four highest categories has been assigned to the securities by a nationally recognized rating service and, as such, are not predominantly speculative in nature;

(e) Before the purchase of any trust preferred securities, the investing bank shall perform a due diligence suitability analysis to determine whether the trust preferred securities are suitable for purchase relative to the bank's tolerance for credit risk, asset liability position, sensitivity to market risk, and its liquidity exposure. Such analysis shall include, at a minimum, the following:

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

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

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

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

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

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

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

(h) The bank shall notify the Department in writing of any investment in trust preferred securities where the issuer is not a bank or bank holding company as defined in O.C.G.A. § 7-1-605.

(8) Tier 2 Subordinated Debt Securities.

Tier 2 subordinated debt securities are subordinated notes issued by banks or bank holding companies, as defined in O.C.G.A. § 7-1-605, intended to qualify as Tier 2 capital under federal regulatory capital guidelines. The subordinated debt securities may or may not be rated, but in any event must be scrutinized under the suitability analysis in this rule as if they were a loan being underwritten by the purchasing bank. Tier 2 subordinated debt securities are authorized investments for a state bank subject to the

terms and conditions contained in this paragraph. The permissibility of such investment may be determined pursuant to this paragraph or pursuant to any other paragraph or paragraphs of this rule to the extent the terms of such investment conform to such other paragraph or paragraphs.

(a) The bank's investment in each corporate issuer of Tier 2 subordinated debt securities shall not exceed fifteen (15) percent of the bank's statutory capital base. For purposes of determining compliance with this requirement, investments in Tier 2 subordinated debt securities issued by a bank shall be aggregated with securities issued by such bank's holding company.

(b) The bank's aggregate investment in Tier 2 subordinated debt securities shall not exceed the bank's policy limits or one hundred (100) percent of the bank's statutory capital base, whichever is less. For purposes of determining compliance, this aggregation requirement applies to all subordinated debt investments, whether purchased pursuant to this paragraph or any other paragraph of this rule.

(c) The issuance of the Tier 2 subordinated debt securities shall be registered under the Securities Act of 1933, as amended, shall be eligible for resale pursuant to Securities and Exchange Commission Rule 144A, or the securities shall be capable of being sold with reasonable promptness at a price which corresponds to their fair value as determined by the bank following due diligence. In the alternative, the issuance can satisfy the suitability analysis test as provided in subsection (e) of this rule.

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

(e) Before the purchase of any Tier 2 subordinated debt securities, the investing bank shall perform a due diligence suitability analysis to determine whether the Tier 2 subordinated debt securities are suitable for purchase relative to the bank's tolerance for credit risk, asset liability position, sensitivity to market risk, and its liquidity exposure. Such analysis shall include, at a minimum, the following:

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

2. A marketability analysis, sufficient to determine whether or not the securities may be sold with reasonable promptness at a price corresponding

to their fair value, which analysis may be supported by input from the placement agent for such securities;

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

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

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

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

(h) Subordinated notes issued by banks or bank holding companies, as defined in O.C.G.A. § 7-1-605, shall not be deemed to be impermissible investments solely by virtue of the fact that the issuer has not obtained regulatory confirmation that proceeds from the issuance of the securities will qualify as Tier 2 capital.

(9) All Other Securities.

A bank may invest in such other securities or funds as the Department may approve, upon a finding that the securities are marketable under ordinary circumstances, with reasonable promptness at a price which corresponds to their fair value, approval shall be in writing and subject to such limitations as the Department may specify. This requirement for departmental approval shall not apply where the statutory capital base of the purchasing bank exceeds $ 20,000,000. However, in such instances, such securities may be purchased only in an amount which does not exceed fifteen (15) percent of the bank's statutory capital base.

(10) In the event a bank's investment in securities no longer conforms to this rule but conformed when the investment was originally made, the bank shall provide written notification to the Department regarding the nonconforming investment within 30 days of discovering the nonconforming investment or 120 days of the investment becoming nonconforming, whichever event occurs first. In the event a bank wishes to hold the nonconforming investment, the bank must submit a letter form application to the Department describing the efforts the bank will undertake to bring the nonconforming investment into conformity and the anticipated time it will take to bring the investment into conformity. Upon review of the application, the Department may request additional information if it determines such additional information is necessary in order to fully and completely evaluate the application. After completion of its review, the Department shall either approve, conditionally or otherwise, or deny such application in writing.

(11) A bank may sell a nonconforming investment without Department authorization but only if it provides the Department with written notice no later than five (5) business days after the sale.

Cite as Ga. Comp. R. & Regs. R. 80-1-4-.01
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "All Investment Securities Not Specifically Authorized by Statute" adopted. F. and eff. June 30, 1965.
Amended: F. Aug. 21, 1967; eff. Sept. 10, 1967.
Repealed: New Rule entitled "Other Approved Investment Securities" adopted. F. June 9, 1972; eff. June 29, 1972.
Repealed: New Rule entitled "Investment Securities" adopted. F. Aug. 28, 1975; eff. Sept. 17, 1975.
Amended: F. July 13, 1981; eff. August 2, 1981.
Amended: F. Aug. 17, 1983; eff. Sept. 6, 1983.
Repealed: New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. July 11, 1994; eff. July 31, 1994.
Amended: F. Aug. 26, 1997; eff. Sept. 15, 1997.
Amended: F. July 12, 1999; eff. August 1, 1999.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.
Repealed: New Rule entitled "Permissible Investments and Limitations" adopted. F. Oct. 22, 2001; eff. Nov. 11, 2001.
Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: F. Jun. 10, 2014; eff. Jun. 30, 2014.
Amended: F. July 7, 2021; eff. July 27, 2021.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-1-4-.02. Securities Underwriting.

(1) A bank with statutory capital base of less than $20,000,000:

(a) Shall not underwrite or otherwise participate as principal in the marketing of securities except to the extent authorized by law or regulation and except for the account of and upon specific instructions from its customer.

(b) Such bank may, with the permission of the department, underwrite or otherwise participate in the marketing of obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of Section 142(b)(1) of the Internal Revenue Code of 1986) issued by or on behalf of any state or political subdivision of a state, including any municipal corporate instrumentality of one or more states, or any public agency or authority of any state or political subdivision of a state ("certain municipal bonds").

(2) A bank with a statutory capital based of $20,000,000 or greater:

(a) May underwrite or otherwise participate in the marketing of any securities which such banks could purchase for their own account, in addition to the certain municipal bonds described in subsection (1)(b); but

(b) May not underwrite open-end funds described in section (3) of Rule 80-1-4-.01.

(3) All underwriting or marketing of securities shall be subject to the following conditions:

(a) Accounting and other records of trading in such securities are maintained separate and apart from accounting and other records relating to purchases of securities for the bank's own account;

(b) The board of directors of the bank must adopt operating policies which are reviewed at least anually regarding the types and quality of securities to be traded, holding periods for securities in inventory, limitations on the amount of securities to be carried in the name of any single obligor, and guidelines relative to disposition of securities subject to adverse market changes; and

(c) Credit memoranda or prospectuses and independent audit reports covering the three (3) years immediately preceding the date of the most recent underwriting are maintained.

(4) Underwriting and marketing of securities are activities also subject to federal law and regulation.

Cite as Ga. Comp. R. & Regs. R. 80-1-4-.02
Authority: O.C.G.A. Sec. 7-1-61.
History. Original Rule entitled "Prohibitions" adopted. F. and eff. June 30, 1965.
Repealed: New Rule, same title adopted. F. June 9, 1972; eff. June 29, 1972.
Repealed: F. Aug. 28, 1975; eff. Sept. 17, 1975.
Amended: New Rule entitled "Accounting and Record Keeping" adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. July 11, 1994; eff. July 31, 1994.
Repealed: New Rule entitled "Securities Underwriting" adopted. F. Oct. 22, 2001; eff. Nov. 11, 2001.

Rule 80-1-4-.03. Accounting and Record Keeping for Investments.

(1) Investment securities transactions shall be accounted for in accordance with generally accepted accounting principles.

(2) Banks shall maintain documentation sufficient to identify adequately the nature of all securities owned. For all securities other than direct investment in government bonds, notes, or debentures, documentation may include annual reports, offering circulars, credit analyses published by nationally recognized rating firms, or inhouse analyses, reflecting an evaluation of the degree of risk in regard to liquidity, marketability, price volatility, and eligibility for pledging.

(3) Investments in the form of "Zero Coupon" obligations shall be recorded at cost plus accretion to maturity over the life of the obligations. Legal limitations applicable to such securities shall be measured against the actual cost of the security. Provided, however,

except in the case of U.S. Government issues, to the extent that the cash investment plus accretions of income earned, but not collected, exceed the legal limitation on any zero coupon security, such amount shall be set aside into a capital reserve and excluded in considering capital adequacy.

Cite as Ga. Comp. R. & Regs. R. 80-1-4-.03
Authority: O.C.G.A. Sec. 7-1-61.
History. Original Rule entitled "Basis for Determining Legal Limits of Any One Obligor Under the Provisions of Section 23 (13-2023) Article 19 of the Banking Law" adopted. F. and eff. June 30, 1965.
Repealed: New Rule entitled "Legal Investment Securities for State Banks" adopted. F. June 9, 1972; eff. June 29, 1972.
Repealed: F. Aug. 28, 1975; eff. Sept. 17, 1975.
Amended: New Rule entitled "Custody and Safekeeping" adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. July 11, 1994; eff. July 31, 1994.
Repealed: New Rule entitled "Accounting and Record Keeping for Investments" adopted. F. Oct. 22, 2001; eff. Nov. 11, 2001.

Rule 80-1-4-.04. Custody and Safekeeping.

(1) Securities may be held in physical or book entry form.

(2) Physical possession of securities shall be maintained:

(a) In the vault of the investing bank;

(b) In safekeeping at any:

1. FDIC-insured, correspondent bank or trust company;

2. Federal Reserve Bank or Federal Home Loan Bank;

3. Broker-dealer insured under the Securities Investors Protection Act provided the market value of such securities does not exceed $500,000; or

(c) As otherwise specifically approved by the department.

Cite as Ga. Comp. R. & Regs. R. 80-1-4-.04
Authority: O.C.G.A. Sec. 7-1-61.
History. Original Rule entitled "Investment in All of Capital Stock of Subsidiary Corporations" adopted. F. and eff. June 30, 1965.
Repealed: New Rule entitled "Applications for Rulings" adopted. F. June 9, 1972; eff. June 29, 1972.
Repealed: F. Aug. 28, 1975; eff. Sept. 17, 1975.
Amended: New Rule entitled "Custody and Safekeeping" adopted. F. Oct. 22, 2001; eff. Nov. 11, 2001.

Rule 80-1-4-.05. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-1-4-.05
Authority: Ga. L. 1919, p. 144.
History. Original Rule entitled "Unauthorized Investments" was filed and effective on June 30, 1965.
Amended: Rule repealed and a new Rule entitled "Obligations of the State of Georgia Defined" adopted. Filed June 9, 1972; effective June 29, 1972.
Amended: Rule repealed. Filed August 28, 1975; effective September 17, 1975.

Rule 80-1-4-.06. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-1-4-.06
Authority: Ga. L. 1919, p. 144.
History. Original Rule entitled "Investment Securities Exempt from All Limitations" was filed and effective on June 30, 1965.
Amended: Rule repealed and a new Rule entitled "Basis of Determining Amounts Invested for Purposes of Limitations" adopted. Filed June 9, 1972; effective June 29, 1972.
Amended: Rule repealed. Filed August 28, 1975; effective September 17, 1975.

Rule 80-1-4-.07. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-1-4-.07
Authority: Ga. L. 1919, p. 144.
History. Original Rule entitled "Disposition of Nonconforming Acquisitions" was filed on June 9, 1972; effective June 29, 1972.
Amended: Rule repealed. Filed August 28, 1975; effective September 17, 1975.

Subject 80-1-5. LOANS AND DISCOUNTS.

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

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

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

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

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

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

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

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

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

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

(8) Wherever approval of the Board of Directors or Loan Committee is required, such approval must be specific, prior, written approval of each extension of credit, except that advances made under a master note covering a specific purpose or project need not receive specific approval where such approval was accorded the master note. Annual approval of a line of credit may be used where interest rate, repayment terms, and anticipated collateral are clearly identified and current credit information is on file.

Commodity, floor-plan and discount lines of credit which are anticipated to exceed fifteen (15) percent of the statutory capital base may be approved annually to be deemed appropriate by the Board of Directors without each transaction receiving specific prior approval. For those lines that are expressly authorized by statute or regulation to exceed twenty-five (25) percent of the statutory capital base, the line must be reviewed quarterly by the Board of Directors or Loan Committee when the line is in fact in excess of twenty-five (25) percent of the statutory capital base.

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

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

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

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

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

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

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

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

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

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

(13) The Department shall promulgate a form which may be used to document compliance with the requirements for approval of loans, obligations, and credit exposures in excess

of 15 percent of the statutory capital base by members of the board of directors or authorized committee of the board of directors as set forth in O.C.G.A. § 7-1-285 (a.1).

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

Cite as Ga. Comp. R. & Regs. R. 80-1-5-.01
Authority: O.C.G.A. §§ 7-1-61; 7-1-285.
History. Original Rule entitled "Analysis" adopted. F. and eff. June 30, 1965.
Repealed: New Rule of the same title adopted. F. June 9, 1972; eff. June 29, 1972.
Repealed: New Rule of the same title adopted. F. July 5, 1973; eff. July 25, 1973.
Repealed: New Rule entitled "Loans Generally, Interpretations and Rulings" adopted. F. Aug. 28, 1975; eff. Sept. 17, 1975.
Amended: F. Jan. 31, 1978; eff. Feb. 20, 1978.
Amended: F. Aug. 22, 1980; eff. Sept. 11, 1980.
Amended: F. July 13, 1981; eff. August 2, 1981.
Amended: F. Aug. 17, 1983; eff. Sept. 6, 1983.
Amended: F. June 28, 1984; eff. August 1, 1984, as specified by the Agency.
Amended: F. Nov. 2, 1994; eff. Nov. 22, 1994.
Amended: F. Sept. 26, 1995; eff. Oct. 16, 1995.
Amended: F. Dec. 6, 1999; eff. Dec. 26, 1999.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.
Amended: F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Mar. 3, 2011; eff. Mar. 23, 2011.
Amended: F. Aug. 29, 2014; eff. Sept. 18, 2014.
Amended: F. June 29, 2017; eff. July 19, 2017.
Amended: F. June 27, 2018; eff. July 17, 2018.

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

(1) A real estate loan (including a leasehold) within the meaning of Part 365 of the Federal Deposit Insurance Corporation's rules and regulations, including 12 CFR 365.1 and 365.2 and the Interagency Guidelines for Real Estate Lending Policies in Appendix A, and 12 C.F.R. 208.51 and the guidelines contained in 12 C.F.R. Part 208 in the case of Federal Reserve member banks, shall comply with the Real Estate Lending Standards of the above laws.

(2) If a loan could be made without real estate as security, a bank will not be penalized for adding real estate as collateral in an abundance of caution. A notation in the loan file must indicate this lack of reliance on the real estate and must meet general safety and soundness standards for credit risk. This does not constitute a waiver of O.C.G.A. § 7-1-285, related Department rules and regulations, or requirements of federal law, and the soundness of the loan should always be considered.

(3) Except as expressly authorized by O.C.G.A. §§ 7-1-262 or 7-1-263, banks may not acquire directly or indirectly any ownership interest in real estate without the prior written approval of the Department.

Cite as Ga. Comp. R. & Regs. R. 80-1-5-.02
Authority: O.C.G.A. §§ 7-1-61; 7-1-286.
History. Original Rule entitled "Interpretations" adopted. F. and eff. June 30, 1965.
Repealed: New Rule of the same title adopted. F. June 9, 1972; eff. June 29, 1972.
Repealed: New Rule of the same title adopted. F. July 5, 1973; eff. July 25, 1973.
Repealed: New Rule entitled "Real Estate Loans" adopted. F. Aug. 28, 1975; eff. Sept. 17, 1975.
Amended: F. Jan. 31, 1978; eff. Feb. 20, 1978.
Amended: F. July 13, 1981; eff. August 2, 1981.
Amended: F. Aug. 17, 1983; eff. Sept. 6, 1983.
Amended: F. June 28, 1984; eff. August 1, 1984, as specified by the Agency.
Amended: F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. Sept. 26, 1995; eff. Oct. 16, 1995.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.
Amended: F. July 28, 2003; eff. August 17, 2003.
Amended: F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: F. Aug. 4, 2008; eff. Aug. 24, 2008.
Amended: F. June 29, 2017; eff. July 19, 2017.
Amended: F. July 9, 2019; eff. July 29, 2019.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Rule 80-1-5-.03. Commodity Loans.

(1) In order that commodity loans and advances may be exempt from the twenty-five (25) percent legal loan limitation of the lending bank, strict compliance with the following requirements must be met.

(a) The commodity must have a market value with ready sale in the open market.

(b) First lien security title to the commodity must be indicated on record in the name of the bank. Where commodities are stored in a warehouse, such lien must be evidenced by the bank's physical possession of warehouse receipts covering the commodities or, if electronic warehouse receipts are utilized, by recordation of bank's lien position on the electronic warehouse receipt or the electronic records of the state approved electronic receipt provider, which must be accessible to the bank. Bank must also have appropriately executed security agreements and financing statements.

(c) The commodity must be covered by insurance against fire and other appropriate hazards with loss payee designated as the lending bank.

(d) The initial advance or loan shall not exceed eighty-five (85) percent of the market value of the commodity on the date of the loan, the margin of fifteen (15) percent between the market value and outstanding loan is maintained at all times, and to that end, the bank shall have the right to call for additional collateral if the margin falls below fifteen (15) percent, and, if the additional collateral is not provided, the bank shall have the right to sell the commodity on the open market. For purposes of this paragraph, "market value" shall mean the local cash price bid for the commodity in question or the nearby future price applicable to future contracts to sell existing commodities but in no event shall the market value exceed fifty (50) percent of the originating bank's statutory capital base.

(e) Where the borrower is not independent of the warehouseman or other person holding the commodity, the commodity must be subjected to inspection by the lender or his agent at least monthly and a written record of such inspections must be maintained.

(f) The obligation matures in not more than twelve (12) months if secured by nonperishable staples; or the obligation matures in not more than six (6) months if secured by refrigerated or frozen staples.

(g) There must be a written agreement, signed by both the bank and the borrower, which clearly outlines the requirements of the bank and the duties and responsibilities of the borrower.

(2) Manufactured or agricultural products in the processing stages shall not be considered as commodities within the meaning of this regulation, but are inventory or goods-in-process to be treated as additional collateral only.

(3) In order for livestock to qualify as commodities subject to treatment under Section (1) of this Rule, the borrower must be engaged in livestock production and the collateral must be marked for identification and confined to feed lots ready for sale in the open market. Livestock held as fixed assets such as for reproduction or dairy purposes do not qualify for the treatment accorded under Section (1) of this Rule.

(4) Manufactured products commonly financed under floor-plan arrangements shall be subject to treatment as commodities under Section (1) of this Rule if they meet the requirements of that section and the conveyance of title identifies each individual unit and does not convey merchandise in bulk. Liens on merchandise in bulk are considered as inventory loans and not commodity loans.

Cite as Ga. Comp. R. & Regs. R. 80-1-5-.03
Authority: O.C.G.A. §§ 7-1-61, 7-1-285.
History. Original Rule entitled "Commodity Loans" adopted. F. Aug. 28, 1975; eff. Sept. 17, 1975.
Amended: F. Jan. 31, 1978; eff. Feb. 20, 1978.
Amended: F. Aug. 17, 1983; eff. Sept. 6, 1983.
Amended: F. July 24, 1986; eff. September 1, 1986, as specified by the Agency.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.

Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-1-5-.04. Participation Loans.

(1) That portion of a loan which is sold by the originating bank to another bank must conform to all laws and regulations applicable to that category of loan to the same extent as if the purchasing bank had itself originated the loan; i.e., collateral documentation, maturity, loan-to-collateral value ratio, maximum loan limits, etc. The purchasing bank shall obtain from the selling bank copies of all pertinent documents or a summary of sufficient information therefrom to allow that bank to conclude that all legal and regulatory requirements have been met and that the loan may be legally carried upon its books.

(2) Participation in Pools of Loans or Discount Lines:

(a) Loans contained in the pool or discount line must be physically marked or specifically identified on the selling bank's records.

(b) The participation agreement must call for the participant to share pro rata in losses experienced by the pool or discount line.

(c) The participation agreement must provide for periodic, at least quarterly, reports by the seller to the purchaser as settlement for losses incurred and providing past due status of loans contained in the pool or discount line.

(d) Where the participation purchased is in excess of fifteen (15) percent of the purchasing bank's statutory capital base, the participation must have the prior written approval of the bank's Board of Directors or Loan Committee.

(3) Where there exist agreements to repurchase or loss indemnity agreements between the selling and purchasing banks, participations shall be treated as loans to the selling bank by the purchasing bank and the amount of the participation shall be considered to be remaining on the selling bank's books for purposes of legal limitations.

(4) The portion of a loan or extension of credit sold as a participation on a nonrecourse basis shall not constitute a loan or extension of credit for purposes of O.C.G.A. § 7-1-285, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event.

Cite as Ga. Comp. R. & Regs. R. 80-1-5-.04
Authority: Ga. L. 1974, pp. 733, 791-792; Ga. L. 1983, Act No. 255, effective March 16, 1983.

History. Original Rule entitled "Participation Loans" was filed on August 28, 1975, effective September 17, 1975.
Amended: Filed August 17, 1983; effective September 6, 1983.
Amended: Filed June 28, 1984; effective August 1, 1984, as specified by the Agency.
Amended: F. June 29, 2017; eff. July 19, 2017.

Rule 80-1-5-.05. Discounted Dealer Paper.

(1) Purchases of dealer paper, with or without recourse, may generally be made without limitation; however, where the aggregate amount of such paper outstanding exceeds twenty-five (25) percent of the bank's statutory capital base and the paper has been taken with recourse or pursuant to an agreement to repurchase between the bank and the dealer, the following conditions must be met:

(a) The dealer must maintain a dealer's reserve in an amount equal to at least five (5) percent of the total outstanding balance on notes discounted with recourse or pursuant to the repurchase agreement and such reserve must be under the control of the lending bank.

(b) The bank must maintain a balance sheet and profit and loss statement on the dealer covering the most recent fiscal period for which such information is available, but in no event shall the statements be more than eighteen months old.

(c) The obligors on all such notes shall have been notified that the bank is owner of the note and payments are to be made directly to the bank.

(d) The dealers shall not be permitted to make payments on the discount notes but shall be required to take over, in full, any note which is past due four months or more.

(e) There must be a written agreement, signed by both the bank and the dealer, which clearly outlines the requirements of the bank and the duties and responsibilities of the dealer.

(2) Whenever the aggregate outstanding balance of discount notes on a single dealer exceeds fifteen (15) percent of the bank's statutory capital base and the notes are taken with recourse or pursuant to a repurchase agreement, the Board of Directors at least annually shall approve the maximum amount to which such aggregate outstanding balance may extend. When in excess of twenty-five (25) percent of the statutory capital base, the line must be reviewed quarterly by the Board of Directors or Loan Committee.

Cite as Ga. Comp. R. & Regs. R. 80-1-5-.05
Authority: Ga. L. 1974, pp. 733, 793-795; Ga. L. 1983, Act No . 255, effective March 16, 1983.
History. Original Rule entitled "Discounted Dealer Paper" was filed on August 28, 1975; effective September 17, 1975.
Amended: Filed August 17, 1983; effective September 6, 1983.

Rule 80-1-5-.06. Loans Secured by Capital Securities.

No bank may lend upon the capital securities of any corporation which is registered as a bank holding company for such lender bank, unless such securities have an established market for resale and market prices for such securities are regularly quoted by an established exchange or over the counter. This restriction shall not be applicable to loans made prior to the effective date of this section nor to violations resulting from a merger, consolidation or acquisition of the lender occurring after the date of loan, provided such loans are repaid in accordance with the contracted terms. This restriction shall not be applicable to the taking of a security interest to such securities to prevent losses on debts previously contracted. This restriction shall also not be applicable where both the aggregate number of shares in which a security interest is held does not exceed ten (10) percent of the total number of shares outstanding and the credit extended upon the basis of such shares as security does not exceed the book value of such shares.

Cite as Ga. Comp. R. & Regs. R. 80-1-5-.06
Authority: Ga. L. 1974, pp. 733, 798.
History. Original Rule entitled "Loans Secured by Capital Securities" was filed on July 13, 1981; effective August 2, 1981.
Amended: Filed August 17, 1983; effective September 6, 1983.

Rule 80-1-5-.07. Extensions of Credit Involving Directors or Officers.

(1) The definition and commentary contained in Federal Reserve Regulation "O" shall be applied to effect the intent of Code Section 7-1-491.

(2) The Department may use its discretion in applying the non-preferential loan prohibition, and in particular may find a violation where it discovers that a bank is attempting to circumvent a prohibition where it would otherwise apply.

Cite as Ga. Comp. R. & Regs. R. 80-1-5-.07
Authority: O.C.G.A. Sec. 7-1-491.
History. Original Rule entitled "Extensions of Credit Involving Directors or Officers" adopted. F. June 28, 1984; eff. August 1, 1984, as specified by the Agency.
Amended: F. Sept. 26, 1995; eff. Oct. 16, 1995.

Rule 80-1-5-.08. Bank Guaranty of Customer Credit Card Obligations at Another Bank.

(1) A bank which does not issue its own credit card but acts as an agent for a correspondent bank may guarantee obligations of established customers in the form of revolving lender credit card accounts at another bank provided the guaranteeing bank establishes a maximum limit for each such account, is not obligated for any amount in excess of such limit, and maintains records updated at least monthly reflecting the current outstanding

balance on each account, the approved limit on each account, and the current past due or payment status on each account.

(2) Guarantees outstanding in compliance with the foregoing shall be considered to be in the nature of standby letters of credit and shall be reflected as such on the books and records of the guaranteeing bank. Outstanding guarantees shall be added to customer liabilities in determining compliance with legal loan limitations.

Cite as Ga. Comp. R. & Regs. R. 80-1-5-.08
Authority: Ga. L. 1974, pp. 733, 801.
History. Original Rule entitled "Bank Guaranty of Customer Credit Card Obligations at Another Bank" adopted. F. July 24, 1986; eff. September 1, 1986, as specified by the Agency.

Rule 80-1-5-.09. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-1-5-.09
Authority: Ga. L. 1974, p. 733, Ga. L. 1989, p. 1252.
History. Original Rule entitled "Appraisals" adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Repealed: F. Dec. 27, 1991; eff. Jan. 16, 1992.

Rule 80-1-5-.10. Real Estate Leasing.

(1) A bank may become the owner and lessor of real property under certain circumstances described in O.C.G.A. § 7-1-282.

(2) A bank that desires to lease real property under the conditions in O.C.G.A. § 7-1-282 must make a letter application to the Department to conduct the activity. Such letter application shall include:

(a) A business plan that addresses the accounting, tax and legal implications of this type of leasing and the projected volume and scope of the activity;

(b) Documentation of the experience and expertise of management that indicates ability to handle credit risk and administer the leasing program in conformity with accounting, legal and tax requirements;

(c) Detailed risk analysis to include the potential impact of the activity on the financial and operating condition of the bank;

(d) A copy of any required federal application and approval; and

(e) Any other items requested by the Department.

(3) The aggregate limit for such leasing for banks shall be 100 percent of the bank's statutory capital base. Any higher amount desired must be approved in advance by the Department.

(4) The Department may at any time restrict the volume of business in this type of leasing if in its judgment there are concerns for safety and soundness of the operation.

Cite as Ga. Comp. R. & Regs. R. 80-1-5-.10
Authority: O.C.G.A. §§ 7-1-61, 7-1-282.
History. Original Rule entitled "Real Estate Leasing" adopted. F. Sept. 1, 2004; eff. Sept. 21, 2004.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-1-5-.11. Combination of Debt for Legal Lending Limit Purposes.

(a) General Rule. Pursuant to Code Section 7-1-285, loans or extensions of credit to one person will be attributed to another person and each person will be deemed a borrower:

(1) When proceeds of a loan or extension of credit are to be used for the direct benefit of the other person, to the extent of the proceeds so used;

(2) When a common enterprise is deemed to exist between the persons as the persons within the group are directly or indirectly related through common control including where one borrower is directly or indirectly controlled by another borrower;

(3) When there is a common use of funds between the persons; or

(4) When a person has a financial obligation on a loan or an extension of credit, to the extent of such obligation.

(b) Definitions. For purposes of this Rule, the below terms shall be defined as follows:

(1) Common control. The direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. Without limiting the foregoing, a person shall be considered to control another person if the first person:

(A) Owns, controls or holds with power to vote 25 percent or more of any class of voting securities of the other person;

(B) Controls in any manner the election of a majority of the directors, trustees, or persons performing similar functions of the other person; or

(C) Exercises a controlling influence over the management or policies over the other person as determined by the department.

(2) Common use of funds. The proceeds of a loan or an extension of credit to a borrower will be deemed to be a common use of funds and will be attributed as

one loan when the proceeds, or assets purchased with the proceeds, are comingled or used to acquire property, goods, or services for the purpose of a shared common commercial objective between the borrowers.

(3) Direct benefit. The proceeds of a loan or extension of credit to a borrower will be deemed to be used for the direct benefit of another person and will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services.

(4) Obligation. A commitment that creates a liability or contingent liability for payment on a loan or extension of credit irrespective of whether the person is a borrower.

(5) Person. An individual or a corporation, limited liability company, partnership, trust, association, joint venture, sole proprietorship, unincorporated organization, or any other form of entity.

Cite as Ga. Comp. R. & Regs. R. 80-1-5-.11
Authority: O.C.G.A. § 7-1-285.
History. Original Rule entitled "Combination of Debt for Legal Lending Limit Purposes" adopted. F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Nov. 2, 2010; eff. Nov. 22, 2010.
Amended: F. June 29, 2017; eff. July 19, 2017

Rule 80-1-5-.12. Conditional Waiver of Applicability of Revised Statutory Capital Base Definition.

(1) Prior to June 1, 2017, the definition of statutory capital base meant the "sum of the capital stock, paid-in capital, appropriated retained earnings, and capital debt of a bank or trust company less any amount of good will, core deposit intangibles, or other intangible assets related to the purchase, acquisition, or merger of a bank charter or accumulated deficit (negative retained earnings)." The revised definition of statutory capital base expressly provides that the Department has the authority to phase in the revised definition for those banks that will have a decreased statutory capital base.

(2) Any bank that has a decrease in its statutory capital base as of July 1, 2017, may submit a letter form application seeking a waiver from the applicability of the revised definition. Any such request for a waiver must be received by the Department no later than August 15, 2017. The application should provide information pertinent to the request, including, but not limited to, a calculation of the statutory capital base under both formulas.

(3) The Department shall take into consideration competitive, financial, managerial, safety and soundness, and other concerns in evaluating any waiver request. The Department is authorized to impose conditions on the grant of any request for a waiver.

(4) All waivers, conditional or otherwise, issued pursuant to this Rule shall expire on August 31 of each year, and application for renewal of a waiver shall be made annually on or before August 1 of each year.

Cite as Ga. Comp. R. & Regs. R. 80-1-5-.12
Authority: O.C.G.A. §§ 7-1-4; 7-1-61; 7-1-285.
History. Original Rule entitled "Conditional Waiver of Applicability of Revised Statutory Capital Base Definition" adopted. F. June 29, 2017; eff. July 19, 2017.

Subject 80-1-6. BANK FINANCIAL AND OTHER REPORTS.

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

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

(a) The election of any new chief executive officer or president;

(b) The resignation or removal of the chief executive officer, president, or any director, giving the reason for such action; and

(c) The transfer of any common stock of the bank aggregating fifteen (15) percent of the outstanding shares of common stock of the bank or any smaller transfer resulting in the new owner holding in the aggregate more than twenty-five (25) percent of the outstanding common stock of the bank.

Cite as Ga. Comp. R. & Regs. R. 80-1-6-.01
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Conditions for Compliance With This Regulation" adopted. F. and eff. June 30, 1965.
Repealed: New Rule of same title adopted. F. June 9, 1972; eff. June 29, 1972.
Repealed: New Rule entitled "Reports to Department" adopted. F. Aug. 28, 1975; eff. Sept. 17, 1975.
Repealed: New Rule of same title adopted. F. July 13, 1981; eff. August 2, 1981.
Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: F. Sep. 18, 2012; eff. Oct. 8, 2012.
Amended: F. June 20, 2016; eff. July 10, 2016.
Amended: F. July 9, 2019; eff. July 29, 2019.

Rule 80-1-6-.02. Reports to Shareholders.

(1) On or before the date of the annual stockholders' meeting of any bank, the shareholders of the bank, regardless of class or voting rights, shall each be provided with the following schedules for the last fiscal year on a comparative basis with the preceding fiscal year:

(a) Statement of Assets, Liabilities, and Capital;

(b) Statement of Earnings and Expenses; and

(c) Reconcilement of Changes in Capital Accounts.

(2) Bank Reports Maintained; Compensation to Directors, etc.

(a) Each bank shall maintain throughout the year for inspection by any shareholder:

(i) Each call Report of Condition and Report of Income since the last shareholders' meeting at which such information was distributed;

(ii) A listing of all shareholders giving each of their names, post office address of record, and number of shares owned; and

(iii) A listing of compensation to each director and chief executive officer if not a director, including salaries, bonuses, committee fees, commission from sale of insurance, etc.

(b) Provided such information shall be available only upon written request by the shareholder setting forth the reasons for which such information is requested and certifying that the recipient will not further distribute any information furnished.

(c) Information requested under paragraph (a) shall be made available within ten (10) days of receipt of any written request therefor.

Cite as Ga. Comp. R. & Regs. R. 80-1-6-.02
Authority: Ga. L. 1974, p. 733, 1975, S.B. 145.
History. Original Rule entitled "Interpretation of Provisions Within the Statute" adopted. F. and eff. June 30, 1965.
Repealed: New Rule of same title adopted. F. June 9, 1972; eff. June 29, 1972.
Repealed: New Rule entitled "Reports to Shareholders" adopted. F. Aug. 28, 1975; eff. Sept. 17, 1975.
Amended: F. Nov. 4, 1975; eff. Nov. 24, 1975.
Amended: F. July 13, 1981; eff. August 2, 1981.
Amended: F. Sep. 18, 2012; eff. Oct. 8, 2012.

Rule 80-1-6-.03. Directors' Financial Reports.

Each director of a bank or trust company shall maintain on file with the chief executive officer of the bank or trust company for which he/she serves as a director a financial statement on forms prescribed by the Department. Such financial statement shall be revised annually, but in no event shall the statement on file be more than eighteen (18) months old. At the discretion of the Board

of Directors of each bank or trust company, such financial statements may be maintained in sealed envelopes available for inspection only by state or federal examiners.

Cite as Ga. Comp. R. & Regs. R. 80-1-6-.03
Authority: Ga. L. 1974, p. 733; 1975, S.B. 145.
History. Original Rule entitled "Exemptions" adopted. F. and eff. June 30, 1965.
Repealed: New Rule of same title adopted. F. June 9, 1972; eff. June 29, 1972.
Repealed: F. Aug. 28, 1975; eff. Sept. 17, 1975.
Amended: New Rule entitled "Directors' Financial Reports" adopted. F. Nov. 4, 1975; eff. Nov. 24, 1975.
Amended: F. June 29, 2017; eff. July 19, 2017.

Rule 80-1-6-.04. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-1-6-.04
Authority: Authority Ga. L. 1919, p. 144, 1972, pp. 556 to 558.
History. Original Rule entitled "Construction Loans" adopted. F. and eff. June 30, 1965.
Repealed: New Rule entitled "Construction and Development Loans" adopted. F. June 9, 1972; eff. June 29, 1972.
Repealed: F. Aug. 28, 1975; eff. Sept. 17, 1975.

Rule 80-1-6-.05. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-1-6-.05
Authority: Ga. L. 1919, p. 144.
History. Original Rule entitled "Loans Secured by Mortgages on Which FHA Has Issued Firm Commitments to Insure" adopted. F. and eff. June 30, 1965.
Repealed: New Rule of same title adopted. F. June 9, 1972; eff. June 29, 1972.
Repealed: F. Aug. 28, 1975; eff. Sept. 17, 1975.

Rule 80-1-6-.06. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-1-6-.06
Authority: Ga. L. 1919, p. 144.
History. Original Rule entitled "Charging Off Nonconforming Real Estate Loans" adopted. F. and eff. June 30, 1965.
Repealed: New Rule of same title adopted. F. June 9, 1972; eff. June 29, 1972.
Repealed: F. Aug. 28, 1975; eff. Sept. 17, 1975.

Subject 80-1-7. LEGAL RESERVES.

Rule 80-1-7-.01. Definitions.

(1) Legal Reserve:

(a) Lawful money of the United States in the office and vaults of the financial institution.

(b) Moneys on deposit subject to immediate call with other federally insured financial institutions such as approved by the Department of Banking and Finance pursuant to Code Section 7-1-370 or with a Federal Reserve Bank, except where such deposits are for the purpose of meeting reserve requirements against assets pursuant to the Federal Credit Control Act of 1969 and regulations pursuant thereto.

1. Reciprocal demand balances due to such financial institutions shall be deducted from the balance due from those financial institutions before making any calculations.

2. Outgoing cash letters shall be included and incoming cash letters deducted before making any calculations of available moneys on deposit.

(c) Cash items and clearings held over shall not be regarded as Legal Reserves within the meaning of this regulation.

(2) Financial institutions eligible to act as a depository for reserves of other financial institutions shall be either a Federal Reserve Bank or a federally insured bank or credit union domiciled within the United States; provided that no financial institution may deposit reserve balances in any such depository in excess of the greater of ten (10) percent of the depositing financial institution's total capital notes, common capital, and surplus, or $250,000, unless prior approval of such depository is granted by the Commissioner.

(3) The biweekly averaging period shall commence on any Thursday and shall continue for the next consecutive 14-calendar-day period. Calculations of reserves and reserve requirements shall include data from all business days; provided financial institutions which are open for business, making loans, taking deposits, or both, six days per week may designate to exclude data from any Wednesday, Thursday, or Saturday for which deposit ledgers are not regularly posted, but not more than one day each week may be so excluded. Wherever data is unavailable or excluded for a calendar day, data from the previous business day shall be used in lieu thereof.

Cite as Ga. Comp. R. & Regs. R. 80-1-7-.01
Authority: Ga. L. 1974, pp. 733, 820-822.
History. Original Rule entitled "Amounts of Reserves to be Maintained" was filed and effective on June 30, 1965.
Amended: Rule repealed and a new Rule of the same title adopted. Filed June 9, 1972; effective June 29, 1972.
Amended: Filed July 5, 1973; effective July 25, 1973.
Amended: Rule repealed and a new Rule entitled "Definitions" adopted. Filed August 28, 1975; effective September 17, 1975.
Amended: Rule repealed and a new Rule of the same title adopted. Filed June 9, 1980; effective October 1, 1980, as specified by the Agency.
Amended: F. June 20, 2016; eff. July 10, 2016.

Rule 80-1-7-.02. Records to Be Maintained.

Where reserves are required pursuant to Rule 80-1-7-.03(2), each financial institution shall maintain, for a period of not less than two calendar years, a record of its biweekly calculations of reserve requirements and reserves maintained. Such record shall be subject to review during examinations of the financial institution. A copy of the recommended format to be used in calculating reserves will be available from the Department of Banking and Finance, but alternative forms may be utilized if they provide the same basic information as provided by the recommended form.

Cite as Ga. Comp. R. & Regs. R. 80-1-7-.02
Authority: Ga. L. 1974, pp. 733, 820-822.
History. Original Rule entitled "Legal Reserve" was filed and effective on June 30, 1965.
Amended. Rule repealed and a new Rule entitled "Records to be Maintained" adopted. Filed June 9, 1972; effective, June 29, 1972.
Amended: Filed August 28, 1975; effective September 17, 1975.
Amended: Rule repealed and a new Rule of the same title adopted. Filed June 9, 1980; effective October 1, 1980, as specified by the Agency.
Amended: F. June 20, 2016; eff. July 10, 2016.

Rule 80-1-7-.03. Amounts of Reserves to Be Maintained.

(1) Every financial institution shall maintain a minimum of the legal reserves required to be maintained pursuant to the federal "Monetary Control Act of 1980" and other applicable federal requirements. The reserve requirement is the minimum acceptable for a financial institution whose overall financial condition is fundamentally sound, which is well-managed and which has not material or significant operational or financial weaknesses. In the event the Department concludes that a financial institution does not satisfy these standards, the Department may establish a higher reserve requirement for a financial institution to maintain.

(2) Financial institutions which are governed by 12 C.F.R. § 204 shall, in lieu of the reserve herein required, keep and maintain such reserve in accordance with the applicable federal requirements.

Cite as Ga. Comp. R. & Regs. R. 80-1-7-.03
Authority: Ga. L. 1974, pp. 733, 802-822.
History. Original Rule entitled "Gross Demand Deposits" was filed and effective on June 30, 1965.
Amended: Rule repealed and a new Rule entitled "Definitions" adopted. Filed June 9, 1972; effective June 29, 1972.
Amended: Filed July 5, 1973; effective July 25, 1973.
Amended: Rule repealed and a new Rule entitled "Amounts of Reserves to be Maintained" adopted. Filed August 28, 1975; effective September 17, 1975.
Amended: Rule repealed and a new Rule of the same title adopted. Filed June 9, 1980; effective October 1, 1980, as specified by the Agency.
Amended: F. June 20, 2016; eff. July 10, 2016.

Rule 80-1-7-.04. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-1-7-.04
Authority: Georgia Code Section 13-2027.
History. Original Rule entitled "Net Demand Deposits" was filed and effective on June 30, 1965.
Amended: Rule repealed. Filed June 9, 1972; effective June 29, 1972.

Rule 80-1-7-.05. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-1-7-.05
Authority: Georgia Code Section 13-2027.
History. Original Rule entitled "Other Definitions" was filed and effective on June 30, 1965.
Amended: Rule repealed. Filed June 9, 1972; effective June 29, 1972.

Subject 80-1-8. DORMANT ACCOUNTS.

Rule 80-1-8-.01. Dormant Accounts: Service Charges.

(1) Dormant accounts are hereby defined as follows:

(a) Demand Deposit Accounts are deemed to be dormant when the depositor, which for the purposes of this rule shall include a member in the case of credit unions and a shareholder in the case of savings and loan associations, has neither increased or decreased the amount of the deposit nor corresponded with the financial institution regarding the deposit for a period of not less than twelve months immediately preceding the determination.

(b) Time and Savings Deposits, including Certificates of Deposit, are deemed to be dormant when the depositor has neither increased or decreased the amount of the deposit or shares nor corresponded with the financial institution regarding the deposit or shares for a period of not less than five (5) years from the date upon which the deposit or share first became eligible for withdrawal.

(c) Certified and Official Checks shall be deemed to be dormant when they have not been presented for payment within two (2) years of the date of issue, or if the issuing financial institution has not had correspondence with the registered owner of the check for a period of two (2) years immediately preceding the determination of dormancy.

(d) For purposes of this regulation, the term, "Demand Deposit Accounts," shall include share draft accounts in the case of credit unions, as well as any "Time" or "Savings" account which by its terms is due and payable, either in whole or in part, within less than ninety days or upon less than ninety days notice by the depositor.

(e) For purposes of this regulation, the term "corresponded" or "correspondence" includes, but is not limited to:

(i) any communication, indication of interest, or relationship set forth in O.C.G.A. § 44-12-197(a) (2)-(5); or

(ii) a depositor accessing an online account.

(2) Where the signature card or other evidence of the financial institution's contractual obligation relative to a deposit account does not make provision for maintenance or service charge on a dormant account as heretofore described, such a charge may be assessed in an amount not to exceed $5.00 per month. Service charges or maintenance charges assessed pursuant to contractual authority governing the account shall not exceed the greater of $5.00 per month or the per month service charge which the financial institution otherwise assesses against active accounts. No service charge or maintenance charge may be assessed for the dormancy period beyond the first twelve months. No service charge or maintenance charge may be assessed unless the financial institution provides written notice prior to the initial imposition of the charges pursuant to O.C.G.A. § 44-12-197(c)(1). Dormant account service charge or maintenance charge may be charged against the account at any time prior to escheat of the account balance under the provisions of the Disposition of Unclaimed Properties Act so long as the total service charge or maintenance charge does not exceed the amount which could have been assessed during the first twelve months of dormancy pursuant to the governing contract between the parties or this regulation.

Cite as Ga. Comp. R. & Regs. R. 80-1-8-.01
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Dormant Bank Accounts" adopted. F. Apr. 21, 1966; eff. May 10, 1966.
Repealed: New Rule entitled "Dormant Accounts: Service Charges" adopted. F. June 9, 1972; eff. January 1, 1973, as specified by the Agency.
Amended: Authority changed. F. Aug. 28, 1975; eff. Sept. 17, 1975.
Amended: F. July 13, 1981; eff. August 2, 1981.
Amended: F. June 28, 1984; eff. August 1, 1984, as specified by the Agency.
Amended: F. July 28, 2003; eff. August 17, 2003.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Rule 80-1-8-.02. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-1-8-.02
Authority: Ga. L. 1972, p. 762; Ga. L. 1974, p. 733.
History. Original Rule entitled "Service Charges" was filed on April 21, 1966; effective May 10, 1966.
Amended: Rule repealed and a new Rule entitled "Abandoned Property Defined" adopted. Filed June 9, 1972; effective January 1, 1973, as specified by the Agency.
Amended: Filed July 5, 1973; effective July 25, 1973.
Amended: Authority changed. Filed August 28, 1975; effective September 17, 1975.
Amended: Rule repealed. Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-8-.03. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-1-8-.03
Authority: Ga. L. 1972, p. 762; Ga. L. 1974, p. 733.
History. Original Rule entitled "Service Charges, Time and Savings Deposits" was filed on April 21, 1966; effective May 10, 1966.
Amended: Rule repealed and a new Rule entitled "Reports of Abandoned Property Held" adopted. Filed June 9, 1972; effective January 1, 1973, as specified by the Agency.
Amended: Authority changed. Filed August 28, 1975; effective September 17, 1975.
Amended: Rule repealed. Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-8-.04. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-1-8-.04
Authority: Ga. L. 1972, p. 762; Ga. L. 1974. p. 733.
History. Original Rule entitled "Outstanding Bank Drafts" was filed on April 21, 1966; effective May 10, 1966.
Amended: Rule repealed and a new Rule entitled "Disposition of Abandoned Property" adopted. Filed June 9, 1972; effective January 1, 1973, as specified by the Agency.
Amended: Filed July 5, 1973; effective July 25, 1973.
Amended: Authority changed. Filed August 28, 1975; effective September 17, 1975.
Amended: Rule repealed. Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-8-.05. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-1-8-.05
Authority: Ga. L. 1972, Senate Bill 430.
History. Original Rule entitled "Effective Date" was filed on June 9, 1972; effective January 1, 1973, as specified by the Agency.
Amended: Rule repealed. Filed August 28, 1975; effective September 17, 1975.

Subject 80-1-9. BORROWED MONEY.

Rule 80-1-9-.01. Borrowed Money Defined.

Borrowed money for purposes of this Regulation and as used in O.C.G.A. § 7-1-291 shall mean the sum of all moneys owed by a bank including participations sold with recourse but excluding:

(a) Liabilities for deposits and official checks recorded during the regular course of business,

(b) Liabilities for moneys accrued as expenses payable or income deferred,

(c) Liabilities for commercial paper rediscounted,

(d) Liabilities to Federal Reserve Bank on account of money borrowed or rediscounts,

(e) Liabilities on account of the acquisition of reserve balances at a Federal Reserve Bank or other reserve agent from a member or nonmember bank,

(f) Liabilities on account of agreements to repurchase securities sold by the bank (commonly known as "repurchase agreements"),

(g) Liabilities which result from the purchase of Federal or Correspondent Funds in excess of amounts excluded under subparagraph (d) herein to the extent that such Federal or Correspondent Funds are held for resale to other financial institutions,

(h) Liabilities which result from the acquisition of excess funds of any state or federal savings and loan association for the purpose of investing such funds in the "federal fund" market at the direction of the association,

(i) Liabilities which result from borrowing from the Export-Import Bank of the United States to the extent that such borrowings are secured by obligations to the bank which are guaranteed by the Export-Import Bank, and

(j) Liabilities in the form of subordinated securities pursuant to O.C.G.A. § 7-1-419.

Cite as Ga. Comp. R. & Regs. R. 80-1-9-.01
Authority: Ga. L. 1974, pp. 733, 801, 802.
History. Original Rule was filed on May 9, 1967; effective May 28, 1967.
Amended: Original Rule entitled "Retention of Records" repealed and a new Rule entitled "Borrowed Money Defined" adopted. Filed July 5, 1973; effective July 25, 1973.
Amended: Filed September 3, 1974; effective September 23, 1974.
Amended: Filed August 28, 1975; effective September 17, 1975.
Amended: F. Aug. 26, 1997; eff. Sept. 15, 1997.
Amended: F. June 20, 2016; eff. July 10, 2016.

Rule 80-1-9-.02. Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-1-9-.02
Authority: Ga. L. 1974, pp. 733, 801, 802. O.C.G.A. Sec. 7-1-61.
History. Original Rule entitled "Limitations on Borrowed Money" was filed on July 5, 1973; effective July 25, 1973.
Amended: Filed August 28, 1975; effective September 17, 1975.
Amended: Filed January 31, 1978; effective February 20, 1978.
Repealed: F. Aug. 26, 1997; eff. Sept. 15, 1997.

Subject 80-1-10. FIXED ASSETS AND ASSETS ACQUIRED D.P.C.

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

(1) Banks may purchase, hold, and convey real estate only such as shall be necessary for the convenient transaction of its business and recreational use of its employees, except that real estate commonly referred to as Other Real Estate and as defined herein may be held

for not longer than five (5) years unless the time limitation is extended by the Department of Banking and Finance.

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

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

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

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

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

(4) In the event a bank is initially in compliance with the limitations set forth in paragraph (2) but the investment in fixed assets ultimately exceeds the fixed asset investment limitation of sixty (60) percent solely as a result of a decline in the bank's statutory capital base, the Department shall not deem the bank to be in violation of paragraph (2); provided, however, nothing herein shall be construed as permitting a bank to invest additional sums in fixed assets in excess of sixty (60) percent of the bank's statutory capital base without the prior written approval of the Department.

Cite as Ga. Comp. R. & Regs. R. 80-1-10-.01
Authority: Ga. L. 1974, pp. 733, 789.
History. Original Rule was filed on June 9, 1972; effective June 29, 1972.
Amended. Filed August 28, 1975; effective September 17, 1975.
Amended: F. Jun. 10, 2014; eff. Jun. 30, 2014.

Rule 80-1-10-.02. Purchase of Real Estate for Future Expansion; Letter Notification.

(1) The purchase of real property for expansion purposes may be made without the prior consent of the Department of Banking and Finance and by only a letter notification when:

(a) The real property is to be utilized as bank premises within five years of the date of purchase;

(b) The purchase of the real property does not result in the bank exceeding the fixed asset limitation;

(c) The bank is not subject to any special requirements whereby the Department requires prior approval for such purchases; and

(d) If an insider is involved, a certification is provided stating that all requirements of O.C.G.A. § 7-1-492 and the provisions of the Federal Reserve Board known as Regulation 0 have been met.

(2) The letter notification shall state the date of purchase, purchase price, location of the property, and why the bank qualifies for letter notification under the provisions of this rule.

(3) Where consent is required, it shall be granted only in those cases where the applicant bank provides reasonable assurance that it plans to utilize the property as bank premises within five (5) years from the date of purchase and indicates the purpose for which the property is being acquired.

(4) The ability to hold property for future expansion shall expire five (5) years from the date of purchase unless the property is utilized as bank premises prior to that time. Banks holding property beyond the five year period must divest themselves of the property through sale unless the time limitation is extended by the Department of Banking and Finance.

(5) The granting of approval to purchase property for future expansion shall in no way be considered as approving the expansion program.

Cite as Ga. Comp. R. & Regs. R. 80-1-10-.02
Authority: Ga. L. 1974, pp. 733, 789.
History. Original Rule entitled "Purchase of Real Estate for Future Expansion" was filed on June 9, 1972; effective June 29, 1972.
Amended: Filed August 28, 1975; effective September 17, 1975.
Amended: Rule retitled "Purchase of Real Estate for Future Expansion; Letter Notification." F. Aug. 26, 1997; eff. Sept. 15, 1997.
Amended: F. Jul. 14, 1998; eff. Aug. 3, 1998.

Rule 80-1-10-.03. Expansion of Existing Facilities.

(1) Expansion of bank premises may be performed by a bank without the prior approval of the Department of Banking and Finance wherever the ultimate and final cost of the expansion or extension will not result in a fixed asset investment by the bank in excess of the sixty (60) percent legal limitation and

(a) The proposed extension will be physically connected to the existing banking house, or

(b) The proposed extension will be located on the same contiguous area of property as the existing banking house, and

(c) In either the case of subparagraph (a) or (b) the proposed extension will not involve the purchase of real property.

(2) Pneumatic tube equipment may not be considered as physically connecting banking facilities within the meaning of the Banking Code.

Cite as Ga. Comp. R. & Regs. R. 80-1-10-.03
Authority: Ga. L. 1974, pp. 733, 789.
History. Original Rule was filed on June 9, 1972; effective June 29, 1972.
Amended: Filed July 5, 1973; effective July 25, 1973.
Amended: Filed August 28, 1975; effective September 17, 1975.

Rule 80-1-10-.04. Relocation: Construction of New Facilities.

Any relocation or construction of new bank premises which will result in a change of the official street address of any bank, whether or not such change can be accomplished within the legal limitation on fixed asset investment, must have the prior approval of the Department of Banking and Finance.

Cite as Ga. Comp. R. & Regs. R. 80-1-10-.04
Authority: Ga. L. 1974, pp. 733, 789.
History. Original Rule was filed on June 9, 1972; effective June 29, 1972.
Amended: Filed August 28, 1975; effective September 17, 1975.

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

(1) With the prior approval of the Department of Banking and Finance, any bank may invest in all of the outstanding capital stock of a subsidiary corporation organized for the purpose of owning bank premises which might be legally owned by such bank and such investment shall be included as fixed assets in determining whether the bank's total investment in fixed assets is within the limitations prescribed by law.

(2) Such real estate holding subsidiaries shall not be permitted to own or otherwise invest its funds in Other Real Estate, furniture and fixtures other than for its own use, securities, or any other assets inconsistent with the purpose for which it was originally organized.

(3) Such real estate holding subsidiaries shall be subject to all of the limitations, prohibitions, and requirements with respect to the purchase, ownership, and expansion of bank premises that the bank would be subject to, except the limitation imposed on fixed asset investment, but provided that the Department of Banking and Finance may set such limitations on the total investment in fixed assets, the total authorized borrowings, the total capitalization, and the annual rental charges of the real estate holding subsidiary as it considers necessary to the sound operation of the company.

(4) Banks may invest in the stock of such corporations and such investments shall be included in determining the bank's legal limitation on investment in fixed assets.

(5) Such real estate holding subsidiaries shall be subject to examination by the Commissioner of Banking and Finance on the same basis as the parent corporation.

Cite as Ga. Comp. R. & Regs. R. 80-1-10-.05
Authority: O.C.G.A. §§ 7-1-61; 7-1-262.
History. Original Rule entitled "Organization of Real Estate Holding Company Subsidiaries" was filed on June 9, 1972; effective June 29, 1972.
Amended: Filed August 28, 1975; effective September 17, 1975.
Amended: Rule retitled "Organization of Real Estate Holding Subsidiaries." F. Jul. 12, 1999; eff. Aug. 1, 1999.
Amended: F. July 9, 2019; eff. July 29, 2019.

Rule 80-1-10-.06. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-1-10-.06
Authority: Ga. L. 1974, pp. 733, 849.
History. Original Rule was filed on June 9, 1972; effective June 29, 1972.
Amended: Filed August 28, 1975; effective September 17, 1975.
Repealed: F. Sep. 18, 2012; eff. Oct. 8, 2012.

Rule 80-1-10-.07. Leasehold Interests in Fixed Assets.

Lease contracts covering land, buildings, or furniture, fixtures, and equipment which result in a bank obtaining title to the property at the expiration of the lease or at any time prior thereto for the payment of any moneys less than the fair market value of the property at time title is acquired shall be considered as fixed assets within the meaning of Georgia Law and this Regulation and shall be reflected on the books of the bank as such and an appropriate liability account similarly established.

Cite as Ga. Comp. R. & Regs. R. 80-1-10-.07
Authority: Ga. L. 1974, pp. 733, 789.
History. Original Rule was filed on June 9, 1972; effective June 29, 1972.
Amended: Filed August 28, 1975; effective September 17, 1975.

Rule 80-1-10-.08. Definitions.

(1) Fixed Asset Investment as used in this Regulation shall include land, buildings, furniture, fixtures, equipment, stock in a real estate holding company subsidiary, stock in cooperative parking facilities corporations, and loans to such subsidiary corporations and leasehold interests defined in 80-1-10-.07 above but shall not include Other Real Estate.

(2) Other Real Estate is real property conveyed to a bank in satisfaction of debt previously contracted in the course of its business and real property purchased at sales under judgments, decrees, or mortgage foreclosures under securities held by it; but a bank shall not bid, at any sale, a larger amount than sufficient to satisfy its debt, costs and expenses. Other Real Estate shall also include property originally acquired for future expansion, but for which such expansion plans have been abandoned and property formerly utilized as bank premises or for other approved purposes, but no longer utilized.

Cite as Ga. Comp. R. & Regs. R. 80-1-10-.08
Authority: Ga. L. 1974, p. 733.
History. Original Rule was filed on June 9, 1972; effective June 29, 1972.
Amended: Filed August 28, 1975; effective September 17, 1975.
Amended: Filed January 31, 1978; effective February 20, 1978.

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

(1) All assets acquired through foreclosure or in lieu of foreclosure and all "Other Real Estate" acquired in such manner or otherwise shall be valued six (6) months prior to or three (3) months following the acquisition by an independent appraiser knowledgeable in the fair market value of such assets or, in the alternative, evaluated by a qualified officer of the bank in conformity with the Evaluation Content portion of the Interagency Appraisal and Evaluation Guidelines (hereinafter "evaluation") if the book value of the property is less than two (2) percent of the statutory capital base of the bank, $400,000 for residential property, or $500,000 for commercial property whichever amount is greater. Appraisals or evaluations subsequent to the initial valuation are required if, based upon a review of the following factors, there is a reasonable basis to determine that the prior valuation is no longer reliable as a reasonable estimate of the property's fair market value: volatility of local market; changes in terms and availability of financing; natural disasters; limited or over supply of competing properties; improvements to the subject property or competing properties; lack of maintenance of the subject or competing properties; changes in underlying economic and market assumptions, such as capitalization rates and lease terms; changes in zoning, building materials, or technology; and environmental contamination. In the event there is no basis to determine that the initial valuation is no longer reliable, then appraisals or evaluations shall be at intervals of not more than five (5) years.

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

period, a copy of the most recent appraisal or evaluation, and a statement as to the estimated annual cost of carrying the asset and estimated annual income produced by the asset.

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

(4) Property subject to this rule shall be initially carried on the books of the bank at the fair market value determined by independent appraisal or evaluation, unless otherwise provided, less the estimated costs to sell the property ("new basis"). This valuation shall be determined as of the date the bank takes legal title to or physical possession of the property, whichever event occurs first. Subsequently, the carrying value shall be subject to write-down or write-up based upon the most recent appraisal or evaluation. However, the property must be carried at the lower of the current fair market value less the estimated costs to sell the property or the new basis. The new basis may be adjusted upward in the event the bank makes any permanent capital improvements, subject to the limitations in paragraph (5), necessary to prepare the property for sale but the adjustment in the new basis shall be the lower of the increase in the fair market value of the property after the capital improvements or the amount expended to make the capital improvements. Non-capital improvements and expenses necessary to carrying and maintaining the property (taxes, legal fees, insurance, yard maintenance, etc.) shall be expenses and not added to the carrying value. Income earned from the property, other than from conversion or sale, shall be credited to income and shall not reduce the carrying value of the property.

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

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

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

(c) Consistent with safe and sound banking practices.

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

Cite as Ga. Comp. R. & Regs. R. 80-1-10-.09
Authority: O.C.G.A. § 7-1-61.
History. Original Rule was filed on January 31, 1978; effective February 20, 1978.

Amended: F. Mar. 3, 2011; eff. Mar. 23, 2011.
Amended: Title changed to "Assets Acquired - Debts Previously Contracted ("D.P.C.")." F. Jun. 10, 2014; eff. Jun. 30, 2014.
Amended: F. June 29, 2017; eff. July 19, 2017.
Amended: F. June 27, 2018; eff. July 17, 2018.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Rule 80-1-10-.10. Bank as a Lessor of Real Estate.

(1) Pursuant to O.C.G.A. § 7-1-262(a)(1), a bank may acquire and hold real estate the bank occupies or intends to occupy primarily for the transaction of its business or the business of any subsidiary or affiliate. Subject to compliance with the provisions of this rule as well as the Department's prior written approval, a bank may lease excess real estate.

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

(3) The underlying real estate must have been acquired in good faith and for permissible purposes. Nothing herein shall be deemed to authorize a bank to acquire real estate for speculative purposes.

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

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

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

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

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

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

Cite as Ga. Comp. R. & Regs. R. 80-1-10-.10
Authority: O.C.G.A. §§ 7-1-61, 7-1-262.

History. Original Rule entitled "Bank as a Lessor of Real Estate" adopted. F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: F. July 7, 2022; eff. July 27, 2022.

Subject 80-1-11. PUBLIC DISCLOSURE OF INFORMATION.

Rule 80-1-11-.01. Public Access to Records.

The following records of the Department of Banking and Finance shall be subject to inspection by members of the public:

(a) Sections of accepted Applications for Charter, received applications for Branch Office, Relocation, Merger, Acquisition of Control of Financial Institutions, Holding Company formation, and Holding Company acquisition deemed to be non-confidential by the Department; provided, however, such non-confidential information will come within Section 80-1-11-.02 ninety (90) days after disposition has been made of the application; and

(b) The terms of or a copy of any bond filed with the Department by (1) mortgage licensees or registrants; (2) money services businesses; and (3) installment lenders.

Cite as Ga. Comp. R. & Regs. R. 80-1-11-.01
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Public Access to Records" adopted. F. July 12, 1974; eff. August 1, 1974.
Amended: F. Aug. 28, 1975; eff. Sept. 17, 1975.
Repealed: New Rule of same title adopted. F. July 13, 1981; eff. August 2, 1981.
Amended: F. July 12, 1999; eff. August 1, 1999.
Amended: F. Oct. 22, 2001; eff. Nov. 11, 2001.
Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: F. Nov. 20, 2007; eff. Dec. 10, 2007.
Amended: F. Sep. 18, 2012; eff. Oct. 8, 2012.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-1-11-.02. Confidential Records.

(1) Consistent with Code Sections 7-1-70 and 7-1-1009, the following records of the Department of Banking and Finance are declared to be in the nature of examination reports obtained by or for the confidential use of the Department in ascertaining the true condition of the bank or other regulated entity and, therefore, shall not be available for inspection except as specifically authorized by the Commissioner:

(a) Reports of Examination;

(b) Reports of Investigation of Applications to the Department;

(c) Reports of Independent Audits;

(d) All correspondence, other records and documents not expressly made available by Rule 80-1-11-.01.

(2) Any examination reports, reports of investigation or other information obtained from another supervisory or regulatory agency or from law enforcement shall be treated as the property of the provider and will not be available for inspection. Requests for such information should be made to the provider directly.

Cite as Ga. Comp. R. & Regs. R. 80-1-11-.02
Authority: O.C.G.A. Secs. 7-1-61, 7-1-70.
History. Original Rule entitled "Limited Access to Records" adopted. F. July 12, 1974; eff. August 1, 1974.
Amended: F. Aug. 28, 1975; eff. Sept. 17, 1975.
Repealed: New Rule entitled "Confidential Records" adopted. F. July 13, 1981; eff. August 2, 1981.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.
Amended: F. Oct. 22, 2001; eff. Nov. 11, 2001.
Amended: F. Aug. 4, 2008; eff. Aug. 24, 2008.

Rule 80-1-11-.03. Protection of Privacy.

To the extent necessary to prevent an invasion of personal privacy, the Commissioner may delete identifying details from documents described in this chapter. In each case of such deletion, the justification therefor will be clearly explained in writing.

Cite as Ga. Comp. R. & Regs. R. 80-1-11-.03
Authority: Ga. L. 1974, pp. 733, 736-738.
History. Original Rule entitled "Confidential Records" was filed on July 12, 1974; effective August 1, 1974.
Amended: Filed August 28, 1975; effective September 17, 1975.
Amended: Rule amended and renumbered as 80-1-11-.02, and Rule 80-1-11-.04, entitled "Protection of Privacy," renumbered as 80-1-11-.03. Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-11-.04. Request for Records.

(1) Requests for copies of records must be in writing and must state the name of the person for whom the records are being sought and the purpose for which the records are to be used.

(2) Requests for copies of records believed to be for fraudulent, anticompetitive, or other illegitimate purposes shall be denied.

(3) The bank whose records are requested shall be notified of the request and disposition of same.

Cite as Ga. Comp. R. & Regs. R. 80-1-11-.04
Authority: Ga. L. 1974, p. 733.
History. Original Rule entitled "Protection of Privacy" was filed on July 12, 1974; effective August 1, 1974.

Amended: Filed on August 28, 1975; effective September 17, 1975.
Amended: Rule amended and renumbered as 80-1-11-.03, and Rule 80-1-1 1-.05, entitled "Request for Records," amended and renumbered as 80-1-11-.04. Filed July 13, 1981; effective August 2, 1981.
Amended: F. Oct. 12, 1989; eff. Nov. 1, 1989.

Rule 80-1-11-.05. Annual Disclosure Statements by Banks.

(a) Requirement of availability - Each bank shall make its annual disclosure statement available to requesters beginning not later than March 31 following its issuance or, if the bank or its holding company mails an annual report to its shareholders, beginning not later than five days after the mailing of such reports, whichever occurs first. A bank shall continually make a disclosure statement available until the disclosure statement for the succeeding year becomes available.

(b) Contents - The disclosure statement may, at the option of the bank, consist of the bank's entire Call Report for the relevant dates and periods. At a minimum, the statement must contain information comparable to that provided in the following Call Report schedules: Balance Sheet; Past Due and Nonaccrual Loans and Leases; Income Statement; Changes in Equity Capital; Charge-Offs and Recoveries and Changes in Allowance for Loan and Lease Losses.

(c) Notice - A notice, which the bank shall at all times display, shall be posted in the lobby of its main office and each branch office, informing its customers and general public that the annual disclosure statement may be obtained from the bank. The notice shall include at a minimum an address and telephone number to which the request should be directed. The first copy of the annual disclosure statement shall be provided to a requester free of charge.

(d) Delivery - Each bank shall, after receiving a request for an annual disclosure statement, promptly mail or otherwise furnish a statement to the requester.

Cite as Ga. Comp. R. & Regs. R. 80-1-11-.05
Authority: Ga. L. 1974, p. 733; O.C.G.A. §§ 7-1-61, 7-1-68.
History. Original Rule entitled "Request for Records" adopted. F. July 12, 1974; eff. August 1, 1974.
Amended: F. Aug. 28, 1975; eff. Sept. 17, 1975.
Repealed: F. July 13, 1981; eff. August 2, 1981.
Amended: New Rule entitled "Annual Disclosure Statements by Banks" adopted. F. Sept. 26, 1995; eff. Oct. 16, 1995.
Amended: F. July 22, 1999; eff. August 1, 1999.
Amended: F. June 20, 2016; eff. July 10, 2016.

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

(1) When necessary or appropriate for business purposes, a financial institution, or any director, officer, or employee thereof, may disclose information contained in, or related

to, reports of examination issued by the Department, to a person or organization officially connected with the financial institution as officer, director, or employee or as an external accountant, attorney, or consultant. A financial institution or a director, officer, or employee may make such disclosure if the external accountant, attorney, or consultant is under a written contract to provide services to the financial institution and the external accountant, attorney, or consultant has a written agreement with the financial institution in which the external accountant, attorney, or consultant:

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

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

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

Cite as Ga. Comp. R. & Regs. R. 80-1-11-.06
Authority: O.C.G.A. §§ 7-1-61; 7-1-70.
History. Original Rule entitled "Sharing Confidential Supervisory Information" adopted. F. June 27, 2018; eff. July 17, 2018.

Subject 80-1-12. DIVIDENDS, MANAGEMENT FEES, ETC.

Rule 80-1-12-.01. Dividends.

(1) The Board of Directors of any state-chartered bank in this State may declare and the bank may pay dividends on its outstanding capital stock without any requirement to notify the Department or request the approval of the Department under the following conditions:

(a) Total adversely classified assets at the most recent examination of the bank, the conclusions of which may have been presented to the Board of Directors, do not exceed eighty (80) percent of Tier 1 Capital plus the allowances for credit losses as reflected at such examination; and

(b) The aggregate amount of dividends declared or anticipated to be declared in the calendar year:

(i) does not exceed fifty (50) percent of the net income that is attributable to the bank that is a Subchapter C-Corporation for the previous calendar year as reported on the Consolidated Reports of Income, Schedule RI-Income Statement; or

(ii) does not exceed seventy-five (75) percent of the net income that is attributable to the bank that is a Subchapter S-Corporation for the previous calendar year as reported on the Consolidated Reports of Income, Schedule RI-Income Statement; and

(c) The ratio of Tier 1 Capital to Average Total Assets shall not be less than six (6) percent.

(2) Any dividend to be declared by the Board of Directors of a bank at a time when each of the foregoing conditions does not exist must be approved, in writing, by the Department prior to the payment thereof pursuant to the provisions of Section 7-1-460(a)(3) of the Code of Georgia. Requests for approval of dividends shall be on forms prescribed by the Department.

(3) The definition of Tier 1 Capital and Average Total Assets as used herein shall be consistent with the definition utilized by the Federal Regulatory Agencies.

Cite as Ga. Comp. R. & Regs. R. 80-1-12-.01
Authority: O.C.G.A. §§ 7-1-61, 7-1-460.
History. Original Rule entitled "Dividends" adopted. F. May 1, 1975; eff. May 21, 1975.
Repealed: New Rule of the same title adopted. F. Mar. 23, 1982; eff. Apr. 12, 1982.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.
Amended: F. Aug. 29, 2014; eff. Sept. 18, 2014.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: F. July 7, 2021; eff. July 27, 2021.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-1-12-.02. Intercompany Dealings, Management Fees.

(1) No bank or trust company shall purchase, lease, or sell any asset or service from or to any affiliate upon terms which are detrimental to the bank or trust company or any minority shareholders of the bank or trust company. Methods for determining propriety of a transaction shall be subject to Departmental oversight and review.

(2) Tax payments by a bank or trust company to a bank holding company shall generally be consistent with the payment of tax liabilities which would have been made had it filed tax returns as a separate entity, eliminating any benefit arising from surtax exemptions. Timing of such payments should generally be in concert with tax payment dates prescribed by tax regulations for estimated tax payments and the rendering of final returns.

(3) Management fees and other charges:

(a) Management fees and other charges, other than specific charges for reimbursement of tax payments or for the purchase or lease of assets or services, payable to a bank holding company or an affiliate of a bank holding company may be paid by the banking or trust subsidiary provided such fees and charges do not exceed the subsidiary's pro rata share of the administrative overhead of the bank holding company plus any direct expenses attributable to the subsidiary and it is clearly demonstrated that the subsidiary has received direct benefit from its relationship with the holding company. Such pro rata share shall be determined through an equitable proration of such administrative overhead among all holding company subsidiaries and activities. The proration may be based on any reasonable formula provided such formula is justified by appropriate memorandum in the files of the bank or trust company and approved by the Board of Directors of the bank or trust company. Such formula shall be subject to Departmental oversight and review.

(b) Administrative overhead shall include only those expenses incurred in general support of all holding company activities and not specifically allocable to a particular subsidiary or activity.

(c) Administrative overhead shall not include net losses incurred in any holding company activity, subsidiary, or investment; nor shall the term include any closing costs, interest, service charge or other expense incurred in connection with any debt owed by the holding company. Administrative overhead shall also not include any salary or other compensation of officers, directors or shareholders which is not commensurate with duties and responsibilities performed in some official capacity with the holding company. Time devoted to performance of duties and fulfilling responsibilities at the holding company level and compensation in connection with such action shall be considered in establishing reasonable levels of compensation from the bank or trust company for persons who are employed by both entities. Each entity shall pay only that portion of the total compensation as is commensurate with the duties performed on behalf of that entity.

(4) Fees and charges contemplated under this Rule may be paid after the liability therefor is incurred. Administrative overhead may be accrued or paid monthly based upon a reasonable projection of actual charges, provided such accrual or payment is adjusted to actual expenses at least annually. No such fee or charge may be paid in advance. Appropriate documentation and justification must be maintained in the bank for any disbursement governed by this Rule.

Cite as Ga. Comp. R. & Regs. R. 80-1-12-.02
Authority: Ga. L. 1974, p. 733; 1976, p. 175.
History. Original Rule entitled "Dividends" adopted. F. May 1, 1975; eff. May 21, 1975.
Repealed: New Rule of the same title adopted. F. Mar. 23, 1982; eff. Apr. 12, 1982.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.

Amended: F. Nov. 7, 2013; eff. Nov. 27, 2013.

Rule 80-1-12-.03. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-1-12-.03
Authority: Ga. L. 1974, p. 733; Ga. L. 1976, p. 175.
History. Original Rule entitled "Banks Acting as Agents for Affiliated Banks" adopted. F. Oct 12, 1989; eff. November 1, 1989.
Repealed: F. Sept 26, 1995; eff. October 16, 1995.

Subject 80-1-13. CORRESPONDENT FUNDS.

Rule 80-1-13-.01. Definitions.

(1) Correspondent (or Federal) Funds shall mean excess funds of one financial institution placed with another financial institution at interest and subject to immediate withdrawal. Funds shall include "unsecured day(s) funds".

(2) For purposes of this Rule,"financial institution" shall mean any of the following:

(a) A state or federally chartered bank;

(b) A state or federally chartered savings and loan association;

(c) A state or federally chartered credit union;

(d) A foreign banking institution holding a state or federal license to maintain a branch or agency in any state of the United States.

Cite as Ga. Comp. R. & Regs. R. 80-1-13-.01
Authority: Ga. L. 1974, pp. 705, 733, 793; Ga. L. 1981, H.B. 822.
History. Original Rule entitled "Definitions" was filed and effective on June 27, 1975, as Emergency Rule 80-1-13-0.3-.01, to remain in effect for 120 days.
Amended: Permanent Rule entitled "Definitions" adopted replacing Emergency Rule 80-1-13-0.3-.01. Filed August 28, 1975; effective September 17, 1975.
Amended: Rule repealed and a new Rule of the same title adopted. Filed July 13, 1981; effective August 2, 1981.
Amended: F. June 20, 2016; eff. July 10, 2016.

Rule 80-1-13-.02. Status of Accounts.

(1) Correspondent Funds Placed (Sold) shall not be considered to be extensions of credit but shall have the same status as a deposit provided the funds are withdrawable on demand and are unsecured.

(2) Correspondent Funds Held (Purchased) shall not constitute borrowings, but shall have the same status as depositors of the financial institution receiving such funds provided the recipient financial institution does not pledge its assets to secure funds and such funds may be withdrawn upon demand.

Cite as Ga. Comp. R. & Regs. R. 80-1-13-.02
Authority: Ga. L. 1974, pp. 705, 733, 793-795, 801-802.
History. Original Rule entitled "Status of Accounts" was filed and effective on June 27, 1975, as Emergency Rule 80-1-13-0.3-.02, to remain in effect for 120 days.
Amended: Permanent Rule adopted replacing Emergency Rule 80-1-13-0.3-.02. Filed August 28, 1975; effective September 17, 1975.
Amended: Rule repealed and a new Rule of the same title adopted. Filed July 13, 1981; effective August 2, 1981.

Rule 80-1-13-.03. Approval of Board of Directors.

No correspondent Funds may be placed (sold) with another financial institution in excess of fifteen (15) percent of the placing (selling) financial institution's statutory capital base without the prior approval of the recipient by the Board of Directors, or a committee thereof, of the placing or selling institution; provided however, the selection of a financial institution by the Board of Directors pursuant to the provisions of Section 7-1-370 to be a depository of a bank's funds shall constitute approval of that institution as the recipient of placed (sold) Correspondent Funds.

Cite as Ga. Comp. R. & Regs. R. 80-1-13-.03
Authority: Ga. L. 1974, pp. 705, 733, 793; Ga. L. 1981, H.B. 822; Ga. L. 1983, Act No . 255, effective March 16, 1983.
History. Original Rule entitled "Approval of Board of Directors" was filed on July 13, 1981; effective August 2, 1981.
Amended: Filed August 17, 1983; effective September 6, 1983.

Subject 80-1-14. AUDITS.

Rule 80-1-14-.01. Independent Audits.

(1) Every bank shall have an audit of its books and records performed at least annually by independent public accountants in accordance with generally accepted auditing standards. The audit must be of sufficient scope to enable the auditor to render an opinion on the financial statements of the bank or consolidated holding company. Such audit shall include a review of the bank's internal controls and such other tests and reviews of bank records as deemed appropriate by the independent auditor, including verifications of the bank's loan and deposit accounts, review of fiduciary activities (pursuant to agreed-upon procedures) accounts held in a fiduciary capacity, and adequate testing and review of the bank's information technology activities. The extent of audit work should be clearly defined in engagement letters. Such letters should discuss the scope of the audit, the

objectives, resource requirements, audit timeframe, and resulting reports. Independent Public Accountants must make their audit work papers, policies, and procedures available to Department examiners for review upon request.

(2) Audit reports in which the auditor expresses an unqualified opinion shall be provided to the Department upon request. Audit reports in which the auditor expresses anything other than an unqualified opinion, including, but not limited to, a qualified opinion, an adverse opinion, or a disclaimer of opinion, shall be provided to the Department within fifteen (15) days following receipt by the financial institution. Audit reports submitted to the Department shall be accompanied by the Letter to Management, if applicable, detailing any reportable conditions discovered during the audit engagement. Failure to obtain the required opinion audit, or the auditor's report thereof, shall be reported to the Department within fifteen (15) days of discovery.

Cite as Ga. Comp. R. & Regs. R. 80-1-14-.01
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Minimum Standards for Internal Audit" adopted. F. Aug. 28, 1975; eff. Sept. 17, 1975.
Amended: F. Nov. 17, 1986; eff. Dec. 7, 1986.
Repealed: New Rule entitled "Independent Audits" adopted. F. Jan. 27, 1995; eff. Feb. 16, 1995.
Amended: F. July 12, 1999; eff. August 1, 1999.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. June 29, 2017; eff. July 19, 2017.

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

(1) An institution shall have an internal audit program that is appropriate to the size of the institution and the nature and scope of its activities. An appropriate internal audit program consists of qualified persons and provides for effective:

(a) Monitoring and reporting on the system of internal controls;

(b) Testing and review of controls over information systems;

(c) Documenting of testing activities, findings, and corrective actions;

(d) Verifying and reviewing of management actions to address material weaknesses; and

(e) Engagement and oversight by the institution's Board of Directors.

(2) The Board of Directors shall name an internal auditor or designate an officer to act as a liaison with third parties engaged to perform the internal audit program.

(3) The Board of Directors shall review and approve the scope of the internal audit program to include the operational areas targeted for review, the proposed timeline of reviews,

testing procedures to be used, the qualifications of personnel for the subject matter to be reviewed, and the independence of personnel from operational responsibilities over areas to be reviewed. Alternatively, a committee formed in compliance with O.C.G.A. § 7-1-483(b)(2), is authorized to act in lieu of the Board of Directors. The scope of the internal audit will be documented - via an engagement letter when third parties are engaged - and provided to the Department upon request.

(4) The internal auditor or designated liaison shall:

(a) Implement or oversee implementation of the institution's internal audit program;

(b) Monitor the implementation of corrective actions; and

(c) Report to the Board of Directors at least annually on the status of the internal audit program to include audit activities, findings, and corrective actions.

(5) The internal audit shall be appropriate to the size of the institution and the nature and scope of its activities. In determining the nature and scope of the internal audit, the financial institution shall take into consideration the auditing standards formulated by The Auditing Standards Board of the AICPA, the Public Company Accounting Oversight Board ("PCAOB"), and/or the Institute for Internal Auditors.

(6) Unless pre-approved by the Department in writing, the external audit obtained pursuant to O.C.G.A. § 7-1-487 and Rule 80-1-14-.01 will not satisfy the internal audit program requirement.

(7) In the event the Department determines that an internal audit program is deficient, the Department may require the institution to:

(a) Replace the internal auditor with an individual acceptable to the Department;

(b) Perform additional reviews by personnel acceptable to the Department with subject matter expertise on, and independence from, the areas targeted for review; and

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

Cite as Ga. Comp. R. & Regs. R. 80-1-14-.02
Authority: O.C.G.A. § 7-1-61.
History. Repealed: New Rule entitled "The Internal Auditor" adopted. F. Jan. 27, 1995; eff. Feb. 16, 1995.
Amended: New title "Internal Audit Program." F. July 9, 2019; eff. July 29, 2019.

Rule 80-1-14-.03. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-1-14-.03
Authority: Ga. L. 1974, pp. 733, 960.
History. Original Rule entitled "Reporting Requirements" adopted. F. Aug. 28, 1975; eff. Sept. 17, 1975.
Repealed: F. Oct. 18, 1988; eff. Nov. 7, 1988.

Subject 80-1-15. EXTENSIONS OF EXISTING OFFICES AND FACILITIES.

Rule 80-1-15-.01. Automated Teller Machine ("ATM") and Night Depository.

An ATM machine, which by definition in O.C.G.A. § 7-1-603 takes deposits, and a night depository may be established anywhere in this state. Establishment of an ATM machine in this state does not constitute doing a banking business here.

Cite as Ga. Comp. R. & Regs. R. 80-1-15-.01
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Emergency Acquisitions and Consolidations Involving a Financial Institution in Danger of Failing or a Failed Financial Institution" adopted as ER. 80-1-15-0.5-.01. F. June 30, 1978; eff. June 29, 1978, the date of adoption.
Amended: ER. 80-1-15-0.7-.01 adopted. F. Jan. 9, 1979; eff. Jan. 4, 1979, the date of adoption.
Amended: ER. 80-1-15-0.8-.01 adopted. F. and eff. Mar. 17, 1981, the date of adoption.
Amended: ER. 80-1-15-0.9-.01 adopted. F. June 1, 1983; eff. May 31, 1983, the date of adoption.
Amended: New Rule entitled "Definitions" adopted. F. July 7, 1988; eff. July 27, 1988.
Amended: Rule retitled "Automated Teller Machine ("ATM")". F. Sept. 26, 1995; eff. Oct. 16, 1995.
Amended: Rule retitled "Automated Teller Machine ("ATM") and Night Depository". F. Aug. 26, 1997; eff. Sept. 15, 1997.
Amended: F. July 28, 2003; eff. August 17, 2003.
Amended: F. Sept. 1, 2004; eff. Sept. 21, 2004.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: F. July 7, 2022; eff. July 27, 2022.

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

(1) Banks may provide unlimited banking services through mobile banking units that do not have a single, permanent site and use a vehicle that travels to various locations to enable customers to conduct the business of banking.

(2) A mobile branch may provide banking services at various regularly scheduled locations or it may be open in a defined area at varying times and locations. If the mobile branch provides banking services at regularly scheduled locations, then it shall be accessible to banking customers in accordance with a published schedule available on the bank's website. In all circumstances, each mobile branch is required to maintain logs indicating the specific locations and times in which the mobile unit is operating in order to track branch activities.

(3) Each bank providing mobile banking unit services shall carry adequate fidelity, robbery, and hazard insurance coverage commensurate with the risks associated with the operation of such units.

(4) Disclosures shall be given to all customers regarding when deposits will be credited and when checks or other withdrawals will be debited.

(5) Since a mobile unit will function as a branch, application for approval must be made as it is for all other branches.

(6) Banks may alter the banking service area set forth in paragraph 2 of this Rule by submitting advance written notification to the Department.

Cite as Ga. Comp. R. & Regs. R. 80-1-15-.02
Authority: O.C.G.A. § 7-1-602.
History. Original Rule entitled "Procedures" adopted as ER. 80-1-15-0.7-.02. F. Jan. 9, 1979; eff. Jan. 4, 1979, the date of adoption.
Amended: ER. 80-1-15-0.8-.02 adopted. F. and eff. Mar. 17, 1981, the date of adoption.
Amended: New Rule entitled "Mobile Banking Units" adopted. F. July 7, 1988; eff. July 27, 1988.
Amended: F. Aug. 26, 1997; eff. Sept. 15, 1997.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: F. July 12, 1999; eff. August 1, 1999.
Amended: F. July 9, 2019; eff. July 29, 2019.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Rule 80-1-15-.03. Messenger Services.

(1) For purposes of this Rule, the below terms shall be defined as follows:

(a) "Branching" shall mean the receipt of deposits, payment of checks, or lending of money.

(b) "Messenger service" shall mean any service used by a bank and its customers to pick up from and deliver to, specific customers at locations such as their homes or offices, items related to transactions between the bank and such customers.

(2) Banks may establish and operate a messenger service or use, with its customers, a third-party messenger service. Banks may use the messenger service to transport items related to the bank's transactions with its customers without the messenger service being approved as a branch provided that the messenger service does not perform any branching functions. In establishing or using such a messenger service, a bank must establish terms and conditions in order to ensure compliance with this Rule and safe and sound banking practices.

(3) Banks may use, with its customers, a messenger service to pick up from, and deliver to, customers items related to branching functions without the messenger service being approved as a branch so long as the messenger service is established and operated by a third-party. Under no circumstance will such messenger service be authorized to perform branching functions. In using such a messenger service, the bank must establish terms and

conditions in order to ensure compliance with this Rule and safe and sound banking practices.

(4) The Department will review the facts and circumstances and determine whether a messenger service is established by a third-party. However, a messenger service will always be established by a third party if:

(a) A party other than the bank owns the messenger service and its facilities (or rents these from a party other than the bank), and who employs the personnel engaged in the provision of the service;

(b) The party retains ultimate discretion as to the limits of the geographic area and the customers it will serve;

(c) The party maintains ultimate responsibility over its scheduling and routing;

(d) The party operates under a separate name from the bank and does not advertise the service as being provided by the bank;

(e) The party assumes full responsibility for all items in transit, including the provision of adequate insurance to cover employee fidelity and any other losses while items are in the custody and control of the party; and

(f) The party acts as the agent for the customer while the items are picked-up, transported, and delivered.

(5)

(a) The bank may defray all or part of the costs incurred by the customer for use of the messenger service, consistent with safety and soundness and prudent fiscal policy. Any payment by the bank may not exceed the actual charge for the services rendered.

(b) The bank shall deem items for deposit to be received by the bank at the time they are credited to the customer's account at the bank or a branch office.

(c) The bank shall deem items representing withdrawals to be paid when the items are delivered to the messenger service.

(6) Banks may provide messenger services for the pick-up and delivery of items related to or not related to branching. They may do so by establishing their own service or by use of a third-party service. Such services may be provided anywhere and will not be considered branching.

Cite as Ga. Comp. R. & Regs. R. 80-1-15-.03
Authority: O.C.G.A. §§ 7-1-61; 7-1-602.
History. Original Rule entitled "Courier Services" adopted. F. July 7, 1988; eff. July 27, 1988.
Amended: F. Sept. 26, 1995; eff. Oct. 16, 1995.
Amended: F. July 12, 1999; eff. August 1, 1999.

Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: New title "Messenger Services." F. Jan. 8, 2021; eff. Jan. 28, 2021.

Rule 80-1-15-.04. Account Service Representatives.

Banks lawfully doing a banking business in Georgia may provide for account service representatives to visit public events and commercial locations including governmental, educational, and health facilities for the purpose of opening deposit accounts and providing services incidental thereto; provided, access to such locations and facilities is available to other financial institutions on a nondiscriminatory basis. Account paying and receiving services may not be provided during such visits other than an initial deposit to a new account.

Cite as Ga. Comp. R. & Regs. R. 80-1-15-.04
Authority: O.C.G.A. § 7-1-602.
History. Original Rule entitled "Account Service Representatives" adopted. F. July 7, 1988; eff. July 27, 1988.
Amended: F. Aug. 26, 1997; eff. Sept. 15, 1997.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Rule 80-1-15-.05. School Savings and Banking Education Programs.

Banks lawfully doing a banking business in Georgia may participate in school savings and banking education programs, where such programs: are provided for minors in order to promote thrift or to provide banking and financial education; are supervised by a school official or an organization affiliated with the school on school premises or at a facility utilized by the school; and are in a location where the bank would otherwise be authorized to have a branch. School savings program deposits are not considered received until they have been delivered to a representative of and at the participating bank. Under a school savings program, checks are not considered paid until received by the participating bank either directly or through a messenger acting as agent for the customer. These programs shall not be considered a branch office, provided the above provisions are met.

Cite as Ga. Comp. R. & Regs. R. 80-1-15-.05
Authority: O.C.G.A. §§ 7-1-241; 7-1-261.
History. Original Rule entitled "School Savings and Banking Education Programs" adopted. F. July 14, 1998; eff. August 3, 1998.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Rule 80-1-15-.06. Representative Offices.

(1) A bank or bank holding company chartered by the Department or a subsidiary of such bank or bank holding company may establish and maintain representative offices upon registering such locations with the Department.

(2) A representative office shall be staffed and accessible to the public.

(3) A representative office may not engage in the banking business which includes, but is not limited to, accepting deposits, opening deposit or savings accounts, paying withdrawals, drafts, or checks, disbursing loan proceeds, or accepting payments.

(4) The combination of representative offices with other facilities such as an automatic teller machine or cash dispensing machine is permitted.

(5) In the event a bank or bank holding company chartered by the Department or a subsidiary of such bank or bank holding company closes a representative office, notice must be provided to the Department prior to the closure in compliance with Rule 80-1-1-.08.

Cite as Ga. Comp. R. & Regs. R. 80-1-15-.06
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Representative Offices" adopted. F. July 7, 2022; eff. July 27, 2022.

Chapter 80-2. CREDIT UNIONS.

Subject 80-2-1. BOOKS AND RECORDS.

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

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

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

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

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

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

(3) Each credit union shall file with the Department a complete report of its condition as of the last business day in March, June, September and December of each calendar year and at such other dates as the Commissioner may determine. Such reports shall be filed no more than thirty (30) days after the close of the applicable accounting period. Each such report shall be on forms required by the Department and shall be attested as provided on the form.

Cite as Ga. Comp. R. & Regs. R. 80-2-1-.01
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Retention of Records of Credit Unions" adopted. F. and eff. June 30, 1965.
Repealed: New Rule entitled "General Requirements for Accounting Procedures" adopted. F. June 17, 1976; eff. July 7, 1976.
Amended: F. July 13, 1981; eff. August 2, 1981.
Amended: F. Aug. 17, 1983; eff. Sept. 6, 1983.
Repealed: New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. July 28, 2003; eff. August 17, 2003.
Amended: F. June 27, 2018; eff. July 17, 2018.

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

(1) In addition to the requirements otherwise set forth herein, the following subsidiary records must be maintained:

(a) Securities Register - shall contain a record of all securities, certificates of deposit, commercial paper, acceptances, and other investments bought or sold, showing date of transaction, proper name of the security, interest rate, maturity date, par value, purchase price, book value, schedule of amortization of premium and accretion of discounts, and location where the security is held.

(b) Loan Ledgers -

1. credit unions shall maintain a record of the direct and indirect liability of each member;

2. where a credit union elects to maintain installment loans separately from other direct loans of a borrower and does not include them on the Liability Ledger above, they may be maintained in a separate ledger with payments being posted directly thereto. Such ledger must reflect any and all modifications to the terms of the original note contract which may be granted from time to time, i.e., adjustments of the due date or amount of payments;

3. such record may be maintained in whatever order desired by management, i.e., alphabetical, numerical, class of loan, except where they are not maintained alphabetically, a cross-reference file must be maintained.

(c) Deposit Ledgers - credit unions must maintain separate deposit records for each general ledger segregation of deposits. Such record must contain a continuing itemized record of all deposits and withdrawals. Deposits will be segregated into no fewer than the following categories: Transaction or Share Draft Accounts, Savings Deposits, Christmas Savings, and Member Deposit Certificates. Deposit records must be posted daily wherever the credit union offers transaction or share draft accounts; provided, a credit union may defer business conducted on Saturday for posting on the next business day. Such record may be maintained in whatever order desired by management; i.e., alphabetical, numerical, class of deposit, except where they are not maintained alphabetically, a cross-reference file must be maintained.

(d) Income and Expense Register - a detailed record of income and expenses must be maintained. Expenses are to be recorded in such detail as to clearly describe each expense; i.e., supplies, rent, salaries, etc.

(e) Cash Items Register - a daily listing must be maintained of all cash items held which shows the maker on the item, last endorser, date acquired, amount, and reason held.

(f) Charged-Off Assets - all charge-offs, including loans, must be approved by the Board of Directors and such approvals recorded in the minute book. A permanent record of all charge-offs and recoveries thereon must be maintained. When a recovery is made on an asset that has been charged off, the funds are to be credited to the regular reserve and applied to the account that was charged off.

(g) Safekeeping Register - a register must be maintained of all items held for safekeeping by a credit union for its members other than items maintained in a safe deposit box under the sole control of the member. The register should describe the item fully, show the name of the owner, date received, and the number of the receipt given to the member. When the item is returned to the member, the receipt must be secured by the credit union, signed by the member stating that he has received the item that was held for safekeeping. The receipt must then be maintained with the safekeeping register.

(h) Reconcilement Records - the Audit Committee shall reconcile correspondent account statements monthly or shall verify for accuracy reconcilements made by others. A copy of each reconcilement shall be filed in chronological order and kept as a record. The Audit Committee may delegate this responsibility to an internal auditor provided such person has no authority to sign on the account or to initiate or post entries to the general ledger.

(i) Overdrafts - a record of all overdrawn deposit accounts shall be maintained. Such record shall contain the name of the account holder, the amount of the overdraft, and the date the overdraft originated. The most current record shall be approved by the Credit Committee or, in lieu thereof, by the board of directors of the credit

union at least monthly, and such approval shall be recorded in the minutes of the meeting at which the action was taken. Overdrafts of less than $1,000, other than overdrafts on the accounts of officers, and directors may be aggregated and reported in lump sum;

(2) All subsidiary records maintained in support of General Ledger accounts must be balanced back to the General Ledger control balance at least monthly. After balancing at the end of each month on all accounts segregated in the general ledger, the balances and the amounts shown in the general ledger of those accounts and the reconcilement of differences, if any, must be recorded in the Trial Balance Log. The date and the initials of the person running the trial balance must be entered in the log.

(3) Information required to be maintained pursuant to this Rule may be in written form or available subject to access upon computer query. If available, subject to query access, a written record of such information shall be produced at least monthly.

(4) Where a credit union has net worth of $5,000,000 or more, review by the Board of Directors as required in paragraphs (1)(f) and (1)(i) above, may be delegated to a specific officer or department of the credit union where such delegation is recorded in the minutes of the Board of Directors. A properly constituted member of the Board of Directors may perform this function for the full Board of Directors regardless of the size of the credit union.

Cite as Ga. Comp. R. & Regs. R. 80-2-1-.02
Authority: O.C.G.A. §§ 7-1-61; 7-1-663.
History. Original Rule entitled "Minimum Requirements for Books and Records" adopted. F. June 17, 1976; eff. July 7, 1976.
Amended: F. July 13, 1981; eff. August 2, 1981.
Amended: F. Aug. 17, 1983; eff. Sept. 6, 1983.
Repealed: New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. Sept. 1, 2004; eff. Sept. 21, 2004.
Amended: F. June 29, 2017; eff. July 19, 2017.
Amended: F. July 9, 2019; eff. July 29, 2019.

Rule 80-2-1-.03. Minimum Records Retention Periods.

Retention of records of the State chartered credit unions shall be in accordance with Rule 80-10-1.

Cite as Ga. Comp. R. & Regs. R. 80-2-1-.03
Authority: O.C.G.A. Sec. 7-1-61.
History. Original Rule entitled "Minimum Records Retention Periods" adopted. F. June 17, 1976; eff. July 7, 1976.
Repealed: New Rule of same title adopted. F. July 13, 1981; eff. August 2, 1981.
Repealed: New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.

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

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

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

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

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

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

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

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

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

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

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

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

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

Cite as Ga. Comp. R. & Regs. R. 80-2-1-.04
Authority: O.C.G.A. §§ 7-1-61; 7-1-671.
History. Original Rule entitled "Microfilm and EDP Processing Requirements" adopted. F. June 17, 1976; eff. July 7, 1976.
Repealed: F. Oct. 12, 1989; eff. Nov. 1, 1989.
Adopted: New Rule entitled "Notification of Intent to Utilize a Federal Power." F. June 27, 2018; eff. July 17, 2018.

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

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

Cite as Ga. Comp. R. & Regs. R. 80-2-1-.05
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Notice of Unauthorized Access to Customer Information" adopted. F. July 9, 2019; eff. July 29, 2019.

Rule 80-2-1-.06. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-2-1-.06
Authority: O.C.G.A. Sec. 7-1-61.
History. Original Rule entitled "Standard Form Bylaws" adopted. F. Oct. 20, 1981; eff. Nov. 9, 1981.
Repealed: F. Oct. 12, 1989; eff. Nov. 1, 1989.

Subject 80-2-2. GROUP SALES PROMOTIONS.

Rule 80-2-2-.01. Definitions.

"Group Sales Promotions" shall mean any offering for the sale of goods or services by or through a credit union to its members, or a class of members, on behalf of a third party not affiliated with the credit union whether or not the credit union is compensated for making the offer available to its members or receives any compensation from the proceeds of the sale of such goods or services.

Cite as Ga. Comp. R. & Regs. R. 80-2-2-.01
Authority: Ga. L. 1974, pp. 733, 904.
History. Original Rule was filed and effective on June 30, 1965.
Amended: Original Rule entitled "Credit Union's Membership as a Part of a Cooperative Purchasing Group" repealed and a new Rule entitled "Definitions" adopted. Filed September 9, 1977; effective September 29, 1977.

Rule 80-2-2-.02. Group Sales Promotions Generally.

(1) "Group Sales Promotions" shall generally be permitted, provided:

(a) There is no warranty, guaranty, or indemnity on the part of the credit union, either expressed or implied;

(b) all compensation or commissions, payable by the provider of such goods or services to any officer, director, employee, or committee member of the credit union in connection with the sale of such goods or services, shall be paid over to the credit union; provided, however, the requirements of this paragraph shall not preclude the individual promoting the group activity from participation in the promotion free of charge or at a discounted rate so long as the Board of Directors are advised accordingly and this fact is recorded in the minutes of the board; and

(c) the "Group Sales Promotion" is authorized by a majority vote of the Board of Directors of the credit union.

(2) In addition to the foregoing requirements,"Group Sales Promotions" involving franchise or group insurance shall be subject to the additional requirement that "administration fees" paid to the credit union in connection with the sale of such insurance shall not exceed five (5%) percent of the premiums collected by the credit union for transmission to the insuror or its agent.

(3) The prohibitions set forth in paragraph (1) (a) above shall be included in writing with all promotional material distributed to members of the credit union.

Cite as Ga. Comp. R. & Regs. R. 80-2-2-.02
Authority: Ga. L. 1974, pp. 733, 904.
History. Original Rule was filed on September 9, 1977; effective September 29, 1977.

Subject 80-2-3. SHARES, DEPOSITS AND DIVIDENDS.

Rule 80-2-3-.01. Certificate of Deposit.

(1) Certificates of Deposit Generally--Any credit union may, from time to time as determined by its board of directors, issue deposit contracts in the form of Certificates of Deposit whereby the credit union agrees to pay a guaranteed rate of interest to the depositor which may be less than, equal to, or greater than any rate paid in the past or anticipated to be paid in the future on regular share deposits of members, provided the terms of such contracts are in compliance with the provisions of this regulation.

(2) Minimum Contract Terms and Standards:

(a) Monies accepted by a credit union pursuant to the authority of paragraph (1) of this regulation shall be considered to be a deposit subject to the provisions of the Financial Institutions Code of Georgia under the following conditions:

1. Certificates of deposit are issued only to members of the issuing credit union or to another financial institution consistent with Code Section 7-1-650;

2. Certificates of deposit shall have a fixed maturity, and shall disclose their terms, including any automatic renewal provisions as established by the board of directors;

3. Funds deposited thereunder shall be subject to penalty provisions for withdrawal prior to maturity;

4. Certificates of deposit shall be non-negotiable and nontransferable;

5. The rates of interest payable under the certificate of deposit contract shall be approved by the Board of Directors of the credit union;

6. Requirements set forth in sections (2)(a)2., (2)(a)3. and 2(a)4. of this rule shall be disclosed to the depositor along with the date of maturity, interest rate, penalties for early withdrawal, and principal amount of the certificate of deposit.

(b) Every credit union issuing Certificates of Deposit shall maintain a record of every certificate of deposit issued. The record may be in the form of a register, ledger, or copy of the certificate by other technological means available and shall show:

(i) The name of the registered owner of the certificate of deposit;

(ii) The amount of the certificate of deposit;

(iii) The maturity of the certificate of deposit; and

(iv) The rate of interest payable on the certificate of deposit.

(c) Interest may be payable at such intervals in accordance with the contract as determined by the board of directors but not more frequently than monthly except for the payment of accrued dividends at the time of redemption of the certificate of deposit. Interest may be paid by check or other electronic means, by deposit to the member's regular share account, or added to the principal value of the certificate of deposit.

(d) No dividends on regular share accounts may be paid until after all interest due and payable on any Certificate of Deposit issued has been paid or credited in full. Such interest may be treated as an expense for financial accounting purposes but shall be added back to net income (loss) to determine "net earnings available for distribution" to the members.

Cite as Ga. Comp. R. & Regs. R. 80-2-3-.01
Authority: O.C.G.A. Sec. 7-1-61.
History. Original Rule entitled "Member Deposit Certificates" adopted as ER. 80-2-3-0.1-.01. F. and eff. August 1, 1973.
Amended: Permanent Rule of same title adopted. F. Nov. 27, 1973; eff. Dec. 17, 1973.
Amended: ER. 80-2-3-0.2-.01 adopted. F. and eff. April 8, 1974.
Amended: Permanent Rule adopted. F. Apr 29, 1974; eff. May 19, 1974.
Amended: F. Nov. 15, 1974; eff. Dec. 5, 1974.
Amended: ER. 80-2-3-0.4-.01 adopted. F. and eff. December 9, 1976.
Amended: Permanent Rule adopted. F. Jan. 21, 1977; eff. Feb. 10, 1977.
Amended: ER. 80-2-3-0.6-.01 adopted. F. and eff. August 31, 1978.
Amended: Permanent Rule adopted. F. Nov. 8, 1978; eff. Nov. 28, 1978.
Amended: F. Mar. 18, 1980; eff. Apr. 7, 1980.
Amended: F. July 13, 1981; eff. August 2, 1981.
Amended: F. Aug. 17, 1983; eff. Sept. 6, 1983.
Amended: F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. Oct. 22, 2001; eff. Nov. 11, 2001.
Repealed: New Rule entitled "Certificate of Deposit" adopted. F. Aug. 15, 2005; eff. Sept. 4, 2005.

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

(1) At least thirty (30) days prior to conducting a savings promotion raffle under O.C.G.A. § 7-1-239.10, a credit union must provide the Department with written notice detailing the proposed savings promotion raffle. Such notice shall, at a minimum, contain the following information:

(a) A detailed description of the terms of the proposed savings promotion raffle including, but not limited to, the type of account that will be utilized to offer the savings promotion raffle, the interest rate to be paid on the account, the fees associated with the account, the fees associated with the most substantially similar account to the savings promotion raffle account offered by the credit union, the amount required to be deposited in the account for a member to be entered in the

raffle and any limitations on the number of entries per member, the frequency of drawings, and available prizes;

(b) Credit union's policies and procedures related to the proposed savings promotion raffle;

(c) Sample of all disclosures provided to members opening a savings promotion raffle account in accordance with O.C.G.A. § 7-1-239.10(c)(1);

(d) Identity and contact information of all third-party service providers, if any, who are contracted to manage or provide administrative support related to conducting the proposed savings promotion raffle; and

(e) If the savings promotion raffle is conducted in whole or in part by a third-party service provider, a document from the third-party service provider identifying the number and location of all other financial institutions whose members and customers are eligible to participate in the savings promotion raffle.

(2) A credit union's directors, officers, employees, and the members of such persons' immediate family, as defined by O.C.G.A. § 20-2-58.1, are prohibited from participating in a savings promotion raffle conducted by that credit union. A credit union's directors and officers are prohibited from participating in a savings promotion raffle at any financial institution if the savings promotion raffle is administered by the same third-party service provider that administers the savings promotion raffle at the credit union.

Cite as Ga. Comp. R. & Regs. R. 80-2-3-.02
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Savings Promotion Raffle" adopted. F. July 9, 2019; eff. July 29, 2019.

Rule 80-2-3-.03. Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-2-3-.03
Authority: Authority O.C.G.A. Secs. 7-1-61, 7-1-663.
History. Original Rule entitled "Payment Periods for Dividends" adopted. F. July 13, 1981; eff. August 2, 1981.
Amended: F. Aug. 15, 2005; eff. Sept. 4, 2005.
Repealed: Rule reserved. F. Aug. 22, 2006; eff. Sept. 11, 2006.

Rule 80-2-3-.04. Departmental Approval of Dividends.

(1) A credit union proposing to pay dividends and interest in excess of 90% of its "net earnings available for distribution" for the preceding fiscal year may do so without the prior written approval of the department; provided that such dividends and interest do not

exceed 100% of the estimated "net earnings available for distribution" for the period for which such dividends and interest are paid.

(2) Requests for approval of dividends and interest in excess of 100% of the estimated "net earnings available for distribution" of the credit union must be submitted on forms provided by the department. For the purpose of this section,"net earnings available for distribution" shall be defined as net income of the credit union after providing for all required reserves, but before deductions for interest and dividends applicable to the payment period.

(3) Approval of dividends shall be based upon the following considerations:

(a) Adequacy of current year earnings to fund the proposed dividends;

(b) Adequacy of reserves;

(c) Adequacy of Undivided Earnings from previous fiscal years to maintain a level of capital commensurate with asset growth, net worth requirements in accordance with applicable law and regulations, and adequate funding of ongoing operations;

(d) Effects of any dividend reduction on cash flow and liquidity;

(e) Competitiveness of dividend structure and deposit classifications; and

(f) Asset condition of the credit union.

Cite as Ga. Comp. R. & Regs. R. 80-2-3-.04
Authority: Authority O.C.G.A. Secs. 7-1-61, 7-1-663.
History. Original Rule entitled "Departmental Approval of Dividends" was filed on July 13, 1981; effective August 2, 1981.
Amended: Filed August 17, 1983; effective September 6, 1983.
Amended: F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. Aug. 15, 2005; eff. Sept. 4, 2005.

Rule 80-2-3-.05. [Repealed].

Cite as Ga. Comp. R. & Regs. R. 80-2-3-.05
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Third Party Payment Services" adopted. F. July 13, 1981; eff. August 2, 1981.
Amended: F. Aug. 17, 1983; eff. Sept. 6, 1983.
Amended: F. Oct. 22, 2001; eff. Nov. 11, 2001.
Repealed: New Rule entitled "Third Party Payment Services; Other Consumer Services" adopted. F. Aug. 15, 2005; eff. Sept. 4, 2005.
Repealed: F. July 7, 2022; eff. July 27, 2022.

Rule 80-2-3-.06. Service Charges Against Dormant Accounts.

The provisions contained in Chapter 80-1-8, Dormant Accounts, shall be applicable to credit unions in determining which accounts are dormant and the maximum service charges which may be assessed against such accounts.

Cite as Ga. Comp. R. & Regs. R. 80-2-3-.06
Authority: Ga. L. 1974, pp. 705, 733, 904.
History. Original Rule entitled "Service Charges Against Dormant Accounts" was filed on June 28, 1984, effective August 1, 1984, as specified by the Agency.

Subject 80-2-4. INVESTMENT OF CREDIT UNION FUNDS.

Rule 80-2-4-.01. Investment of Credit Union Funds in Other Financial Institutions.

(1) No credit union chartered by the State of Georgia shall invest its funds which are not used in loans in any bank, savings and loan association, or credit union in an amount exceeding five (5) percent of the total deposits of the bank, savings and loan association or credit union; or such larger amount as may be approved by the Department.

(2) For purposes of this Rule, the total deposits of the bank, savings and loan association, or credit union shall be that amount reported in the depository's most recent statement of condition.

Cite as Ga. Comp. R. & Regs. R. 80-2-4-.01
Authority: Ga. L. 1974, pp. 705, 894-895, 904; 1981, pp. 1245, 1246.
History. Original Rule entitled "Investment of Credit Union Funds" adopted. F. May 10, 1976; eff. May 30, 1976.
Repealed: New Rule entitled "Investment of Credit Union Funds in Other Financial Institutions" adopted. F. Oct. 22, 2001; eff. Nov. 11, 2001.
Amended: F. June 20, 2016; eff. July 10, 2016.

Rule 80-2-4-.02. Investment of Credit Union Funds in Fixed Assets; Requirements.

(1) The aggregate investment by a credit union in fixed assets shall not exceed sixty (60) percent of total equity capital and reserves (excluding the allowance for loan losses) except that a greater sum may be invested with the prior approval of the Department.

(2) In the event a credit union invests in a leasehold in order to occupy the premises for the transaction of its business and the investment does not cause the credit union to exceed the fixed asset limitation set forth in paragraph (1), the credit union shall provide the Department with written notification of the investment.

(3) Letter form applications seeking approval to invest in fixed assets in an amount in excess of sixty (60) percent of total equity capital and reserves (excluding the allowance for loan

losses), must provide for an orderly plan of restoring the fixed asset investment to the sixty (60) percent limitation within not more than five (5) years.

(4) Nothing herein shall be construed as permitting a credit union to acquire real estate without the prior approval of the Department or as expressly provided in Rule 80-2-4-.04.

Cite as Ga. Comp. R. & Regs. R. 80-2-4-.02
Authority: O.C.G.A. §§ 7-1-61; 7-1-650; 7-1-663.
History. Original Rule entitled "Investment of Credit Union Funds in Fixed Assets; Letter Form Application and Regular Form Application; Requirements" adopted. F. Oct. 22, 2001; eff. Nov. 11, 2001.
Amended: New title "Investment of Credit Union Funds in Fixed Assets; Requirements." F. June 29, 2017; eff. July 19, 2017.

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

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

(a) offering third-party payment services;

(b) holding real estate;

(c) acting as a financial planner or investment adviser;

(d) offering a full range of investment products;

(e) exercising powers incidental to financial activities as provided in O.C.G.A. § 7-1-650; and

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

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

business of the credit union, and setting forth the provisions that will be implemented in order to mitigate any related risks. Upon review of the application, the Department may request additional information if it determines such additional information is necessary in order to fully and completely evaluate the application. After completion of its review, the Department shall either approve, conditionally or otherwise, or deny such application in writing.

(3) If more than one credit union has an ownership interest in such subsidiary or affiliate, the credit union that has the largest percentage ownership in the subsidiary or affiliate must submit the application to the Department. In the event the largest credit union percentage ownership in the subsidiary or affiliate is held by multiple credit unions, then only one credit union is required to submit an application to the Department.

(4) For purposes of this rule only, "affiliate" means a corporation or limited liability company, that a credit union has less than a majority ownership interest.

Cite as Ga. Comp. R. & Regs. R. 80-2-4-.03
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Investment of Excess Funds in Participation Loans" adopted. F. Oct. 22, 2001; eff. Nov. 11, 2001.
Amended: F. Aug. 15, 2005; eff. Sept. 4, 2005.
Repealed: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Adopted: New Rule entitled "Investment of Credit Union Funds in Subsidiaries." F. Jun. 10, 2014; eff. Jun. 30, 2014.
Amended: F. July 9, 2019; eff. July 29, 2019.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-2-4-.04. Purchase of Real Estate for Future Expansion; Letter Notification.

(1) The purchase of real estate solely for expansion purposes may be made without the prior consent of the Department and by letter notification when:

(a) The real property is to be utilized solely as the premises of a credit union or its wholly owned subsidiary within five years of the date of purchase;

(b) The purchase of the real property does not result in the credit union exceeding the fixed asset limitation;

(c) The credit union is not subject to any special requirements whereby the Department requires prior approval for such purchases; and

(d) If a director, officer, or committee member is a party to the transaction, a certification is provided stating that all requirements of O.C.G.A. § 7-1-656 and the provisions of any applicable federal requirement have been satisfied.

(2) The letter notification shall state the date of purchase, purchase price, location of the property, and why the credit union qualifies for letter notification under the provisions of this rule.

(3) The ability to hold property for future expansion shall expire five (5) years from the date of purchase unless the property is utilized as credit union premises prior to that time. Credit unions holding property beyond the five-year period must divest themselves of the property through sale unless the time limitation is extended by the Department.

Cite as Ga. Comp. R. & Regs. R. 80-2-4-.04
Authority: O.C.G.A. §§ 7-1-61; 7-1-650; 7-1-663.
History. Original Rule entitled "Purchase of Real Estate for Future Expansion; Letter Notification" adopted. F. June 29, 2017; eff. July 19, 2017.

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

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

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

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

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

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

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

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

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

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

Cite as Ga. Comp. R. & Regs. R. 80-2-4-.05
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Credit Union as a Lessor of Real Estate" adopted. F. June 27, 2018; eff. July 17, 2018.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

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

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

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

(2) Prior to investing in a charitable donation account, the Board of Directors must adopt a Conflict of Interest and Ethics Policy that specifically addresses charitable contributions. Such Conflict of Interest and Ethics Policy must include all designated charitable purposes authorized to receive contributions and each designated charitable purpose must be consistent with the best interests of the membership of the credit union. The credit union shall develop written procedures regarding the funding of charitable donation accounts and the distribution of funds from such accounts;

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

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

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

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

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

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

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

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

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

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

Cite as Ga. Comp. R. & Regs. R. 80-2-4-.06
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Charitable Donation Accounts" adopted. F. June 27, 2018; eff. July 17, 2018.

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

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

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

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

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

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

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

(6) Prior to the board of directors approving an otherwise impermissible investment under Paragraph (5), the credit union must develop board approved policies and procedures detailing the risk management processes the board will take into consideration in approving an otherwise impermissible investment, including, but not limited to, the controls that will be implemented to monitor the investment, the timing and methodology of evaluating the quality and risks posed by the investment, and a documented and reasonable approach to transfer or otherwise divest of the investments in an expedited manner.

Cite as Ga. Comp. R. & Regs. R. 80-2-4-.07
Authority: O.C.G.A. §§ 7-1-61; 7-1-650.
History. Original Rule entitled "Life Insurance as an Employee Benefit" adopted. F. June 27, 2018; eff. July 17, 2018.

Rule 80-2-4-.08. Application Requirements for Branch Offices.

(1) Branch offices may be established with the prior approval of the Department by regular application or by expedited application for certain qualified credit unions as provided in paragraph (3).

(2) Unless the provisions related to an expedited application in paragraph (3) is satisfied, a credit union must submit an application to the Department in order to obtain approval to establish a branch office. An application will not be deemed to have been accepted by the Department until all portions of the application have been completed to the satisfaction of

the Department. If the Department notifies the credit union of deficiencies in the application, the credit union must complete the application within thirty (30) days of receipt of the notification of the Department. The Department will approve or deny an application for a branch office within thirty (30) days of receipt of a completed application.

(3) In lieu of an application, a credit union is authorized to submit an expedited application to establish a new branch office subject to the below conditions.

(a) The credit union must meet the following criteria:

(i) The credit union must be well capitalized as defined by the capital requirements of the Department and the NCUA;

(ii) The credit union must have received a CAMELS composite rating of "1" or "2" as a result of the most recent state or federal examination;

(iii) The credit union must not be subject to any agreements, orders, or other enforcement or administrative agreements with the Department or the NCUA; and

(iv) Total investments in fixed assets do not exceed sixty (60) percent of total equity capital and reserves (excluding the allowance for loan losses).

(b) The expedited application must include the following:

(i) The physical address of the branch office;

(ii) A statement regarding whether or not an insider is involved in the acquisition, construction, or leasing of the property;

(iii) The anticipated fixed asset investment for this proposal and whether the credit union will be in compliance with Rule 80-2-4-.02; and

(iv) A statement certifying that the credit union qualifies for expediated processing under subparagraph (a).

(c) Unless it has previously issued an approval letter under subparagraph (d), the Department will attempt to acknowledge receipt of an expedited application or notify the applicant that it does not qualify for expedited processing and may submit an application for regular processing within two business days of receipt of such notice.

(d) The approval to establish a branch office will be effective at the earlier of the approval letter from the Department or 10 business days from the date of acknowledged receipt.

(e) Notwithstanding the above, the Department may deny or remove from expedited processing any credit union's application where it finds that:

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

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

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

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

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

In this event, the credit union will be notified that expedited processing is not available, the reason, and instructions as to how to proceed.

Cite as Ga. Comp. R. & Regs. R. 80-2-4-.08
Authority: O.C.G.A. §§ 7-1-61, 7-1-79, 7-1-655.
History. Original Rule entitled "Application or Notice Requirements for Branch Offices" adopted. F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: New title, "Application Requirements for Branch Offices." F. July 7, 2022; eff. July 27, 2022.

Rule 80-2-4-.09. Relocation or Simultaneous Redesignation of Two or More Credit Union Locations.

(1) Definitions:

(a) Relocation. The location of an existing branch location is to be moved to a new or additional location which is to be constructed, purchased or leased within the same immediate vicinity of the existing branch.

(b) Redesignation. Where two existing credit union locations exchange their designations, a redesignation occurs. Under a redesignation, a branch office becomes the main office and the main office, if it is not closed, becomes a branch office.

(2) Procedure for a Relocation. A credit union meeting the qualifying criteria for expedited processing in sections (3) of Rule 80-2-4-.08 may submit a letter form notification to relocate an existing branch or main office location. The approval to relocate such existing location under the notice procedure will be effective at the earlier of: an approval letter from the department, or 10 business days from the date of acknowledged receipt. In the

event the credit union does not qualify for expedited processing, a form application should be submitted to the Department, which will normally be processed within 30 days from receipt of a completed application. All relocations should include a notice to members posted in a conspicuous place of the affected location as well as on the credit union's website at least 30 days before relocating. In addition, if any relocation proposal involves relocation of the credit union's main office, additional procedures such as amendment of the credit union's Articles of Incorporation may apply.

(3) Procedure for a Redesignation. Upon receipt of a letter form request setting forth the details of the proposed redesignation, the Department will review and process such request within seven (7) days. In the event the credit union intends on closing the former main office as part of a redesignation, then the closing procedures for a branch location must be followed.

Cite as Ga. Comp. R. & Regs. R. 80-2-4-.09
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Relocation or Simultaneous Redesignation of Two or More Credit Union Locations" adopted. F. Jan. 8, 2021; eff. Jan. 28, 2021.

Subject 80-2-5. SURETY BOND COVERAGE.

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

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

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

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

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

Cite as Ga. Comp. R. & Regs. R. 80-2-5-.01
Authority: O.C.G.A. Secs. 7-1-61, 7-1-663.
History. Original Rule entitled "Minimum Requirements for Surety Bond Coverage" adopted. F. May 14, 1976; eff. June 3, 1976.
Amended: F. July 13, 1981; eff. August 2, 1981.

Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: Title changed to "Minimum Requirements for Fidelity Bond Coverage." F. Jun. 10, 2014; eff. Jun. 30, 2014.

Subject 80-2-6. SUPERVISORY AUDITS.

Rule 80-2-6-.01. Audits.

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

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

(3)

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

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

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

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

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

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

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

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

Cite as Ga. Comp. R. & Regs. R. 80-2-6-.01
Authority: O.C.G.A. §§ 7-1-61; 7-1-657.
History. Original Rule was filed on October 26, 1976; effective November 15, 1976.
Amended: New title "Supervisory Audits." F. June 15, 2015; eff. July 5, 2015.
Amended: F. June 29, 2018; eff. July 19, 2018.
Amended: New title "Audits." F. July 9, 2019; eff. July 29, 2019.

Rule 80-2-6-.02. [Repealed].

Cite as Ga. Comp. R. & Regs. R. 80-2-6-.02
Authority: O.CG.A. § 7-1-61.
History. Original Rule was filed on October 26, 1976; effect November 15, 1976.
Amended: F. June 15, 2015; eff. July 5, 2015.
Repealed: F. June 29, 2018; eff. July 19, 2018.

Rule 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.

Cite as Ga. Comp. R. & Regs. R. 80-2-6-.03
Authority: Ga. L. 1974, pp. 705, 733, 904; 1981, pp. 1245, 1250.

History. Original Rule was filed on October 26, 1976; effect November 15, 1976.
Amended: F. June 15, 2015; eff. July 5, 2015.

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

(1) The auditor should be generally familiar with the statutes, rules, and regulations under which the credit union being audited operates, and with its charter and bylaw provisions. The annual audit should incorporate the necessary procedures to satisfy the auditor that there is compliance with the applicable requirements that might materially affect the credit union's financial position of operation.

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

(3) Specific Requirements for the annual audit:

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

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

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

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

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

Cite as Ga. Comp. R. & Regs. R. 80-2-6-.04
Authority: O.C.G.A. §§ 7-1-61; 7-1-657.
History. Original Rule was filed on October 26, 1976; effective November 15, 1976.
Amended: F. June 15, 2015; eff. July 5, 2015.
Amended: F. June 29, 2018; eff. July 19, 2018.

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

(1) An institution shall have an internal audit program that is appropriate to the size of the institution and the nature and scope of its activities. An appropriate internal audit program consists of qualified persons and provides for effective:

(a) Monitoring and reporting on the system of internal controls;

(b) Testing and review of controls over information systems;

(c) Documenting of testing activities, findings, and corrective actions;

(d) Verifying and reviewing of management actions to address material weaknesses; and

(e) Engagement and oversight by the institution's Board of Directors.

(2) The Board of Directors shall name an internal auditor or designate an officer to act as a liaison with third parties engaged to perform the internal audit program.

(3) The Board of Directors shall review and approve the scope of the internal audit program to include the operational areas targeted for review, the proposed timeline of reviews, testing procedures to be used, the qualifications of personnel for the subject matter to be reviewed, and the independence of personnel from operational responsibilities over areas to be reviewed. Alternatively, an audit committee formed in compliance with O.C.G.A. § 7-1-656(b)(2), is authorized to act in lieu of the Board of Directors. The scope of the internal audit will be documented - via an engagement letter when third parties are engaged - and provided to the Department upon request.

(4) The internal auditor or designated liaison shall:

(a) Implement or oversee implementation of the institution's internal audit program;

(b) Monitor the implementation of corrective actions; and

(c) Report to the Board of Directors at least annually on the status of the internal audit program to include audit activities, findings, and corrective actions.

(5) The internal audit shall be appropriate to the size of the institution and the nature and scope of its activities. In determining the nature and scope of the internal audit, the financial institution shall take into consideration the auditing standards formulated by The Auditing Standards Board of the AICPA, and/or the Institute for Internal Auditors.

(6) Unless pre-approved by the Department in writing, the external audit obtained pursuant to O.C.G.A. § 7-1-657 and Rule 80-2-6-.01 will not satisfy the internal audit program requirement.

(7) In the event the Department determines that an internal audit program is deficient, the Department may require the institution to:

(a) Replace the internal auditor with an individual acceptable to the Department;

(b) Perform additional reviews by personnel acceptable to the Department with subject matter expertise on, and independence from, the areas targeted for review; and

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

Cite as Ga. Comp. R. & Regs. R. 80-2-6-.05
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Internal Audit Program" adopted. F. July 9, 2019; eff. July 29, 2019.

Subject 80-2-7. CREDIT UNION SERVICE CONTRACTS.

Rule 80-2-7-.01. Definitions.

(1) Definitions:

(a) "Credit Union Service Contract" shall mean a contract executed by a credit union and a third party servicer to provide credit union services to the credit union.

(b) "Direct Credit Union Services" shall include traditional banking type functions such as taking deposits, paying checks and closing loans. When these services are provided by another financial institution, the agency rules in Rule 80-1-2-.01 thru .04 shall apply.

(c) "Indirect Credit Union Services" are those back office, support or enhancement type operations potentially provided by third parties, including but not limited to check and deposit sorting and posting; electronic and video systems for recording credit union transactions; computation and posting of interest and other credits and charges; preparation and marking of share drafts, statements, notices and similar items, bill payment and other services requested by members which are provided by the credit union through a third party; servicing loans; or other clerical, bookkeeping, accounting, statistical, customer support or similar functions which may be performed by a credit union, whether performed on site or elsewhere, and regardless of the method of delivery.

(d) "Third party service provider" shall mean any provider of credit union services to a credit union.

Cite as Ga. Comp. R. & Regs. R. 80-2-7-.01
Authority: O.C.G.A. Sec. 7-1-61.
History. Original Rule entitled "General Provisions and Definitions" adopted. F. Nov. 8, 1978; eff. Nov. 28, 1978. Amended: Rule retitled "Definitions". F. July 28, 2003; eff. August 17, 2003.

Rule 80-2-7-.02. Contracts for Credit Union Services.

(1) A state chartered credit union that wishes to contract with a third party to provide direct or indirect credit union services shall within 30 days of execution of such contract, notify the department in writing and provide the following information:

(a) Name, address, and contact information for the service provider;

(b) List of services to be provided.

(2) A state chartered credit union contracting with a third party to provide credit union services must maintain the following information on file at the credit union and shall not execute a contract with a third party unless this information has been obtained:

(a) A copy of the contract under which the services are provided;

(b) A schedule of fees to be charged for each type of service to be performed;

(c) Written assurance from the third party service provider that:

1. The records of the credit union for which the services are to be performed will be subject to examination and regulation by the department as if the records were maintained by the credit union on its own premises;

2. The records of the credit union in the service provider's possession shall be available to examiners promptly upon receipt of notice;

3. The department shall have the authority to periodically review the internal routine and controls of the service provider to ascertain that the operations are being conducted in a sound manner in keeping with generally accepted credit union procedures and industry standards;

(d) A listing of all reports and printouts which the service provider is offering the credit union and the time required, after receipt of notice of examination, to provide those reports in readable form to the examiners; and

(e) Evidence of financial stability to include a copy of the service provider's most recent audit and financial statement, both of which should be aged no more than 18 months. This is a continuous requirement.

(3) A state chartered credit union contracting with a third party service provider must employ good faith efforts to monitor the financial condition of the service provider and must

notify the department immediately when it discovers or suspects that the service provider has experienced a net operating loss or is insolvent.

(4) For the purposes of this regulation,"net operating loss" shall mean that all operating income is less than the total of:

(a) All operating expenses;

(b) Other expenses, losses on sale of assets or investments, and any provisions established for losses on investments, loans or other assets.

Cite as Ga. Comp. R. & Regs. R. 80-2-7-.02
Authority: O.C.G.A. Sec. 7-1-61.
History. Original Rule entitled "Application for Permission to Perform Credit Union Services" adopted. F. Nov. 8, 1978; eff. Nov. 28, 1978.
Amended: F. July 13, 1981; eff. August 2, 1981.
Amended: Rule retitled "Contracts for Credit Union Services". F. July 28, 2003; eff. August 17, 2003.

Rule 80-2-7-.03. Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-2-7-.03
Authority: O.C.G.A. Sec. 7-1-61.
History. Original Rule entitled "Contracting to Perform or Have Performed Credit Union Services" adopted. F. Nov. 8, 1978; eff. Nov. 28, 1978.
Amended: F. July 13, 1981; eff. August 2, 1981.
Repealed: Rule reserved. F. July 28, 2003; eff. August 17, 2003.

Rule 80-2-7-.04. Debt Cancellation Contracts and Debt Suspension Agreements.

(1) State chartered credit unions may offer Debt Cancellation Contracts and Debt Suspension Agreements to members, subject to this rule and policies and procedures of the Department. Policies of the Department include requirements for disclosures and certain prohibited practices. Credit unions are expected to comply with all these requirements. Such products will not be considered insurance products in this state when offered by credit unions.

(2) Definitions and Explanation:

(a) A "Debt Cancellation Contract" (DCC) is a contractual agreement modifying loan terms that is linked to a credit union's extension of credit, under which the credit union agrees to cancel all or part of a member's obligation to repay an extension of credit from that credit union upon the occurrence of a specified event.

(b) A "Debt Suspension Agreement" (DSA) is a contractual agreement that modifies loan terms and that is linked to an extension of credit, wherein the credit union agrees to suspend all or part of a member's obligation to repay an extension of credit upon the occurrence of some specified event.

(c) Typically, these products are tied to the life, injury or disability of the borrower, although some products are based on the occurrence of some other specified event, such as termination of employment.

(d) Fees are assessed to the borrower for the ability to cancel or suspend loan payments on the loan, in accordance with the terms of the agreement.

(e) To "underwrite" in the context of this rule means to directly provide for any losses resulting from the operation of the product.

(3) State chartered credit unions desiring to offer DCC or DSA products where the credit union is not underwriting the product shall provide a letter form notification to the Department. The credit union must keep on file the following information, which must be obtained before execution of a contract:

(a) A listing of the types of contracts offered and the underwriting standards for each product;

(b) A copy of the written policies and procedures developed regarding administration of debt cancellation or debt suspension products and their compliance with Department policies;

(c) Identification of any vendor or third party service provider used in conjunction with the product offerings, including a list of the products and services being provided (see also Rule 80-2-7-.01 for contracting with third parties);

(d) A copy of the credit union's plan demonstrating the ability to administer claims;

(e) An analysis of the credit union's risk evaluation and mitigation procedures, including any plans to obtain insurance coverage to fully or partially indemnify itself for losses resulting from the operation of the DCC or DSA product; and

(f) An analysis of the expected impact on credit union staffing.

(4) If a credit union intends to underwrite any part of the DCC or DSA, the following information must also be submitted to the Department in the form of a letter application. No underwriting will be permitted until such approval is granted.

(a) Analysis of management expertise, based on education and experience, in the areas of product design, underwriting, actuarial analysis, claims processing and

risk reserving and accounting practices to support the ability to provide these functions in-house.

(b) An explanation of the risk management techniques the credit union will undertake, including product design criteria, underwriting procedures, limitations and conditions on DCC or DSA products, and other risk mitigation procedures in order to limit risk exposure to the credit union.

(c) A well-documented analysis of risk of the products being proposed, including the risks posed by catastrophic events that could result in unusually high claims upon the credit union.

(d) An outline of the proposed practices for properly reserving for risks related to these products based on industry practices and Generally Accepted Accounting Principles.

(e) An analysis of the credit union to support that the credit union has the proper financial position, cash flow performance and capital position to sustain continued operations in the event of an unusually high claims event.

(5) State chartered credit unions desiring to offer DCC or DSA products where third party service providers will underwrite the products or will administer any part of the program shall provide the letter form notification described in this rule. In addition to any requirements of Rule Chapter 80-2-7 governing service providers, the following information shall also be obtained by the credit union before any contract is executed, and such information will be kept on file at the credit union:

(a) A description of the experience of the third party service provider in offering such DCC or DSA products;

(b) An analysis of the financial stability of the third party service provider, including but not limited to: operating or cash flow statements, analysis of capital and reserves and the use of external company ratings performed by a nationally recognized rating service;

(c) In lieu of (a) and (b) of this paragraph, the credit union may provide proof of the third party's appropriate licensure with the state of Georgia Department of Insurance.

(d) A copy of the standard form contract to be utilized. The contract must contain the third party service provider's assurance that:

1. It will make its books and records available for examination by the Department; and

2. The Department shall have the authority to periodically review the internal routine and controls of the service provider to ascertain that the operations are being conducted in a sound manner in keeping with industry practices and Generally Accepted Accounting Principles.

(e) A schedule of fees to be charged for each product or service performed; and

(f) A listing of reports, printouts, schedules or program that will be provided by the third party service provider to the credit union to permit management, auditors, examiners and other interested parties to monitor the services provided.

Cite as Ga. Comp. R. & Regs. R. 80-2-7-.04
Authority: O.C.G.A. §§ 7-1-61, 7-1-663.
History. Original Rule entitled "Debt Cancellation Contracts and Debt Suspension Agreements" adopted. F. July 28, 2003; eff. August 17, 2003.
Amended: F. July 7, 2022; eff. July 27, 2022.

Subject 80-2-8. FIELD OF MEMBERSHIP.

Rule 80-2-8-.01. Definitions.

(1) The field of membership of a state-chartered credit union shall consist of those persons, groups of persons, or organizations, each bound together by its own "common bond," i.e., a specific relationship of occupation, association or interest; residence or employment within a well-defined neighborhood, community, or rural district; employment; or membership in a bona fide cooperative, educational, fraternal, professional, religious, rural or similar organization. The common bond shall be such as would tend to create a mutual interest between persons sharing the relationship and must exist outside of the credit union itself. A common bond within a field of membership shall include persons related by blood, adoption, or marriage to or living in the same household with a person having the common bond as well as persons and surviving spouses of persons who are no longer within the common bond but who were members of the credit union in good standing when they left.

(2) Organizations, where more than 50% of the organization consists of employees, members, or owners within a non-geographic common bond shall be eligible for membership in the credit union under the same conditions as such employees, members or owners. Organizations that are headquartered within a geographic common bond shall be eligible for membership in the credit union under the same conditions as natural persons located within the field of membership.

Cite as Ga. Comp. R. & Regs. R. 80-2-8-.01
Authority: O.C.G.A. §§ 7-1-61, 7-1-651, 7-1-663.

History. Original Rule entitled "Definition" adopted. F. Aug. 17, 1983; eff. Sept. 6, 1983.
Repealed: New Rule entitled "Definitions" adopted. F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: F. June 29, 2017; eff. July 19, 2017.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-2-8-.02. Expedited Applications for Non-Geographic Group Common Bonds.

(1) Requests for approval of non-geographic common bonds can be submitted to the Department via an expedited application form so long as the following conditions are satisfied:

(a) The credit union must have received a CAMELS composite rating of "1" or "2" as a result of the most recent state or federal examination;

(b) The credit union must not be subject to any agreements, orders, or other enforcement or administrative agreements with the Department or the NCUA;

(c) The requested field of membership addition consists of 5,000 potential members or less;

(d) The requested field of membership is not a geographic common bond;

(e) The requested field of membership is located entirely within the State of Georgia; and

(f) The requested field of membership satisfies all of the requirements in this rule and Rule 80-2-8-.03.

(2) Notwithstanding the above, the Department may remove from expedited processing any credit union's application where it finds that:

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

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

(c) The requirements for expedited processing have not been satisfied; or

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

In this event, the credit union will be notified that expedited processing is not available, the reason, and instructions as to how to proceed.

(3) The Department shall approve, deny, or remove from expedited processing any expedited application for field of membership approval within ten (10) business days of receipt of a completed expedited application.

Cite as Ga. Comp. R. & Regs. R. 80-2-8-.02
Authority: O.C.G.A. §§ 7-1-61, 7-1-663.
History. Original Rule entitled "Affiliated Organizations" adopted. F. Aug. 17, 1983; eff. Sept. 6, 1983.
Repealed: New Rule entitled "Affiliated Organizations as Additions to Non Residential Group Common Bonds" adopted. F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: New title "Affiliated Organizations as Additions to Non-Geographic Group Common Bonds." F. June 29, 2018; eff. July 19, 2018.
Amended: New title, "Expedited Applications for Non-Geographic Group Common Bonds." F. July 7, 2022; eff. July 27, 2022.

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

(1) A field of membership may consist of more than one common bond. Pursuant to O.C.G.A. § 7-1-634, application to the Department is required prior to a credit union amending its bylaws to add an additional common bond group.

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

(a) Demonstrate that the application promotes competition and that broadens the availability of financial services to the proposed membership;

(b) Reserved;

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

(d) In the case of a non-geographic group common bond, demonstrate sponsor support for any new group sought such as the submission of a written request from a senior policy making official of the organization certifying that the organization desires inclusion in the credit union's field of membership; and

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

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

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

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

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

(5) The field of membership shall not be expanded to include the additional common bond group until:

(a) The Department approves the application;

(b) The Board of Directors amends the bylaws to add such common bond to the field of membership; and

(c) A copy of the amended bylaws, properly adding such common bond to the field of membership, is received by the Department.

Cite as Ga. Comp. R. & Regs. R. 80-2-8-.03
Authority: O.C.G.A. §§ 7-1-61, 7-1-630, 7-1-634.
History. Original Rule entitled "Community Financial Services" adopted. F. Aug. 17, 1983; eff. Sept. 6, 1983.
Amended: F. Oct. 12, 1989; eff. Nov. 1, 1989.
Repealed: New Rule entitled "Requirements for Occupational and Organizational Groups" adopted. F. Sept. 1, 2004; eff. Sept. 21, 2004.
Repealed: New Rule entitled "Requirements for Adding Additional Common Bond Groups to a Credit Union's Field of Membership" adopted. F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: F. June 29, 2018; eff. July 19, 2018.
Amended: F. July 9, 2019; eff. July 29, 2019.
Amended: F. July 7, 2022; eff. July 27, 2022.

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

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

(2) Definitions for geographic groups:

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

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

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

1. Residents share common political, environmental, geographical or economic characteristics that tend to create 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 geographic group common bond request shall be accompanied by application to the department and a proposed change to the credit union's bylaws. In reviewing such application, the department shall consider:

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

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

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

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

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

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

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

capability, data management facilities, and ability of management to recognize, monitor and control risk.

Cite as Ga. Comp. R. & Regs. R. 80-2-8-.04
Authority: O.C.G.A. §§ 7-1-3; 7-1-61; 7-1-70; 7-1-630; 7-1-634; 7-1-663.
History. Original Rule entitled "Other Changes" adopted. F. Aug. 17, 1983; eff. Sept. 6, 1983.
Amended: F. Jan. 27, 1995; eff. Feb. 16, 1995.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.
Repealed: New Rule entitled "Requirements for Residential Groups" adopted. F. Sept. 1, 2004; eff. Sept. 21, 2004.
Amended: F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: F. June 15, 2015; eff. July 5, 2015.
Amended: F. June 29, 2017; eff. July 19, 2017.
Amended: New title "Requirements for Geographic Groups." F. June 29, 2018; eff. July 19, 2018.

Rule 80-2-8-.05. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-2-8-.05
Authority: O.C.G.A. Secs. 7-1-61, 7-1-663.
History. Original Rule entitled "Emergency Changes" adopted. F. Aug. 17, 1983; eff. Sept. 6, 1983.
Repealed: New Rule entitled "Other Changes" adopted. F. Sept. 1, 2004; eff. Sept. 21, 2004.
Repealed: F. Aug. 15, 2005; eff. Sept. 4, 2005.

Rule 80-2-8-.06. Emergency Changes.

The department may waive any provisions of this chapter in its discretion to facilitate the merger or combination of any credit union with a troubled or failing credit union.

Cite as Ga. Comp. R. & Regs. R. 80-2-8-.06
Authority: O.C.G.A. Secs. 7-1-61, 7-1-663.
History. Original Rule entitled "Emergency Changes" adopted. F. Sept. 1, 2004; eff. Sept. 21, 2004.

Subject 80-2-9. INVESTMENT SECURITIES.

Rule 80-2-9-.01. Investment Securities.

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

(a) Without limitation if such securities are:

1. The general obligations of the United States Government or any agency or instrumentality thereof;

2. Guaranteed as to principal and interest by the United States Government or any agency or instrumentality thereof; or

3. Separate Trading of Registered Interest and Principal of Securities which are offered exclusively in book entry form, are direct obligations of the United States, and are issued under Chapter 31, Title 13 USC.

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

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

1. General and direct obligations of any state other than Georgia or counties, municipalities, or other political subdivisions of such states authorized to levy taxes;

2. Secured by the pledge or assignment of tax receipts sufficient to pay the principal and interest of such securities as they become due;

3. The revenue obligations of a political subdivision authorized to establish utility fees, public transportation usage fees, or public use fees where such levies or fees are pledged to and are sufficient to pay the principal and interest of the securities as they become due; and

4. The securities are the securities of, or other interests in, any open-end or closed-end management type investment fund or investment trust which:

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

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

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

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

(II) Commercial paper and repurchase agreements, which are fully collateralized by securities authorized in subparagraph (1)(a)1., (1)(a)2., and (1)(a)3. of this Rule, and where the

fund or trust takes delivery of such collateral either directly or through an authorized custodian; or

(III) Certificates of deposit issued by financial institutions insured by an instrumentality of the United States government, and;

(iv) Does not:

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Are no-load, and

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

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

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

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

(a) Governmentally sponsored programs which are fully collateralized by obligations fully guaranteed as to principal and interest by a governmental entity may be

purchased to the same extent as direct obligations of the governmental entity granting the guarantee; and

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

(5) Except for those investments specifically authorized in subparagraph (1)(a)3. of this Rule, futures, forwards, option contracts, interest rate swaps, and direct and indirect investments associated with any security which otherwise constitutes a permissible investment under provisions of this Rule may be approved in writing by the Department for credit unions demonstrating technical expertise and policies sufficient to promote safe and sound use of such investments as part of prudent investment strategies.

(6) Subordinated debt is a security issued by a credit union after approval by the National Credit Union Administration, which may qualify as capital under federal regulatory capital guidelines. The subordinated debt must be scrutinized under the suitability analysis in this rule as if it was a loan being underwritten by the purchasing credit union. Subordinated debt is an authorized investment for a state credit union subject to compliance with the terms and conditions contained in this paragraph.

(a) Notwithstanding any provision in this rule to the contrary, the credit union's aggregate investment in subordinated debt shall not exceed the credit union's policy limits or twenty-five percent of net worth, whichever is less. For purposes of determining compliance, this aggregation requirement applies to all subordinated debt investments, whether purchased pursuant to this paragraph or any other paragraph of this rule.

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

(c) Before the purchase of subordinated debt, the credit union shall perform a due diligence suitability analysis to determine whether the subordinated debt is suitable for purchase relative to the credit union's tolerance for credit risk, asset liability position, sensitivity to market risk, and its liquidity exposure. Such analysis shall include, at a minimum, the following:

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

2. A review of the subordinated debt plan submitted by the issuing credit union to the National Credit Union Administration;

3. An analysis of the quality, capability, and leadership expertise of the management of the issuing credit union;

4. A marketability analysis, sufficient to determine whether or not the securities may be sold with reasonable promptness at a price corresponding to their fair value, which analysis may be supported by input from the placement agent for such securities;

5. The documentation of the suitability analysis shall be in written form and maintained in the credit union's files; and

6. A periodic update of the suitability analysis shall be performed by the credit union at least as frequently as annually during the term of the investment.

(d) The credit union shall obtain and monitor the securities' market values on an ongoing basis.

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

(7) In the event a credit union's investment in securities no longer conforms to this Rule but conformed when the investment was originally made, the credit union shall provide written notification to the Department regarding the nonconforming investment within 30 days of discovering the nonconforming investment or 120 days of the investment becoming nonconforming, whichever event occurs first. In the event a credit union wishes to hold the nonconforming investment, the credit union must submit a letter form application to the Department describing the efforts the credit union will undertake to bring the nonconforming investment into conformity and the anticipated time it will take to bring the investment into conformity. Upon review of the application, the Department may request additional information if it determines such additional information is necessary in order to fully and completely evaluate the application. After completion of its review, the Department shall either approve, conditionally or otherwise, or deny such application in writing.

(8) A credit union may sell a nonconforming investment without Department authorization but only if it provides the Department with written notice no later than five (5) business days after the sale.

Cite as Ga. Comp. R. & Regs. R. 80-2-9-.01
Authority: O.C.G.A. §§ 7-1-650, 7-1-654, 7-1-663.
History. Original Rule entitled "Investment Securities" adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. Jul. 7, 1994; eff. July 27, 1994.

Amended: F. Jul. 14, 1998; eff. Aug. 3, 1998.
Amended: F. Jul. 12, 1999; eff. Aug. 1, 1999.
Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: F. Jun. 10, 2014; eff. Jun. 30, 2014.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-2-9-.02. Accounting and Record Keeping.

(1) Securities transactions shall be accounted for in accordance with paragraph 1 of Rule 80-2-1-.01.

(2) Credit Unions shall maintain documentation sufficient to identify adequately the nature of all securities owned. For all securities other than direct investments in government bonds, notes, or debentures, documentation may include annual reports, offering circulars, credit analyses published by nationally recognized rating firms, or in-house analyses, reflecting an evaluation of the degree of risk in regard to liquidity, marketability, and price volatility.

(3) Investments in the form of "Zero Coupon" obligations shall be recorded at cost plus accretion to maturity over the life of the obligations. Legal limitations applicable to such securities shall be measured against the actual cost of the security. Provided, however, to the extent that the cash investment plus accretions of income earned, but not collected, exceed the legal limitation on any zero coupon security, such amount shall be set aside into a capital reserve and excluded in considering capital adequacy.

Cite as Ga. Comp. R. & Regs. R. 80-2-9-.02
Authority: Ga. L. 1974, p. 733.
History. Original Rule entitled "Accounting and Record Keeping" adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. Jul. 7, 1994; eff. July 27, 1994.

Rule 80-2-9-.03. Custody and Safekeeping.

(1) Securities may be held in physical or book entry form.

(2) Physical possession of securities shall be maintained:

(a) In the vault of the investing credit union, or

(b) In safekeeping at any:

1. Federally-insured correspondent bank, credit union or trust company,

2. Federal Reserve or Federal Home Loan Bank,

3. Broker-dealer insured under the Securities Investors Protection Act provided the market value of such securities does not exceed $500,000, or

4. As otherwise specifically approved by the Department.

Cite as Ga. Comp. R. & Regs. R. 80-2-9-.03
Authority: Ga. L. 1974, p. 733.
History. Original Rule entitled "Custody and Safekeeping" adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. Jul. 7, 1994; eff. July 27, 1994.

Subject 80-2-10. CREDIT UNION VOTING PROCEDURES.

Rule 80-2-10-.01. Proxy.

The prohibition of Section 7-1-661 regarding vote by proxy makes it unlawful for any individual representative to cast a vote for another individual member of the credit union at any meeting. This does not preclude the authorized representative vote exception as provided in that section.

Cite as Ga. Comp. R. & Regs. R. 80-2-10-.01
Authority: Ga. L. 1968, p. 465, Sec. 1.
History. Original Rule entitled "Proxy" adopted. F. Jan. 27, 1995; eff. Feb. 16, 1995.

Rule 80-2-10-.02. Voting Procedures.

(1) Members may vote in person, by written ballot, or electronically. Voting by written ballot or electronically may occur prior to the membership meeting by mail, electronically, or at established ballot box locations, provided:

(a) The credit union's bylaws specifically authorize voting electronically or by mail ballot and/or ballot box voting;

(b) The Board of Directors of the credit union have officially adopted electronic, written mail ballot and/or ballot box voting procedures which assure that such voting occurs in an orderly, secure and controlled environment designed to preserve the one member one vote statutory requirement;

(c) The notice of the meeting includes a copy of the voting procedures. In the case of ballot box voting, a copy of the voting procedures must be prominently posted at each ballot box location; and

(d) The question being considered is clearly and fully stated in the notice of the meeting.

Cite as Ga. Comp. R. & Regs. R. 80-2-10-.02
Authority: Authority O.C.G.A. Sec. 7-1-663.
History. Original Rule entitled "Voting Procedures" adopted. F. Jan. 27, 1995; eff. Feb. 16, 1995.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.

Subject 80-2-11. EXTENSIONS OF EXISTING OFFICES AND FACILITIES; AUXILIARY SERVICES.

Rule 80-2-11-.01. Automated Teller Machine ("ATM") and Night Depository.

An ATM machine, which by definition in O.C.G.A. § 7-1-664 takes deposits, and a night depository may be established anywhere in this state. Establishment of an ATM machine in this state does not constitute doing a banking business here.

Cite as Ga. Comp. R. & Regs. R. 80-2-11-.01
Authority: O.C.G.A. § 7-1-664.
History. Original Rule entitled "Expansion of Credit Union Fixed Assets; Letter Form Application and Regular Form Application; Requirements" adopted. F. Dec. 18, 2000; eff. Jan. 7, 2001.
Repealed: F. Oct. 22, 2001; eff. Nov. 11, 2001.
Adopted: New Rule entitled "Automated Teller Machine ("ATM") and Night Depository." F. Jan. 8, 2021; eff. Jan. 28, 2021.

Rule 80-2-11-.02. Mobile Credit Union Units.

(1) A credit union may provide unlimited banking services through mobile credit union units that do not have a single, permanent site and use a vehicle that travels to various locations to enable members to conduct the business of banking.

(2) A mobile branch may provide banking services at various regularly scheduled locations or it may be open in a defined area at varying times and locations. If the mobile branch provides banking services at regularly scheduled locations, then it shall be accessible to credit union members in accordance with a published schedule available on the credit union's website. In all circumstances, each mobile branch is required to maintain logs indicating the specific locations and times in which the mobile unit is operating in order to track branch activities.

(3) Each credit union providing mobile credit union unit services shall carry adequate fidelity, robbery, and hazard insurance coverage commensurate with the risks associated with the operation of such units.

(4) Disclosures shall be given to all members regarding when deposits will be credited and when checks or other withdrawals will be debited.

(5) Since a mobile unit will function as a branch, application for approval must be made as it is for all other branches.

(6) Credit unions may alter the banking service area set forth in paragraph 2 of this Rule by submitting advance written notification to the Department.

Cite as Ga. Comp. R. & Regs. R. 80-2-11-.02
Authority: O.C.G.A. § 7-1-665.
History. Original Rule entitled "Mobile Credit Union Units" adopted. F. Jan. 8, 2021; eff. Jan. 28, 2021.

Rule 80-2-11-.03. Account Service Representatives.

Credit unions lawfully doing a banking business in Georgia may provide for account service representatives to visit public events and commercial locations including governmental, educational, and health facilities for the purpose of opening deposit accounts and providing services incidental thereto; provided, access to such locations and facilities is available to other credit unions on a nondiscriminatory basis. Account paying and receiving services may not be provided during such visits other than an initial deposit to a new account.

Cite as Ga. Comp. R. & Regs. R. 80-2-11-.03
Authority: O.C.G.A. §§ 7-1-61; 7-1-241.
History. Original Rule entitled "Account Service Representatives" adopted. F. Jan. 8, 2021; eff. Jan. 28, 2021.

Rule 80-2-11-.04. School Savings and Banking Education Programs.

Credit unions lawfully doing a banking business in Georgia may participate in school savings and banking education programs, where such programs: are provided for minors in order to promote thrift or to provide banking and financial education; are supervised by a school official or an organization affiliated with the school on school premises or at a facility utilized by the school; and are in a location where the credit union would otherwise be authorized to have a branch. School savings program deposits are not considered received until they have been delivered to a representative of and at the participating credit union. Under a school savings program, checks are not considered paid until received by the participating credit union either directly or through a messenger acting as agent for the customer. These programs shall not be considered a branch office, provided the above provisions are met.

Cite as Ga. Comp. R. & Regs. R. 80-2-11-.04
Authority: O.C.G.A. §§ 7-1-241; 7-1-650.
History. Original Rule entitled "School Savings and Banking Education Programs" adopted. F. Jan. 8, 2021; eff. Jan. 28, 2021.

Rule 80-2-11-.05. Expansion or Extension of Branch Location.

(1) No notification is necessary for an extension that is an ATM, cash dispensing machine, night depository or point of sale terminal.

(2) If any other extension is located within the boundary lines of a single contiguous area of property owned or leased by the credit union and used as a branch location or if it is within 200 yards of such branch location, then the credit union must provide written notice to the Department of such extension. Such notification shall be in letter form and shall specify:

(a) Exact location of proposed extension;

(b) The nature of service that will be provided at the extension;

(c) Distance of extension from credit union;

(d) Ownership of the location; and

(e) Cost of establishing the extension, and if site is to be leased, a copy of the proposed lease agreement.

(3) For all other extensions that are not addressed in paragraphs (1) and (2), a credit union must obtain prior approval from the Department by submitting a letter form application.

Cite as Ga. Comp. R. & Regs. R. 80-2-11-.05
Authority: O.C.G.A. § 7-1-664.
History. Original Rule entitled "Expansion or Extension of Branch Location" adopted. F. Jan. 8, 2021; eff. Jan. 28, 2021.

Subject 80-2-12. CREDIT UNION LOANS.

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

(1) Lending limitations of Code Section 7-1-658 shall be computed quarterly as reported on the credit union's most recently filed call report; provided, however, that if significant capital changes occur after the filing of the call report which causes the net worth of the credit union to increase or decrease by 5 percent or more, then the legal lending limit will be immediately recalculated at the time of the capital change and it will be effective until the filing of the next call report. In determining whether the net worth capital has increased or decreased by 5 percent or more, each credit union will utilize the dollar amount reported on the applicable call report and recalculate its net worth if the dollar amount increases or decreases by 5 percent or more during the applicable time period.

(2) Where the lending limitations are reduced by recalculation, existing debt which was in conformity with the legal limitations at the time it originated shall not be construed to be non-conforming with new legal limitations.

(3) "Indirect" loans as used in Code Section 7-1-658 shall mean loans made for the substantial benefit of a third party where repayment of the loan is dependent on activities

of the third party rather than solely dependent on the resources of the borrower and subject to the provisions of Rule 80-2-12-.05.

(4) Loans by a credit union to any wholly-owned subsidiary of the credit union, which subsidiary is located within an approved office of the credit union and which has agreed to abide by all laws, rules and regulations applicable to the credit union shall be exempt from the twenty-five (25) percent maximum lending limit of the credit union.

(5) Wherever approval of the Board of Directors or Credit Committee is required, such approval must be a specific, prior, and written approval of each extension of credit, except that advances made under a master note covering a specific purpose or project need not receive specific approval where such approval was accorded the master note. Annual approval of a line of credit may be used where interest rate, repayment terms, and anticipated collateral are clearly identified and current credit information is on file. Commodity, floor-plan and discount lines of credit which are anticipated to exceed five (5) percent of the legal lending limit may be approved annually to be deemed appropriate by the Board of Directors without each transaction receiving specific prior approval.

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

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

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

(9) In determining amounts loaned, all amounts guaranteed or insured by any instrumentality of the United States government shall be deducted to the extent of the guaranty or insurance coverage. Immediate and deferred participations on loans by an instrumentality of the United States government shall also be excluded. Where the source of repayment of a loan, i.e. lease payments, is guaranteed by an instrumentality of the United States government and such guarantee is assignable and has been assigned to the credit union, such loan may be excluded to the extent of the guarantee.

(10) Except as provided in this paragraph, exposures in the form of insufficient funds checks held beyond the permissible return date and overdrafts shall be considered "extensions of credit" solely for the purpose of determining compliance with the legal limitation as it applies to the maker of the check or owner of the overdraft. Such exposures shall also be subject to the requirements for prior written approval and ample collateral where the total indebtedness of the borrower exceeds five (5) percent of the credit union's net worth. Such exposures will not be considered extensions of credit for purposes of compliance with the above legal loan limitations and requirements, provided that the exposure is inadvertent, which requires that:

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

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

(11) Extensions of credit to political subdivisions of the State of Georgia authorized to levy taxes or backed by the taxing authority of another political subdivision shall qualify for exemption from the twenty-five (25) percent loan limitation under the provisions of O.C.G.A. § 7-1-658(g), only where such extension of credit otherwise conforms with the provisions of Georgia Constitution, Article 9, Section 5.

(12) Pursuant to O.C.G.A. § 7-1-658(h), a loan or extension of credit to a leasing company for the purpose of purchasing equipment for lease shall be considered a loan to the lessee, provided that:

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

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

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

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

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

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

(13) The Department shall promulgate a form which may be used to document compliance with the requirements for approval of loans and obligations in excess of 5 percent of the net worth of the credit union by members of the board of directors or credit committee as set forth in O.C.G.A. § 7-1-658(e).

Cite as Ga. Comp. R. & Regs. R. 80-2-12-.01
Authority: O.C.G.A. §§ 7-1-61; 7-1-658.
History. Original Rule entitled "Loans Generally, Interpretations and Rulings" adopted. F. Aug. 15, 2007; eff. Sept. 4, 2007.
Note: Correction of typographical error in Rule title on SOS Rules and Regulations website. In accordance with the Official Compilation Rules and Regulations of the State of Georgia (as published September 4, 2007), "Loan Generally, Interpretations and Rulings" corrected to "Loans Generally, Interpretations and Rulings." Effective July 17, 2018.
Amended: F. June 27, 2018; eff. July 17, 2018.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

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

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

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

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

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

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

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

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

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

(3) Conditions common to all real estate loans as to legal requirements and technical aspects shall be met, including but not limited to evidence of title search, recordation, an independent written appraisal or, in the alternative, a written estimate of market value in conformity with 12 CFR 722.3 (hereinafter "estimate"), and adequate insurance protection upon the insurable improvements with loss payable clause to the credit union. The lack of the foregoing technical requirements, while causing the loan to be technically defective, shall not be cause to consider the loan as nonconforming and in violation of law unless the total aggregate borrowings by the borrower exceed the unsecured lending limits of O.C.G.A. § 7-1-658(d), in which case the real estate collateral will not contribute to the "ample security" of the line.

(4) Interpretations of provisions within the statute:

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Temporary construction or development loans may be made by a credit union for a period not to exceed sixty (60) months where the loan is made to finance the construction of residential development which will exceed nine (9) units or industrial or commercial buildings, or for a period not to exceed twenty-four (24)

months where the loan is made to finance construction of nine (9) or less residential units or farm buildings or to improve and develop land preliminary to such construction, without a prior commitment to guarantee or insure or take-out agreement by an instrumentality or corporation wholly-owned by the United States or of this State or any other financially responsible lending agency. The parties must actually intend the loan to be paid off or refinanced by a purchaser within the specified maturities and the lots, when development is residential, must be released periodically during the development of land for such purposes, and pro rata reductions must be made in the principal of the debt. All such temporary construction and development loans must be supported by a statement of purpose or intent, and if held beyond the construction or development periods, must be made to conform to the seventy-five percent (75%) and ninety-five percent (95%) limitations; otherwise, they will be held to be nonconforming real estate loans.

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

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

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

Cite as Ga. Comp. R. & Regs. R. 80-2-12-.02
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Real Estate Loans" adopted. F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: F. June 27, 2018; eff. July 17, 2018.
Amended: F. July 7, 2022; eff. July 27, 2022.

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

(1) Credit unions may invest in loans made by other lenders. Credit unions may purchase one hundred percent or less of a loan as part of a participation. Alternatively, credit unions may purchase one hundred percent of a loan as a whole loan. Loans purchased must conform to all laws and regulations applicable to that category of loan to the same extent as if the purchasing credit union had originated the loan itself. Applicable statutory and regulatory requirements, including, but not limited to, collateral documentation requirements, loan to collateral value requirements, and loan limitations must be met. The purchasing credit union shall obtain from the selling lender copies of all pertinent collateral and credit documents or, solely in the case of a loan participation, a summary of

information sufficient to conclude that all legal and regulatory requirements have been met.

(2) A credit union that purchases a loan has the responsibility of conducting loan underwriting procedures on the loan to determine that it complies with the policies of the credit union and meets the credit union's credit standards.

(3) The following additional requirements apply to a participation purchase in pools of loans and, those that are applicable, apply to a whole loan purchase in pools of loans:

(a) Loans in the pool or discount line must be specifically identifiable on the records of the selling lender.

(b) The participation agreement must call for the participant to share pro rata in losses experienced by the pool.

(c) The participation agreement must provide for a periodic, at least quarterly, report by the seller to the purchaser to account for settlement for losses incurred and to provide information on past due status of loans contained in the pool or discount line.

(d) Where the purchase exceeds the purchasing credit union's unsecured lending limit, the purchase must be accorded prior written approval from the Board or the Board-approved credit committee.

(e) The purchase in the pool must satisfy safety and soundness. In determining whether a participation in a pool of loans is safe and sound, the Department will consider:

1. The credit union's understanding of the selling lender's organization, business model, financial health, and the related risks of the participation;

2. The credit union's due diligence in monitoring and protecting against participation risks;

3. If contracts between the credit union and the selling lender grants the credit union sufficient control over the seller's actions and provides for replacing an inadequate servicer; and

4. Other factors relevant to safety and soundness.

(4) Where agreements exist for the seller to repurchase or indemnify loss, participation and whole loan purchases shall be treated as loans to the seller by the purchasing credit union and the amount of the purchase shall be considered to be remaining on the seller's books for the purposes of the seller's loan limitations.

(5) The purchasing credit union shall be deemed in compliance with the documentation requirements of this Rule so long as the credit union may electronically access, on demand, the required pertinent documentation required by this Rule.

Cite as Ga. Comp. R. & Regs. R. 80-2-12-.03
Authority: O.C.G.A. §§ 7-1-61, 7-1-650, 7-1-663.
History. Original Rule entitled "Participation Loans" adopted. F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: New title "Participation Loans and Whole Loans." F. June 29, 2017; eff. July 19, 2017.
Amended: F. July 9, 2019; eff. July 29, 2019.
Amended: F. July 7, 2022; eff. July 27, 2022.

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

(1) All assets acquired through foreclosure or in lieu of foreclosure and all "Other Real Estate" acquired in such manner or otherwise shall be valued six (6) months prior to or three (3) months following the acquisition by an independent appraiser knowledgeable in the fair market value of such assets or, in the alternative, evaluated by a qualified officer of the credit union in conformity with the Evaluation Content portion of the Interagency Appraisal and Evaluation Guidelines (hereinafter "evaluation") if the book value of the property is less than two (2) percent of the net worth and allowance for loan and lease losses of the credit union, $400,000 for residential property, or $500,000 for commercial property whichever amount is greater. Appraisals or evaluations subsequent to the initial valuation are required if, based upon a review of the following factors, there is a reasonable basis to determine that the prior valuation is no longer reliable as a reasonable estimate of the property's fair market value: volatility of local market; changes in terms and availability of financing; natural disasters; limited or over supply of competing properties; improvements to the subject property or competing properties; lack of maintenance of the subject or competing properties; changes in underlying economic and market assumptions, such as capitalization rates and lease terms; changes in zoning, building materials, or technology; and environmental contamination. In the event there is no basis to determine that the initial valuation is no longer reliable, then appraisals or evaluations shall be at intervals of not more than five (5) years.

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

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

(4) Property subject to this rule shall be initially carried on the books of the credit union at the fair market value determined by independent appraisal or evaluation, unless otherwise

provided, less the estimated costs to sell the property ("new basis"). This valuation shall be determined as of the date the credit union takes legal title to or physical possession of the property, whichever event occurs first. Subsequently, the carrying value shall be subject to write-down or write-up based upon the most recent appraisal or evaluation. However, the property must be carried at the lower of the current fair market value less the estimated costs to sell the property or the new basis. The new basis may be adjusted upward in the event the credit union makes any permanent capital improvements, subject to the limitations in paragraph (5), necessary to prepare the property for sale but the adjustment in the new basis shall be the lower of the increase in the fair market value of the property after the capital improvements or the amount expended to make the capital improvements. Non-capital improvements and expenses necessary to carrying and maintaining the property (taxes, legal fees, insurance, yard maintenance, etc.) shall be expenses and not added to the carrying value. Income earned from the property, other than from conversion or sale, shall be credited to income and shall not reduce the carrying value of the property.

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

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

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

(c) Consistent with safe and sound banking practices.

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

Cite as Ga. Comp. R. & Regs. R. 80-2-12-.04
Authority: O.C.G.A. §§ 7-1-61; 7-1-650.
History. Original Rule entitled "Assets Acquired - Debts Previously Contracted ("D.P.C.")" adopted. F. June 27, 2018; eff. July 17, 2018.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Rule 80-2-12-.05. Combination of Debt for Legal Lending Limit Purposes.

(a) General Rule. Pursuant to Code Section 7-1-658, loans or extensions of credit to one person will be attributed to another person and each person will be deemed a borrower:

(1) When proceeds of a loan or extension of credit are to be used for the direct benefit of the other person, to the extent of the proceeds so used;

(2) When a common enterprise is deemed to exist between the persons as the persons within the group are directly or indirectly related through common control including where one borrower is directly or indirectly controlled by another borrower;

(3) When there is a common use of funds between the persons; or

(4) When a person has a financial obligation on a loan or an extension of credit, to the extent of such obligation.

(b) Definitions. For purposes of this Rule, the below terms shall be defined as follows:

(1) Common control. The direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. Without limiting the foregoing, a person shall be considered to control another person if the first person:

(A) Owns, controls or holds with power to vote 25 percent or more of any class of voting securities of the other person;

(B) Controls in any manner the election of a majority of the directors, trustees, or persons performing similar functions of the other person; or

(C) Exercises a controlling influence over the management or policies over the other person as determined by the department.

(2) Common use of funds. The proceeds of a loan or an extension of credit to a borrower will be deemed to be a common use of funds and will be attributed as one loan when the proceeds, or assets purchased with the proceeds, are comingled or used to acquire property, goods, or services for the purpose of a shared common commercial objective between the borrowers.

(3) Direct benefit. The proceeds of a loan or extension of credit to a borrower will be deemed to be used for the direct benefit of another person and will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services.

(4) Obligation. A commitment that creates a liability or contingent liability for payment on a loan or extension of credit irrespective of whether the person is a borrower.

(5) Person. An individual or a corporation, limited liability company, partnership, trust, association, joint venture, sole proprietorship, unincorporated organization, or any other form of entity.

Cite as Ga. Comp. R. & Regs. R. 80-2-12-.05
Authority: O.C.G.A. § 7-1-658.
History. Original Rule entitled "Combination of Debt for Legal Lending Limit Purposes" adopted. F. Jan. 8, 2021; eff. Jan. 28, 2021.

Subject 80-2-13. APPLICATIONS.

Rule 80-2-13-.01. Procedures for Other Transactions, Applications.

(1) Conversion to state-chartered credit union. A meeting with the Department should precede filing a letter form application, which application should include all of the information requested in the Applications Manual.

(2) Mergers. The procedure for approval of a merger involves the filing of a letter application to the Department, which should include all of the information requested in the Applications Manual.

(3) Fiduciary Powers. A full application as detailed in the Applications Manual is required for exercise of full trust powers. Exercise of limited trust services and a single trust service requires a letter form application. Request to perform a single trust service may be expedited. No publication is required.

(4) Creation and Operation of a Subsidiary of a Credit Union. A credit union can exercise powers incidental to banking and create a separate subsidiary to effect such powers as may be financial in nature, incidental or complementary to the provision of financial services, subject in most cases to certain investment limitations. Most require a letter form application describing the activity, how it relates to the business of banking and finance, and what protections will be in place to deal with any associated risks. An application to create and operate a subsidiary of a credit union can be expedited if the requirements of Rule 80-1-1-.10 are satisfied.

(5) Letter form applications are required for name reservations and permissions set forth in O.C.G.A. §§ 7-1-130, 7-1-131, 7-1-242, and 7-1-243.

Cite as Ga. Comp. R. & Regs. R. 80-2-13-.01
Authority: O.C.G.A. § 7-1-61.

History. Original Rule entitled "Procedures for Other Transactions, Applications" adopted. F. July 7, 2022; eff. July 27, 2022.

Chapter 80-3. MONEY TRANSMISSION.

Subject 80-3-1. DISCLOSURES, LOCATIONS, AND AUTHORIZED AGENTS.

Rule 80-3-1-.01. Definitions, Activities, and Locations.

(1) For purposes of this Rule Chapter and Rule 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 licensee giving notices of additional locations or changes in locations operated by the licensee shall do so in a form and manner as provided by the Department.

Cite as Ga. Comp. R. & Regs. R. 80-3-1-.01
Authority: O.C.G.A. §§ 7-1-61, 7-1-681, 7-1-690.
History. Original Rule entitled "Sale of Money Orders at Non-Banking Outlets" adopted. F. and eff. June 30, 1965.
Repealed: New Rule of same title adopted. F. Nov. 19, 1975; eff. Dec. 9, 1975.
Repealed: New Rule entitled "Exemptions" adopted. F. July 13, 1981; eff. August 2, 1981.
Repealed: New Rule entitled "Sale of Checks" adopted. F. Sept. 4, 1990; eff. Sept. 24, 1990.
Amended: F. Sept. 26, 1995; eff. Oct. 16, 1995.
Amended: Rule retitled "Check Sellers". F. Aug. 26, 1997; eff. Sept. 15, 1997.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: F. July 12, 1999; eff. August 1, 1999.
Amended: Rule retitled "Check Sellers and Money Transmitters: Exemptions and Requirements". F. July 28, 2003; eff. August 17, 2003.
Amended: F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: Title changed to "Payment Instrument Sellers and Money Transmitters." F. Jun. 10, 2014; eff. Jun. 30, 2014.
Amended: F. June 15, 2015; eff. July 5, 2015.
Amended: F. Jan. 6, 2016; eff. Jan. 26, 2016.
Amended: F. June 27, 2018; eff. July 17, 2018.
Amended: F. July 9, 2019; eff. July 29, 2019.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: F. July 7, 2021; eff. July 27, 2021.
Amended: New title, "Definitions, Activities, and Locations." F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-3-1-.02. Disclosures and Receipts.

(1) Every licensee or authorized agent of a licensee, unless such authorized agent is a financial institution whose deposits are federally insured, shall display prominently in the premises where money is transmitted or where payment instruments are issued or sold a copy of its license.

(2) 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.

Cite as Ga. Comp. R. & Regs. R. 80-3-1-.02
Authority: O.C.G.A. §§ 7-1-61, 7-1-690.
History. Original Rule entitled "Display of License Certificate" adopted. F. and eff. June 30, 1965.
Repealed: New Rule of same title adopted. F. Nov. 19, 1975; eff. Dec. 9, 1975.
Repealed: New Rule entitled "Cashers of Checks" adopted. F. Sept. 4, 1990; eff. Sept. 24, 1990.
Amended: F. Sept. 13, 1991; eff. Oct. 3, 1991.
Amended: Rule retitled "Check Cashers". F. Aug. 26, 1997; eff. Sept. 15, 1997.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.
Amended: F. July 28, 2003; eff. August 17, 2003.
Amended: F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: F. Aug. 4, 2008; eff. Aug. 24, 2008.
Amended: F. Aug. 27, 2009; eff. Sept. 6, 2009.
Amended: F. Nov. 2, 2010; eff. Nov. 22, 2010.
Amended: F. Jun. 10, 2014; eff. Jun. 30, 2014.
Amended: F. June 15, 2015; eff. July 5, 2015.
Amended: F. June 27, 2018; eff. July 17, 2018.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: New title, "Disclosures and Receipts." F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-3-1-.03. Authorized Agents.

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

(2) Licensees are required to submit authorized agent information, including notices of additional locations or changes in locations operated by an authorized agent, to the Department in such form, timeframe, and manner and with such supporting documentation as required. The initial authorized agent list should include all authorized agents of the licensee as of the date the licensee begins business. Future reports related to authorized agents will be submitted on a quarterly basis. The initial authorized agent list as well as the subsequent quarterly reports shall be deemed to be the licensee's notice of new locations operated by authorized agents as well as the licensee's application for approval of the designated authorized agents. The notice required by this section shall also include the name and business locations of any authorized agent whose agency has been revoked, suspended, cancelled, terminated, or voluntarily closed by the licensee since the previous report. The reason for such revocation or suspension, and the amount of any outstanding claim by the licensee against the authorized agent relating to the sale of payment instrument or money transmission shall be provided to the Department upon request. Failure to report changes to authorized agents and/or locations in the reporting period in which the authorized agent began or ceased offering the licensee's services can result in fines, revocation, suspension, or other administrative action by the Department.

(3) Proceeds received from the sale of payment instruments or money transmission net of fees charged and retained by the authorized agent shall be remitted to the licensee in accordance with the terms of the contract between the licensee and the authorized agent.

Cite as Ga. Comp. R. & Regs. R. 80-3-1-.03
Authority: O.C.G.A. §§ 7-1-61, 7-1-690.
History. Original Rule entitled "Report of Criminal Violations" adopted. F. and eff. June 30, 1965.
Repealed: New Rule entitled "Quarterly Notice of Agents and Locations" adopted. F. Nov. 19, 1975; eff. Dec. 9, 1975.
Repealed: New Rule entitled "Wire Transfer Services" adopted. F. Sept. 4, 1990; eff. Sept. 24, 1990.
Amended: F. Aug. 26, 1997; eff. Sept. 15, 1997.
Amended: Rule retitled "Money Service Businesses: Compliance With Federal Requirements". F. July 28, 2003; eff. August 17, 2003.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Jun. 10, 2014; eff. Jun. 30, 2014.
Amended: F. June 27, 2018; eff. July 17, 2018.
Amended: New title, "Authorized Agents." F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-3-1-.04. Notice of Unauthorized Access to Personal Information.

(1) In the event that a licensee provides notice under applicable federal or state law of an information security incident involving unauthorized access to personal information, then the licensee shall simultaneously provide a duplicate of such disclosure to the Department. For purposes of this rule, personal information is any record containing nonpublic personal information about a customer or potential customer whether in paper, electronic, or other form maintained by or on behalf of the licensee.

(2) Pursuant to O.C.G.A. § 10-1-912, a business that satisfies the definition of an information broker is required to provide notice to Georgia residents in the event of a data breach that results in access or likely access to unencrypted personal information. In the event a licensee or an affiliate of a licensee is required to make such notification to Georgia residents, then a duplicate of the notification will simultaneously be submitted to the Department.

Cite as Ga. Comp. R. & Regs. R. 80-3-1-.04
Authority: O.C.G.A. §§ 7-1-61, 7-1-690.
History. Original Rule entitled "Financial Statements" adopted. F. June 2, 1977; eff. June 22, 1977.
Repealed: New Rule entitled "Reports of Large Currency Transactions" adopted. F. Sept. 4, 1990; eff. Sept. 24, 1990.
Amended: F. Nov. 2, 1994; eff. Nov. 22, 1994.
Amended: Rule retitled "Reports of Large Currency Transactions by Check Cashers, Check Sellers and Other Money Transmitters". F. Aug. 26, 1997; eff. Sept. 15, 1997.
Amended: Rule retitled "Reports of Large Currency Transactions, Recordkeeping, and Suspicious Activity Reporting Requirements for Check Cashers, Check Sellers and Money Transmitters". F. July 28, 2003; eff. August 17, 2003.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: Title changed to "Reports of Large Currency Transactions, Recordkeeping, and Suspicious Activity Reporting Requirements for Check Cashers, Payment Instrument Sellers and Money Transmitters." F. Jun. 10, 2014; eff. Jun. 30, 2014.
Amended: F. June 27, 2018; eff. July 17, 2018.
Repealed: F. Dec. 16, 2021; eff. Jan. 5, 2022.
Adopted: New Rule entitled "Notice of Unauthorized Access to Personal Information." F. July 7, 2022; eff. July 27, 2022.

Rule 80-3-1-.05. Information Security Safeguards for Consumer Financial Information.

All licensees shall create and maintain an information security program to safeguard the nonpublic personal information of customers to the extent required by 16 C.F.R. Part 314 (the "Safeguards Rule"). As part of its regulatory oversight, the Department shall review, to the extent applicable, licensee's information security programs, risk assessments, incident response plans, and other required elements of the Safeguards Rule.

Cite as Ga. Comp. R. & Regs. R. 80-3-1-.05
Authority: O.C.G.A. §§ 7-1-61, 7-1-690.
History. Original Rule entitled "Demonstration of Financial Responsibility" adopted. F. July 24, 1986; eff. September 1, 1986, as specified by the Agency.
Repealed: New Rule entitled "Reports of Apparent Criminal Irregularity" adopted. F. Sept. 4, 1990; eff. Sept. 24, 1990.
Amended: Rule retitled "Currency Transactions by Wire Transfer: Financial Institutions and Money Transmitters". F. Aug. 26, 1997; eff. Sept. 15, 1997.
Repealed: Rule reserved. F. July 28, 2003; eff. August 17, 2003.
Adopted: New Rule entitled "Information Security Safeguards for Consumer Financial Information." F. July 7, 2022; eff. July 27, 2022.

Rule 80-3-1-.06. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-3-1-.06
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Reports of Apparent Criminal Irregularity by Check Cashers, Check Sellers, and Other Money Transmitters" adopted. F. Aug. 26, 1997; eff. Sept. 15, 1997.
Amended: Rule retitled "Reports of Apparent Criminal Irregularity by Check Cashers, Check Sellers, Money Transmitters, and Agents". F. July 28, 2003; eff. August 17, 2003.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. Sep. 18, 2012; eff. Oct. 8, 2012.
Amended: Title changed to "Reports of Apparent Criminal Irregularity by Check Cashers, Payment Instrument Sellers, Money Transmitters, and Authorized Agents." F. Jun. 10, 2014; eff. Jun. 30, 2014.
Amended: F. June 27, 2018; eff. July 17, 2018.
Repealed: F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-3-1-.07. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-3-1-.07
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Administrative Fines and Penalties" adopted. F. July 28, 2003; eff. August 17, 2003.
Amended: F. Sept. 1, 2004; eff. Sept. 21, 2004.
Amended: F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: F. Aug. 4, 2008; eff. Aug. 24, 2008.
Amended: F. Nov. 2, 2010; eff. Nov. 22, 2010.
Amended: F. Nov. 7, 2013; eff. Nov. 27, 2013.
Amended: F. Jun. 10, 2014; eff. Jun. 30, 2014.
Amended: F. Jan. 6, 2016; eff. Jan. 26, 2016.
Note: Correction of non-substantive typographical error, duplicate entry of "**Amended:** F. Jan. 6, 2016; eff. Jan. 26, 2016." deleted from History. Effective Mar. 8, 2016.
Amended: F. June 29, 2017; eff. July 19, 2017.
Amended: F. June 27, 2018; eff. July 17, 2018.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: F. July 7, 2021; eff. July 27, 2021.
Repealed: F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-3-1-.08. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-3-1-.08
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "State Requirements for Financial Institutions" adopted. F. July 28, 2003; eff. August 17, 2003.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. Jun. 10, 2014; eff. Jun. 30, 2014.
Repealed: F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-3-1-.09. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-3-1-.09
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Verification of Lawful Presence Citizenship Affidavit" adopted. F. Nov. 7, 2013; eff. Nov. 27, 2013.
Amended: F. Jun. 10, 2014; eff. Jun. 30, 2014.
Repealed: F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-3-1-.10. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-3-1-.10
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Nationwide Multistate Licensing System and Registry" adopted. F. Jun. 10, 2014; eff. Jun. 30, 2014.
Repealed: F. Dec. 16, 2021; eff. Jan. 5, 2022.

Subject 80-3-2. FINANCIAL CONDITION, REPORTING, AND CONTROL.

Rule 80-3-2-.01. Reports of Condition.

Licensees are required to prepare and submit various reports of condition.

(1) Each licensee shall have an audit of its books and records performed at least annually by independent public accountants in accordance with generally accepted auditing standards. Audits will be provided to the Department within ten (10) days of the Department's request for such information.

(2) Each licensee shall submit to the Department, through NMLS, a Money Services Businesses ("MSB") Call Report on a quarterly basis in a form and manner prescribed by the Department, no later than forty-five (45) days after the end of each calendar quarter.

(3) Each licensee shall file, no later than August 14th of each year, an activity statement in a form and manner prescribed by the Department, which shall include, but not be limited to, the average daily outstanding balances for payment instruments or outstanding orders to transmit not yet paid for transactions originating in Georgia during the second calendar quarter. Licensees submitting an activity statement to the Department are certifying to the material accuracy and validity of the information as submitted.

Cite as Ga. Comp. R. & Regs. R. 80-3-2-.01
Authority: O.C.G.A. §§ 7-1-61, 7-1-690.
History. Original Rule entitled "Reports of Condition" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-3-2-.02. Net Worth.

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, including, but not limited to, audited financial statements for the most recent fiscal year and the previous two years or, if determined to be acceptable by the Department for a more recently formed entity, certified unaudited financial statements for the most recent fiscal year or other relevant period. 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.

Cite as Ga. Comp. R. & Regs. R. 80-3-2-.02
Authority: O.C.G.A. §§ 7-1-61, 7-1-690.
History. Original Rule entitled "Net Worth" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-3-2-.03. Surety Bond.

If a licensee's average daily outstanding balances for payment instruments or outstanding orders to transmit not yet paid for transactions originating in Georgia, as calculated by the licensee for each calendar quarter, exceeds the amount of the licensee's surety bond by more than ten percent (10%), the licensee must promptly, which in no event shall be later than twenty (20) days after such calculation, provide additional coverage to fully account for the increase in outstandings pursuant to O.C.G.A. § 7-1-683.2(b). However, notwithstanding the above, the amount of the surety bond required by O.C.G.A. § 7-1-683.2(b) shall not exceed $2,000,000.00.

Cite as Ga. Comp. R. & Regs. R. 80-3-2-.03
Authority: O.C.G.A. §§ 7-1-61, 7-1-690.
History. Original Rule entitled "Surety Bond" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-3-2-.04. Change in Control.

(1) A licensee shall submit an application in the form and in a manner prescribed by the Department seeking approval for any proposed change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such proposed change in ownership or change in control of the licensee as required by O.C.G.A. § 7-1-688 at least thirty (30) days prior to the proposed change.

(2) A licensee acquiring another licensee under the provisions of O.C.G.A. § 7-1-688(d)(2) shall provide the written notice required by such statute at least thirty (30) days prior to such proposed acquisition.

Cite as Ga. Comp. R. & Regs. R. 80-3-2-.04
Authority: O.C.G.A. §§ 7-1-61, 7-1-690.
History. Original Rule entitled "Change in Control" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-3-2-.05. Notice of Change in Executive Officer.

The notice of change in executive officer required by O.C.G.A. § 7-1-687(e) shall be timely furnished to the Department through the Nationwide Multistate Licensing System and Registry ("NMLSR"). Supporting documentation for the notice demonstrating whether the executive officer meets the requirements of O.C.G.A. §§ 7-1-684 and 7-1-687 shall be submitted via NMLSR within thirty (30) days of the effective date of the change in executive officer. Such documentation shall include, but is not limited to, a background check, credit history, responses to disclosure questions, and additional information that may be requested by the Department. If the notice is not disapproved by the Department within ninety (90) days after the date on which the supporting documentation was determined to be complete, the notice is deemed approved.

Cite as Ga. Comp. R. & Regs. R. 80-3-2-.05
Authority: O.C.G.A. §§ 7-1-61, 7-1-690.
History. Original Rule entitled "Notice of Change in Executive Officer" adopted. F. July 7, 2022; eff. July 27, 2022.

Rule 80-3-2-.06. Passive Investor.

(1) Each applicant or licensee who has an owner or potential owner who claims to satisfy the passive investor definition in O.C.G.A. § 7-1-680 shall provide to the Department the following documentation at the time of initial license application or at least thirty (30) days prior to the proposed acquisition by such person:

   (a) a document in a form and manner prescribed by the Department in which the purported passive investor, or individual in control of such person if an entity, attests to meeting the criteria for a passive investor; or,

   (b) a written agreement signed by both the applicant or licensee and the purported passive investor, or individual in control of such person if an entity, in which such person commits to meeting the criteria for a passive investor.

(2) If an applicant or licensee has an owner or potential owner who claims to satisfy the passive investor definition in O.C.G.A. § 7-1-680 and fails to provide acceptable documentation establishing that the person is a passive investor or the person fails to continuously satisfy the passive investor requirements, then

   (a) the applicant for a new license shall promptly supplement its license application by submitting documentation required by the Department to investigate the person as an ultimate equitable owner of the applicant pursuant to O.C.G.A. §§ 7-1-683 and 7-1-684, or the license application shall be subject to denial; or,

(b) the licensee shall timely file a change in control application and submit related documentation required by the Department, or the licensee shall be subject to penalties for failure to obtain approval for a change in control pursuant to Rule 80-3-1-.07(4)(h).

Cite as Ga. Comp. R. & Regs. R. 80-3-2-.06
Authority: O.C.G.A. §§ 7-1-61, 7-1-690.
History. Original Rule entitled "Passive Investor" adopted. F. July 7, 2022; eff. July 27, 2022.

Subject 80-3-3. BOOKS AND RECORDS.

Rule 80-3-3-.01. Minimum Books and Records.

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

(1) A record of each payment instrument sold;

(2) A general ledger which shall be posted at least monthly containing all assets, liabilities, capital, and income and expense accounts;

(3) Settlement sheets received from authorized agents;

(4) Bank statements and bank reconciliation records;

(5) Records of outstanding payment instruments;

(6) Records of each payment instrument paid;

(7) A list of the names and addresses of all of the licensee's authorized agents;

(8) A copy of all currency transaction reports and suspicious activity reports that are required by law to be filed by the licensee and the related work papers;

(9) For money transmitters, records of all money transmissions sent or received as well as all outstanding money transmissions;

(10) Supporting documentation for all reports required to be prepared or filed with the Department or the Nationwide Multistate Licensing System and Registry; and

(11) Information security program materials maintained by the licensee in accordance with 16 C.F.R. Part 314, ("the Safeguards Rule") and Rule 80-3-1-.05, including, but not limited to, any risk assessment and incident response plan.

Cite as Ga. Comp. R. & Regs. R. 80-3-3-.01
Authority: O.C.G.A. §§ 7-1-61, 7-1-690

History. Original Rule entitled "Minimum Books and Records" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-3-3-.02. Examinations.

Each licensee shall maintain a principal location at which its books and records are maintained and which is accessible to the Department for examination during normal business hours. Records required to be maintained under this rule may be maintained in a photographic, electronic, or other similar format at a central location within or outside the State of Georgia provided specific records can be transmitted to a location designated by the Department within ten (10) days of the Department's request. The Department may examine any person that purports to satisfy the exemption from licensure set forth in O.C.G.A. § 7-1-682 to verify that the person qualifies for the exemption from licensure. A licensee that refuses to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department), that withholds material information, or makes a misrepresentation shall have its license revoked.

Cite as Ga. Comp. R. & Regs. R. 80-3-3-.02
Authority: O.C.G.A. §§ 7-1-61, 7-1-690.
History. Original Rule entitled "Examinations" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

Subject 80-3-4. ADMINISTRATIVE FINES AND PENALTIES.

Rule 80-3-4-.01. Administrative Fines.

(1) Except as otherwise indicated, these fines and penalties apply to any person, partnership, association, corporation, or any other group of individuals, however organized, that is required to be licensed under Article 4 of Chapter 1 of Title 7. The Department, at its sole discretion, may waive or modify a fine based upon the financial resources of the person, gravity of the violation, history of previous violations, and such other facts and circumstances deemed appropriate by the Department.

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

(3) In addition to any fines levied by the Department, the recipient of the fine may be subject to additional administrative actions for the same underlying activity.

(4) The Department establishes the following fines and penalties for violation of the laws and rules governing payment instrument sellers and money transmitters.

   (a) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain its books and records

according to the requirements of O.C.G.A. § 7-1-689 and Rules 80-3-1-.01(3), 80-3-1-.02(2), 80-3-1-.03, 80-3-2-.01, 80-3-3-.01, or 80-3-3-.02, such licensee shall be subject to a fine of one thousand dollars ($1,000) for each books and records violation listed in Rule 80-3-1-.01(3), 80-3-1-.02(2), 80-3-1-.03, 80-3-2-.01, 80-3-3-.01 or 80-3-3-.02.

(b) Operating Without Proper License. Any person who acts as a payment instrument seller or money transmitter prior to receiving a current license required under O.C.G.A. Article 4 of Chapter 1 of Title 7, or who acquires a payment instrument seller or money transmission business without its own license, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars ($1,000) per day.

(c) Felons. Any licensee that hires or retains a covered employee who is a felon as described in O.C.G.A. § 7-1-684(b), when such covered employee has not complied with the remedies provided for in O.C.G.A. § 7-1-684(b) for each conviction before such employment, shall be subject to a fine of five thousand dollars ($5,000) for each such covered employee.

(d) Locations and Authorized Agents. Any licensee that does not give timely notice to the Department of new locations or agents beyond those previously reported as required in O.C.G.A. § 7-1-686(d) and Rules 80-3-1-.01(3) and 80-3-1-.03(2), shall be subject to a fine of five hundred dollars ($500) for each location or agent not reported.

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

(f) Authorized Agents. Any licensee that does not give notice of an authorized agent whose agency certificate has been revoked, suspended, cancelled, terminated, or voluntarily closed by the licensee as required by Rule 80-3-1-.03(2), shall be subject to a fine of five thousand dollars ($5,000) for each authorized agent revocation, suspension, cancellation, termination, or voluntary closure not reported in writing to the Department.

(g) Failure to Provide Receipt. In the event a licensee or its authorized agent does not provide the customer with a written receipt or other evidence of acceptance as

required in Rule 80-3-1-.02(2), it shall be subject to a fine of one thousand dollars ($1,000) per transaction where the receipt was not provided.

(h) Failure to Notify or Obtain Approval from the Department of Change in Ownership, Change in Control, or Designation of Executive Officer. Any licensee or other person who fails to obtain the Department's prior approval of a change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control of the licensee in compliance with O.C.G.A. § 7-1-688 and Rule 80-3-2-.04 shall be subject to a fine of one thousand dollars ($1,000). Any licensee or other person who fails to timely notify the Department of a change in executive officer not resulting from a change in control or ownership in compliance with O.C.G.A. § 7-1-687 shall be subject to a fine of one thousand dollars ($1,000).

(i) Other Business Activities. Any licensee found to have violated any law of this state by conducting any other business that is not lawful in conjunction with the selling of payment instruments or money transmission, shall be subject to a fine of five thousand dollars ($5,000).

(j) Failure to Report. Any licensee who fails to provide required reports as established by the Department and file the reports with the Department or the Nationwide Multistate Licensing System and Registry within the designated time periods shall be subject to a fine of one thousand dollars ($1,000) for each such occurrence.

(k) Failure to Submit to Exam. The penalty for the refusal of a licensee to permit the Department to conduct an investigation or examination of its books, accounts, and records (after a reasonable request by the Department), shall be a five thousand dollars ($5,000) fine. Refusal shall require at least two attempts by the Department to schedule an examination or investigation.

(l) Consumer Complaints. Any licensee who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department's correspondence to such licensee, shall be subject to a fine of one thousand dollars ($1,000) for each occurrence.

(m) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or the requirements referred to in Rules 80-3-6-.01, 80-3-6-.02, and 80-3-6-.03, such licensee shall be subject to a fine of one thousand dollars ($1,000) for each instance of non-compliance.

(n) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensed

payment instrument seller or money transmitter that fails to disclose that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee within ten (10) business days of the date of the event necessitating the disclosure, shall be subject to a fine of one thousand dollars ($1,000). Any licensed payment instrument seller or money transmitter that fails to submit a new lawful presence affidavit from a current owner or executive officer within ten (10) business days of the owner or executive officer that executed the previous lawful presence affidavit no longer being in that position with the licensee, shall be subject to a fine of one thousand dollars ($1,000) per day until the new affidavit is provided.

(o) Failure to Timely Update Information on the Nationwide Multistate Licensing System and Registry. Any licensee that fails to update its information on the Nationwide Multistate Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars ($1,000) per occurrence. In addition, the failure of a control person of a licensee to update the individual's information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions by the control person, within ten (10) business days of the date of the event necessitating the change, shall subject the licensee to a fine of one thousand dollars ($1,000) per occurrence.

(p) Failure to Post Required License. Any licensee that fails to post a copy of its license in the premises where money is transmitted or where payment instruments are issued or sold shall be subject to a fine of five hundred dollars ($500) for each instance of non-compliance.

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

(r) Unauthorized Access to Customer Information. Any licensee that fails to provide the Department with notice of unauthorized access to customer information as required by Rule 80-3-1-.04 shall be subject to a fine of one thousand dollars ($1,000) a day until the notice is provided.

(s) Failure to Timely Increase the Amount of the Surety Bond. Any licensee that fails to increase the amount of the applicable surety bond when its average daily outstanding balances for payment instruments or outstanding orders to transmit not yet paid, as required by Rule 80-3-2-.03, exceed the face amount of the surety bond by ten percent (10%) or more shall be subject to a fine of one thousand dollars ($1,000) per occurrence.

Cite as Ga. Comp. R. & Regs. R. 80-3-4-.01
Authority: O.C.G.A. §§ 7-1-61, 7-1-690, 7-1-694.

History. Original Rule entitled "Administrative Fines" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.
Amended: F. July 7, 2022; eff. July 27, 2022

Subject 80-3-5. LICENSING.

Rule 80-3-5-.01. Verification of Lawful Presence Citizenship Affidavit.

(1) Pursuant to O.C.G.A. § 50-36-1, the Department is required to obtain an affidavit verifying the lawful presence of every natural person that submits an application for a license as a payment instrument seller or money transmitter on behalf of an individual, business, corporation, partnership, limited liability company, or any other business entity. For businesses, corporations, partnerships, limited liability companies, and other business entities (collectively "company applicant"), only an owner or executive officer that is authorized to act on behalf of the company applicant is authorized to submit the required signed and sworn affidavit.

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

Cite as Ga. Comp. R. & Regs. R. 80-3-5-.01
Authority: O.C.G.A. §§ 7-1-61, 7-1-690, 7-1-682, 7-1-683.
History. Original Rule entitled "Verification of Lawful Presence Citizenship Affidavit" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-3-5-.02. Nationwide Multistate Licensing System and Registry.

(1) License issuance and renewals.

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

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

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

(a) It shall be the sole responsibility of each applicant for a license and each licensee to keep current at all times its information on the NMLSR. Amendments to any information on file with the NMLSR must be made by the applicant or licensee within ten (10) business days of the date of the event necessitating the change. The Department shall have no responsibility for any communication not received by an applicant or licensee due to its failure to maintain current contact information on the NMLSR as required.

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

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

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

timely update any disclosure information may result in the revocation of its license.

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

(4) All written notices required pursuant to O.C.G.A. §§ 7-1-687(a) and 7-1-687(d) and Rule 80-3-1-.04 shall be submitted to the Department via NMLSR. Such notices shall be uploaded as state-specific documents under the document type "Additional Requirements." The file name for each document shall begin with "Georgia Required Written Notice" but may contain additional words at the option of the licensee.

Cite as Ga. Comp. R. & Regs. R. 80-3-5-.02
Authority: O.C.G.A. §§ 7-1-61, 7-1-690, 7-1-683.3.
History. Original Rule entitled "Nationwide Multistate Licensing System and Registry" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-3-5-.03. International Investigative Background Report.

Upon request by the Department, the international investigative background report authorized by O.C.G.A. § 7-1-689(f)(1)(C) shall be provided by any individual who has resided outside the United States at any time within ten (10) years prior to applying for a licensee or occupying any role in connection with an applicant, licensee, or authorized agent requiring approval or subject to disapproval by the Department. Such report shall be prepared by an independent search firm that has demonstrated that it has sufficient knowledge and resources, employs accepted and reasonable research methodologies, and is not affiliated with and does not have an interest in the individual it is investigating. Such report shall include the following information, presented in English:

(a) Comprehensive credit history report, or any equivalent information obtained or generated by the independent search firm to accomplish such report, including a search of court data in the countries, provinces, states, cities, towns, and contiguous areas where the individual has resided and worked to the extent such information is available in any jurisdiction where the individual has resided within the past ten (10) years;

(b) Criminal record information outside of the United States, including, but not limited to, felonies, misdemeanors, or similar convictions for violations of law in the countries, provinces, states, cities, towns, and contiguous areas where the individual has resided and worked;

(c) Employment history;

(d) Media history, including an electronic search of national and local publications, wire services, and business applications; and,

(e) Financial services-related regulatory history, including but not limited to, money transmission, sale of payment instruments, securities, banking, insurance, and mortgage-related industries.

Cite as Ga. Comp. R. & Regs. R. 80-3-5-.03
Authority: O.C.G.A. §§ 7-1-61, 7-1-690.
History. Original Rule entitled "International Investigative Background Report" adopted. F. July 7, 2022; eff. July 27, 2022.

Subject 80-3-6. COMPLIANCE WITH FEDERAL REQUIREMENTS.

Rule 80-3-6-.01. Money Service Businesses: Compliance with Federal Requirements.

(1) For the purposes of this Rule, Money Service Businesses ("MSBs") refer to a class of non-bank financial institutions defined in the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act"), which Act requires such non-bank financial institutions to register with the Financial Crimes Enforcement Network, United States Department of the Treasury and to comply with other recordkeeping and compliance laws.

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

(3) All licensees under Article 4 of Chapter 1 of Title 7 must have a compliance program and must comply with the recordkeeping requirements, currency transaction reporting, and suspicious activity reporting set forth in the Bank Secrecy Act provided the licensees are required to do so under the Bank Secrecy Act. Other recordkeeping requirements required by state law are provided for in Rules 80-3-3-.01 and 80-3-3-.02. Licensees may consult https://www.fincen.gov/resources/financial-institutions/money-services-businesses for questions about the federal requirements.

Cite as Ga. Comp. R. & Regs. R. 80-3-6-.01
Authority: O.C.G.A. §§ 7-1-61, 7-1-690.
History. Original Rule entitled "Money Service Businesses: Compliance with Federal Requirements" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-3-6-.02. Reports of Large Currency Transactions, Recordkeeping, and Suspicious Activity Reporting Requirements.

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

(2) The reporting requirements contained in Article 11 of Chapter 1 of Title 7 shall be met by filing with the appropriate federal agency a copy of the form(s) filed in compliance with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") within the time limits set forth therein. Such forms shall include the filing of currency transaction reports and suspicious activity reports as described in the Bank Secrecy Act and accompanying regulations.

(3) Recordkeeping. Georgia law regarding such recordkeeping for payment instrument sellers and money transmitters shall be satisfied by compliance with all applicable federal law. Such federal law includes, but is not limited to, the Bank Secrecy Act.

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

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

Cite as Ga. Comp. R. & Regs. R. 80-3-6-.02
Authority: O.C.G.A. §§ 7-1-61, 7-1-690.
History. Original Rule entitled "Reports of Large Currency Transactions, Recordkeeping, and Suspicious Activity Reporting Requirements" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-3-6-.03. Reports of Apparent Criminal Irregularity by Licensees and Authorized Agents.

(1) Sale of payment instruments and money transmitter licensees shall file with the Department the name, location, and federal tax identification number of any authorized agent within this state who has failed to remit to the licensee the proceeds received from the sale of the licensee's payment instruments or from licensee's money transmission activities in accordance with the terms of the contract between the licensee and the authorized agent or whose authorized agency status has been revoked, suspended, terminated, cancelled, or voluntarily closed due to an outstanding liability due to the licensee. The report shall state the aggregate amount of unremitted payment instrument

sales or money transmission proceeds due to the licensee and any provisions which have been made to recover same.

(2) Structuring to avoid reporting.

(a) Unless otherwise reporting to the appropriate federal agency under Rule 80-3-6-.02(2), every payment instrument seller, authorized agent of a payment instrument seller, money transmitters, and authorized agents of money transmitters shall report to the Department any instance involving such sale of payment instruments or money transmission where there is reasonable cause to believe that its customer has, for the purpose of evading the reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or Article 11 of Chapter 1 of Title 7:

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

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

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

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

(3) Any licensed payment instrument seller or money transmitter shall notify the Department within ten (10) business days of any knowledge or discovery of any criminal act or apparent criminal act by any officer, director, or employee of such licensee or by any officer, director, or employee of an authorized agent occurring in this state and relating to the business of the licensee. Such notification shall include a full description of the acts or apparent acts believed to be in violation of the criminal laws of this state or the United States, the names of all persons believed to be involved, a statement as to action taken by the licensee in response to the discovery or suspicions, and a copy of the written notification to the licensee's fidelity insurance carrier.

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

Cite as Ga. Comp. R. & Regs. R. 80-3-6-.03
Authority: O.C.G.A. §§ 7-1-61, 7-1-690.

History. Original Rule entitled "Reports of Apparent Criminal Irregularity by Licensees and Authorized Agents" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-3-6-.04. State Requirements for Financial Institutions.

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

(2) Banks and credit unions are required to follow federal guidelines and requirements for detecting abuses or the structuring of transactions designed to avoid Bank Secrecy Act reporting.

Cite as Ga. Comp. R. & Regs. R. 80-3-6-.04
Authority: O.C.G.A. §§ 7-1-61, 7-1-690.
History. Original Rule entitled "State Requirements for Financial Institutions" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

Chapter 80-4. CHECK CASHERS.

Subject 80-4-1. CHECK CASHERS.

Rule 80-4-1-.01. Books and Records; Other Requirements.

(1) For purposes of this Rules Chapter and Rule 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 contain the licensee's name, which shall conform to the name on record with the Department, and unique identifier, which shall clearly indicate that the number was issued by the Nationwide Multistate Licensing System and Registry.

(5) Minimum Books and Records.

(a) Books and records required herein shall be maintained by every licensee.

(b) A record of cashed payment instruments shall be maintained by each licensee as a log of all transactions occurring each day. The log must be maintained in chronological order based on the date of negotiation of the payment instrument.

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

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

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

(iii) Amount of the payment instrument; and

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

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

(i) Date of the payment instrument;

(ii) Payment instrument number;

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

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

(c) A daily cash reconcilement statement shall be maintained summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business. Such reconcilement statement shall separately reflect cash received from the sale of payment instruments (if also 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.

(g) Information security program materials maintained by the licensee in accordance with 16 C.F.R. Part 314, ("the Safeguards Rule") and Rule 80-3-1-.05, including, but not limited to, any risk assessment and incident response plan.

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

(7) Each licensee shall maintain a principal location at which its books and records are maintained and which is accessible to the Department for examination during normal business hours. Records required to be maintained under this rule may be maintained in a photographic, electronic, or other similar format at a central location within or outside the State of Georgia provided specific records can be transmitted to a location designated by the Department within ten (10) days of the Department's request. The Department may

examine any person that purports to satisfy the exemption from licensure set forth in O.C.G.A. § 7-1-701.1 to verify that the person qualifies for the exemption from licensure. A licensee that refuses to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department), that withholds material information or makes a misrepresentation shall have its license revoked.

(8) The business of the licensee may be conducted through additional outlets, including those operated as mobile facilities, provided that mobile facilities maintain a regular schedule of times and locations at which they cash payment instruments, file the schedule with the Department, and comply with local licensure requirements at each location at which business is conducted. A licensee must provide the Department with written notice at least thirty (30) days prior to it conducting business at any additional outlets.

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

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

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

Cite as Ga. Comp. R. & Regs. R. 80-4-1-.01
Authority: O.C.G.A. §§ 7-1-61, 7-1-701.1, 7-1-702.1, 7-1-706.1.
History. Original Rule entitled "Definitions" was filed on July 5, 1973; effective July 25, 1973.
Amended: Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.
Amended: Filed July 13, 1981; effective August 2, 1981.
Amended: Filed October 12, 1982; effective November 2, 1982.
Repealed: F. June 20, 2016; eff. July 10, 2016.
Adopted: New Rule entitled "Books and Records; Other Requirements." F. Dec. 16, 2021; eff. Jan. 5, 2022.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-4-1-.02. Money Service Businesses: Compliance with Federal Requirements.

(1) For the purposes of this Rule, Money Service Businesses ("MSBs") refer to a class of non-bank financial institutions defined in the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act"), which Act requires such non-bank financial institutions to register with the Financial Crimes Enforcement Network, United

States Department of the Treasury and to comply with other recordkeeping and compliance laws.

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

(3) All licensees under Article 4A of Chapter 1 of Title 7 must have a compliance program and must comply with the recordkeeping requirements, currency transaction reporting, and suspicious activity reporting set forth in the Bank Secrecy Act provided the licensees are required to do so under the Bank Secrecy Act. Other recordkeeping requirements required by state law are provided for in Rule 80-4-1-.01(5). Licensees may consult https://www.fincen.gov/resources/financial-institutions/money-services-businesses for questions about the federal requirements.

Cite as Ga. Comp. R. & Regs. R. 80-4-1-.02
Authority: O.C.G.A. §§ 7-1-61, 7-1-706.1.
History. Original Rule entitled "Incorporation" was filed on July 5, 1973; effective July 25, 1973.
Amended: Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.
Amended: Filed July 13, 1981; effective August 2, 1981.
Repealed: F. June 20, 2016; eff. July 10, 2016.
Adopted: New Rule entitled "Money Service Businesses: Compliance with Federal Requirements." F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-4-1-.03. Reports of Large Currency Transactions, Record-Keeping, and Suspicious Activity Reporting Requirements for Check Cashers.

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

(2) The reporting requirements contained in Article 11 of Chapter 1 of Title 7 shall be met by filing with the appropriate federal agency a copy of the form(s) filed in compliance with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") within the time limits set forth therein. Such forms shall include the filing of currency transaction reports and suspicious activity reports as described in the Bank Secrecy Act and accompanying regulations.

(3) Recordkeeping. Georgia law regarding such recordkeeping for check cashers shall be satisfied by compliance with all applicable federal law. Such federal law includes, but is not limited to, the Bank Secrecy Act. A licensed check casher that does not satisfy the definition of a check casher under the Bank Secrecy Act shall comply with the state recordkeeping requirements at Rule 80-4-1-.01(5).

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

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

Cite as Ga. Comp. R. & Regs. R. 80-4-1-.03
Authority: O.C.G.A. §§ 7-1-61, 7-1-706.1.
History. Original Rule entitled "Bonds" was filed on July 5, 1973; effective July 25, 1973.
Amended: Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.
Repealed: F. June 20, 2016; eff. July 10, 2016.
Adopted: New Rule entitled "Reports of Large Currency Transactions, Record-Keeping, and Suspicious Activity Reporting Requirements for Check Cashers." F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-4-1-.04. Reports of Apparent Criminal Irregularity by Check Cashers.

(1) Structuring to avoid reporting. Unless otherwise reporting to the appropriate federal agency under Paragraph (2) of Rule 80-4-1-.03, every check casher and other persons who cash payment instruments for a fee shall report to the Department any instance involving such cashing of payment instruments where there is reasonable cause to believe that its customer has, for the purpose of evading the reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or Article 11 of Chapter 1 of Title 7:

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

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

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

(2) Any licensed check casher shall notify the Department within ten (10) business days of any knowledge or discovery of any criminal act or apparent criminal act by any officer, director, or employee of such licensee occurring in this state and relating to the business of the licensee. Such notification shall include a full description of the acts or apparent acts believed to be in violation of the criminal laws of this state or the United States, the names of all persons believed to be involved, a statement as to action taken by the

licensee in response to the discovery or suspicions, and a copy of the written notification to the licensee's fidelity insurance carrier.

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

Cite as Ga. Comp. R. & Regs. R. 80-4-1-.04
Authority: O.C.G.A. §§ 7-1-61, 7-1-706.1.
History. Original Rule entitled "Books, Records, and Accounts" was filed on July 5, 1973; effective July 25, 1973.
Amended: Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.
Amended: Filed July 13, 1981; effective August 2, 1981.
Amended: Filed October 12, 1982; effective November 2, 1982.
Repealed: F. June 20, 2016; eff. July 10, 2016.
Adopted: New Rule entitled "Reports of Apparent Criminal Irregularity by Check Cashers." F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-4-1-.05. Administrative Fines and Penalties.

(1) Except as otherwise indicated, these fines and penalties apply to any person, partnership, association, corporation, or any other group of individuals, however organized, that is required to be licensed under Article 4A of Chapter 1 of Title 7. The Department, at its sole discretion, may waive or modify a fine based upon the financial resources of the person, gravity of the violation, history of previous violations, and such other facts and circumstances deemed appropriate by the Department.

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

(3) In addition to any fines levied by the Department, the recipient of the fine may be subject to additional administrative actions for the same underlying activity.

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

(a) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain its books and records according to the requirements of O.C.G.A. § 7-1-706(a) and Rules 80-4-1-.01(2) or 80-4-1-.01(5), such licensee shall be subject to a fine of one thousand dollars ($1,000) for each books and records violation listed in Rules 80-4-1-.01(2) or 80-4-1-.01(5).

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

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

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

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

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

(g) Deferred Payment. Any licensee that defers payment on a payment instrument pending collection and has not obtained the surety bond as required by O.C.G.A. § 7-1-707(c) shall be subject to a fine of five thousand dollars ($5,000) per occurrence.

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

(i) Corporate Checks. Any licensee that cashes a payment instrument made payable to a corporation or other business association or cashes a payment instrument drawn by the corporation or other business association and made payable to cash without the proper written authorization as required by O.C.G.A. § 7-1-707(d) and Rule 80-4-1-.01(3) shall be subject to a fine of one thousand dollars ($1,000) per occurrence.

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

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

(l) Failure to Submit to Exam. The penalty for the refusal of a licensee to permit the Department to conduct an investigation or examination of its books, accounts, and records (after a reasonable request by the Department), shall be a five thousand dollar ($5,000) fine. Refusal shall require at least two attempts by the Department to schedule an examination or investigation.

(m) Consumer Complaints. Any licensee who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department's correspondence to such licensee, shall be subject to a fine of one thousand dollars ($1,000) for each occurrence.

(n) Failure to Notify or Obtain Approval from the Department of Change in Ownership, Change in Control, or Designation of Executive Officer. Any licensee or other person who fails to obtain the Department's prior approval of a change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control of the licensee in compliance with O.C.G.A. § 7-1-705.1 and Rule 80-4-1-.01 shall be subject to a fine of one thousand dollars ($1,000). Any licensee or other person who fails to timely notify the Department of a change in executive officer not resulting from a change in control or ownership in compliance with O.C.G.A. § 7-1-705 shall be subject to a fine of one thousand dollars ($1,000).

(o) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or the requirements referred to in Rules 80-4-1-.02, 80-4-1-.03, and 80-4-1-.04, such licensee shall be subject to a fine of one thousand dollars ($1,000) for each instance of non-compliance.

(p) Failure to Post Required License or Failure to Include Required Legend on Advertising. Any licensee that fails to post a copy of its license in prominent view of each teller window or other customer service station, or distributes advertising in this state related to the cashing of payment instruments that fails to comply with the requirements of Rule 80-4-1-.01(4) shall be subject to a fine of five hundred dollars ($500) for each instance of non-compliance.

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

(r) Failure to Timely Update Information on the Nationwide Multistate Licensing System and Registry. Any licensee that fails to update its information on the Nationwide Multistate Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars ($1,000) per occurrence. In addition, the failure of a control person of a licensee to update the individual's information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions by the control person, within ten (10) business days of the date of the event necessitating the change, shall subject the licensee to a fine of one thousand dollars ($1,000) per occurrence.

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

(t) Unauthorized Access to Customer Information. Any licensee that fails to provide the Department with notice of unauthorized access to customer information as required by Rule 80-4-1-.08 shall be subject to a fine of one thousand dollars ($1,000) a day until the notice is provided.

Cite as Ga. Comp. R. & Regs. R. 80-4-1-.05
Authority: O.C.G.A. §§ 7-1-61, 7-1-708.2.
History. Original Rule entitled "Reserves" was filed on July 5, 1973; effective July 25, 1973.
Amended: Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.
Amended: Filed July 13, 1981; effective August 2, 1981.
Amended: F. Sept. 26, 1995; eff. Oct. 16, 1995.
Repealed: F. June 20, 2016; eff. July 10, 2016.
Adopted: New Rule entitled "Administrative Fines and Penalties." F. Dec. 16, 2021; eff. Jan. 5, 2022.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-4-1-.06. Verification of Lawful Presence Citizenship Affidavit.

(1) Pursuant to O.C.G.A. § 50-36-1, the Department is required to obtain an affidavit verifying the lawful presence of every natural person that submits an application for a license as a check casher on behalf of an individual, business, corporation, partnership, limited liability company, or any other business entity. For businesses, corporations, partnerships, limited liability companies, and other business entities (collectively "company applicant"), only an owner or executive officer that is authorized to act on behalf of the company applicant is authorized to submit the required signed and sworn affidavit.

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

Cite as Ga. Comp. R. & Regs. R. 80-4-1-.06
Authority: O.C.G.A. §§ 7-1-61, 7-1-702.
History. Original Rule entitled "Investments" was filed on July 5, 1973; effective July 25, 1973.
Amended: Filed May 3, 1974; effective May 23, 1974.
Amended: Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.
Amended: Filed October 12, 1982, effective November 2, 1982.
Amended: F. Sept. 27, 1995; eff. Oct. 16, 1995.
Repealed: F. June 20, 2016; eff. July 10, 2016.
Adopted: New Rule entitled "Verification of Lawful Presence Citizenship Affidavit." F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-4-1-.07. Nationwide Multistate Licensing System and Registry.

(1) License issuance and renewals.

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

(b) All licenses issued shall expire on December 31 of each year, and an application for renewal shall be made annually between November 1 and December 31 each year. Subsequent renewal applications and/or license fees must be received on or before December 1 of each year or the renewal applicant will be assessed a late

fee as set forth in Rule 80-5-1-.02. A renewal application is not deemed received until all required information and corresponding fees have been provided by the licensee. A proper renewal application not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license will expire. Unless a proper renewal application has been received any license which is not renewed on or before December 31 will require the renewal applicant to file a reinstatement application in order to conduct business as a check casher in the State after that date.

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

(a) It shall be the sole responsibility of each applicant for a license and each licensee to keep current at all times its information on the NMLSR. Amendments to any information on file with the NMLSR must be made by the applicant or licensee within ten (10) business days of the date of the event necessitating the change. The Department shall have no responsibility for any communication not received by an applicant or licensee due to its failure to maintain current contact information on the NMLSR as required.

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

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

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

(3) A licensee may challenge information entered by the Department into the NMLSR. All challenges must be sent to the Department in writing addressed to the attention of the

Deputy Commissioner of Non-Depository Financial Institutions. Once received, the Department shall consider the merits of the challenge raised and provide the licensee with a written reply that shall be the Department's final decision regarding the challenge.

(4) All written notices required pursuant to O.C.G.A. §§ 7-1-705(a) and 7-1-705(b) and Rule 80-4-1-.08 shall be submitted to the Department via NMLSR. Such notices shall be uploaded as state-specific documents under the document type "Additional Requirements." The file name for each document shall begin with "Georgia Required Written Notice" but may contain additional words at the option of the licensee.

Cite as Ga. Comp. R. & Regs. R. 80-4-1-.07
Authority: O.C.G.A. §§ 7-1-61, 7-1-702.2.
History. Original Rule entitled "Borrowing Power" was filed on July 5, 1973, effective July 25, 1973.
Amended: Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.
Repealed: F. June 20, 2016; eff. July 10, 2016.
Adopted: New Rule entitled "Nationwide Multistate Licensing System and Registry." F. Dec. 16, 2021; eff. Jan. 5, 2022.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-4-1-.08. Notice of Unauthorized Access to Personal Information.

(1) In the event that a licensee provides notice under applicable federal or state law of an information security incident involving unauthorized access to personal information, then the licensee shall simultaneously provide a duplicate of such disclosure to the Department. For purposes of this rule, personal information is any record containing nonpublic personal information about a customer or potential customer whether in paper, electronic, or other form maintained by or on behalf of the licensee.

(2) Pursuant to O.C.G.A. § 10-1-912, a business that satisfies the definition of an information broker is required to provide notice to Georgia residents in the event of a data breach that results in access or likely access to unencrypted personal information. In the event a licensee or an affiliate of a licensee is required to make such notification to Georgia residents, then a duplicate of the notification will simultaneously be submitted to the Department.

Cite as Ga. Comp. R. & Regs. R. 80-4-1-.08
Authority: O.C.G.A. §§ 7-1-61, 7-1-706.1.
History. Original Rule entitled "Membership in a Federal Home Loan Bank" was filed on July 5, 1973; effective July 25, 1973.
Amended: Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.
Repealed: F. June 20, 2016; eff. July 10, 2016.
Adopted: New Rule entitled "Notice of Unauthorized Access to Personal Information." F. July 7, 2022; eff. July 27, 2022.

Rule 80-4-1-.09. Information Security Safeguards for Consumer Financial Information.

All licensees shall create and maintain an information security program to safeguard the nonpublic personal information of customers to the extent required by 16 C.F.R. Part 314 (the "Safeguards Rule"). As part of its regulatory oversight, the Department shall review, to the extent applicable, licensee's information security programs, risk assessments, incident response plans, and other required elements of the Safeguards Rule.

Cite as Ga. Comp. R. & Regs. R. 80-4-1-.09
Authority: O.C.G.A. §§ 7-1-61, 7-1-706.1.
History. Original Rule entitled "Insurance of Accounts" was filed on July 5, 1973; effective July 25, 1973.
Amended: Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.
Repealed: F. June 20, 2016; eff. July 10, 2016.
Adopted: New Rule entitled "Information Security Safeguards for Consumer Financial Information." F. July 7, 2022; eff. July 27, 2022.

Rule 80-4-1-.10. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-4-1-.10
Authority: Ga. L. 1974, pp. 705, 733, 945; O.C.G.A. § 7-1-61.
History. Original Rule entitled "Loans" was filed on July 5, 1973; effective July 25, 1973.
Amended: Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.
Amended: Filed July 13, 1981; effective August 2, 1981.
Amended: Filed October 12, 1982; effective November 2, 1982.
Repealed: F. June 20, 2016; eff. July 10, 2016.

Rule 80-4-1-.11. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-4-1-.11
Authority: Ga. L. 1974, pp. 705, 733, 945; O.C.G.A. § 7-1-61.
History. Original Rule entitled "Members" was filed on July 5, 1973; effective July 25, 1973.
Amended: Rule repealed and a new Rule entitled "Application of Division 80-1 of Rules and Regulations of the Department" adopted. Filed June 18, 1979; effective July 8, 1979.
Amended: Filed July 13, 1981; effective August 2, 1981.
Repealed: F. June 20, 2016; eff. July 10, 2016.

Rule 80-4-1-.12. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-4-1-.12
Authority: Ga. L. 1974, pp. 705, 733, 945; O.C.G.A. § 7-1-61.
History. Original Rule entitled "Dividends, Earnings and Interest" was filed on July 5, 1973; effective July 25, 1973.
Amended: Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.
Repealed: F. June 20, 2016; eff. July 10, 2016.

Rule 80-4-1-.13. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-4-1-.13
Authority: Ga. L. 1974, pp. 705, 733, 945; O.C.G.A. § 7-1-61.
History. Original Rule entitled "Branches" was filed on July 5, 1973; effective July 25, 1973.
Amended: Rule repealed and a new Rule of the same title adopted. Filed June 18, 1979; effective July 8, 1979.
Repealed: F. June 20, 2016; eff. July 10, 2016.

Rule 80-4-1-.14. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-4-1-.14
Authority: Ga. L. 1974, pp. 705, 733, 945; O.C.G.A. § 7-1-61.
History. Original Rule entitled "Foreclosed Property" was filed on October 12, 1982; effective November 2, 1982.
Repealed: F. June 20, 2016; eff. July 10, 2016.

Rule 80-4-1-.15. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-4-1-.15
Authority: Ga. L. 1974, pp. 705, 733, 945; O.C.G.A. § 7-1-61.
History. Original Rule entitled "Credit for Brokered Loans" was filed on August 17, 1983; effective September 6, 1983.
Repealed: F. June 20, 2016; eff. July 10, 2016.

Chapter 80-5. FINANCIAL INSTITUTIONS.

Subject 80-5-1. SUPERVISION, EXAMINATION, REGISTRATION AND INVESTIGATION FEES ADMINISTRATIVE LATE FEES.

Rule 80-5-1-.01. General.

(1) The appropriation for the Department of Banking and Finance is enacted by the General Assembly and signed into law annually. An annual fee shall be assessed on financial institutions supervised or regulated by the Department. These fees are remitted to the Office of the State Treasurer.

(2) 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 the Report of Condition preceding the assessment date. All financial institutions will be assessed, either for a full year or for a partial year, as appropriate. Subject to an increased assessment due to an acquisition, annual assessments for Georgia chartered financial institutions existing on July 1, will be based on June 30 Call Report Assets, should be delivered on or about September 10, and are due and payable no later than September 30. A late payment penalty may be assessed for the full year billing at

any time after the due date. Subject to the provisions herein, assessments related to a conversion to a Georgia state chartered institution or a charter issuance after July 1 will be prorated for the number of full and partial months as a Georgia state chartered institution and will be delivered as soon as practical and shall be due and payable upon receipt. A late payment penalty may be assessed for the partial year billing fourteen days after bill issuance. Under no circumstances, shall any portion of an annual assessment paid to the Department be refunded.

(3) Newly chartered financial institutions 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 initial assessment period for newly chartered financial institutions 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 a Georgia state chartered institution that is acquired by a federal or national institution or institution chartered by another state 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 Georgia state chartered institution. A Georgia state chartered institution that is acquired by a federal or national institution or an institution chartered by another state after the assessment date, shall pay the full assessment.

(5) Assessment fees for a Georgia state chartered institution that is acquired by another Georgia state chartered 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 combined institutions as of June 30. A Georgia state chartered institution that is acquired after the assessment date, shall pay the full assessment.

(6) Assessment fees for a Georgia state chartered institution that converts to a federal or national institution or institution chartered by another state 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 Georgia state chartered institution. A Georgia state chartered institution that converts to a federal or national institution or institution chartered by another state after the assessment date, shall pay the full assessment.

(7) Assessment fees for a national bank, federal credit union, or institution chartered by another state that is acquired by a Georgia state chartered institution after July 1 will be prorated based on the number of full and partial months the additional assets of the national bank, federal credit union, or the institution chartered by another state were combined into the Georgia state chartered 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-.03.

Cite as Ga. Comp. R. & Regs. R. 80-5-1-.01
Authority: O.C.G.A. §§ 7-1-41, 7-1-61.
History. Original Rule entitled "General" adopted. F. Nov. 4, 1975; eff. Nov. 24, 1975.
Repealed: New Rule of same title adopted. F. Mar 24, 1982; eff. June 13, 1982.
Amended: F. June 28, 1984; eff. August 1, 1984, as specified by the Agency.
Amended: F. June 10, 1988; eff. June 30, 1988.
Amended: F. July 14, 1998; eff. August 3, 1998. F. Nov. 2, 2010; eff. November 22, 2010.
Amended: F. Jun. 10, 2014; eff. Jun. 30, 2014.
Amended: F. June 15, 2015; eff. July 5, 2015.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: F. July 7, 2021; eff. July 27, 2021.
Amended: F. Dec. 16, 2021; eff. Jan. 5, 2022.

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

(b) The annual renewal license fee is one thousand nine hundred dollars ($1,900) for payment instrument sellers and money transmitters and 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 license renewal fee is not received by the Department on or before December 1 may be assessed a late fine 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 may be assessed a late fine 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).

(3) 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 may be assessed a late fine 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 may be assessed a late fine 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 two hundred dollars ($200). Subsequent renewal application fees must be received by the Department on or before December 1 of each year or the applicant may be assessed a late fine of two hundred dollars ($200). 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. 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 may be assessed a late fine 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 may be assessed a late fine 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 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).

(g) 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).

(h) 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.

(5) Installment Lenders.

(a) The annual license fee is five hundred dollars ($500).

(b) The annual license renewal fee is five hundred dollars ($500) 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 license renewal fee is not received by the Department on or before December 1 may be assessed a late fine of three hundred dollars ($300) and cannot be assured of renewal of its license prior to January 1.

(c) An additional nonrefundable initial 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. § 7-3-32 shall pay a nonrefundable investigation, application, and processing fee of five hundred dollars ($500).

(e) An application for an additional location of a licensee shall be accompanied by a nonrefundable fee of three hundred dollars ($300). An annual renewal fee of three hundred dollars ($300) per each approved additional location shall be due and

must be received by the Department on or before the first day of December of each year.

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

(7) 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.

(8) All license, investigation, and supervision fees, late fees, fines, taxes owed to the Department, and assessed civil penalties must be paid prior to renewal, reinstatement, or reapplication for a license or any other approval from the Department.

Cite as Ga. Comp. R. & Regs. R. 80-5-1-.02
Authority: O.C.G.A. §§ 7-1-41, 7-1-61, 7-1-683, 7-1-685, 7-1-702, 7-1-704, 7-1-716, 7-1-721, 7-1-1004, 7-1-1005, 7-3-20, 7-3-32.
History. Original Rule entitled "Supervision Fees" adopted. F. Nov. 4, 1975; eff. Nov. 24, 1975.
Amended: F. June 8, 1976; eff. June 28, 1976.
Repealed: New Rule of the same title adopted. F. June 9, 1980; eff. July 1, 1980, as specified by the Agency.
Repealed: New Rule entitled "License Registration and Supervision Fees" adopted. F. May 24, 1982; eff. June 13, 1982.
Amended: F. June 28, 1984; eff. August 1, 1984, as specified by the Agency.
Amended: F. June 10, 1988; eff. June 30, 1988.
Repealed: New Rule of same title adopted. F. Sept. 4, 1990; eff. Sept. 24, 1990.
Amended: F. Oct. 15, 1993; eff. Nov. 4, 1993.
Amended: F. Sept. 26, 1995; eff. Oct. 16, 1995.
Amended: Rule retitled "License, Registration and Supervision Fees for Check Cashers and Sellers, Representative Offices and Mortgage Lenders and Brokers; Due Dates" adopted. F. July 14, 1998; eff. August 3, 1998.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.
Amended: Rule retitled "License, Registration and Supervision Fees for Check Cashers and Sellers, Money Transmitters, Representative Offices and Mortgage Lenders and Brokers; Due Dates". F. July 28, 2003; eff. August 17, 2003.
Amended: F. Sept. 1, 2004; eff. Sept. 21, 2004.
Amended: F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: F. Aug. 4, 2008; eff. Aug. 24, 2008.
Amended: F. Dec. 15, 2008; eff. Jan. 4, 2009.
Amended: F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Aug. 2, 2011; eff. Aug. 22, 2011.
Amended: Title changed to "License and Supervision Fees for Check Cashers, Payment Instrument Sellers, Money Transmitters, Representative Offices and Mortgage Lenders and Brokers; Due Dates." F. June 10, 2014; eff. June 30, 2014.
Amended: F. Aug. 29, 2014; eff. Sept. 18, 2014.
Amended: F. Dec. 5, 2014; eff. Dec. 25, 2014.
Amended: F. June 15, 2015; eff. July 5, 2015.
Amended: F. June 20, 2016; eff. July 10, 2016.
Amended: New title "License and Supervision Fees for Check Cashers, Payment Instrument Sellers, Money Transmitters, Representative Offices, Mortgage Lenders, Mortgage Brokers, and Installment Lenders; Due Dates."

F. Aug. 19, 2020; eff. Sept. 8, 2020.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 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:

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), licensees under Chapter 3 of Title 7 (Georgia Installment Loan Act), trust departments, holding companies and financial service providers 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 branches shall pay an investigation fee of $1,250 for each application that is processed as a regular application. Applicants for new branch offices or relocations of branches are not required to pay an investigation fee for each application that is processed as an expedited application. A simple redesignation of an existing bank location, which does not entail the closure or opening of a location, only requires a written application but does not require a fee.

(b) Applicants for approval of new bank, trust company, state savings or mutual savings bank, or savings and loan associations 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 bank agency or domestic international banking facility 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.

(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.

Cite as Ga. Comp. R. & Regs. R. 80-5-1-.03
Authority: O.C.G.A. §§ 7-1-41; 7-1-61.
History. Original Rule entitled "Examination and Investigation Fees" adopted. F. Nov. 4, 1975; eff. Nov. 24, 1975.
Amended: F. June 8, 1976; eff. June 28, 1976.
Amended: F. June 9, 1980; eff. July 1, 1980, as specified by the Agency.
Amended: F. July 13, 1981; eff. August 2, 1981.
Repealed: New Rule of the same title adopted. F. May 24, 1982; eff. June 13, 1982.
Repealed: New Rule of the same title adopted. F. June 28, 1984; eff. August 1, 1984, as specified by the Agency.
Amended: F. June 10, 1988; eff. June 30, 1988.
Amended: F. Sept. 4, 1990; eff. Sept. 24, 1990.
Amended: F. Oct. 15, 1993; eff. Nov. 4, 1993.
Amended: Rule retitled "Examination, Supervision, Application and Other Fees". F. Aug. 26, 1997; eff. Sept. 15, 1997.
Amended: Rule retitled "Examination, Supervision, Registration, Application and Other Fees for Banking Activities and Nonbank Subsidiaries of Banks or Holding Companies". F. July 14, 1998; eff. August 3, 1998.
Amended: Rule retitled "Examination, Supervision, Registration, Application and Other Fees for Financial

Institutions and Nonbank Subsidiaries of Banks or Holding Companies." F. July 12, 1999, eff. August 1, 1999.
Amended: F. Dec. 6, 1999; eff. Dec. 26, 1999.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.
Amended: F. July 28, 2003; eff. August 17, 2003.
Amended: F. Sept. 1, 2004; eff. Sept. 21, 2004.
Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: F. Aug. 4, 2008; eff. Aug. 24, 2008.
Amended: F. June 10, 2014; eff. June 30, 2014.
Amended: F. Dec. 5, 2014; eff. Dec. 25, 2014.
Amended: F. June 15, 2015; eff. July 5, 2015.
Amended: F. June 20, 2016; eff. July 10, 2016.
Amended: F. June 29, 2017; eff. July 19, 2017.
Amended: F. Aug. 19, 2020; eff. Sept. 8, 2020.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: F. July 7, 2021; eff. July 27, 2021.

Rule 80-5-1-.04. Levy, Collection, and Remittance of Georgia Residential Mortgage Act Per Loan Fee.

(a) Each borrower who obtains a mortgage loan as defined in O.C.G.A. § 7-1-1000(21) shall pay to the department a per loan fee of $10.00. The $10.00 fee will be due if the loan is secured by a deed to secure debt, security deed, mortgage, security instrument, deed of trust, a modification of a security deed, or other form or modification of a security interest which has been recorded. A change to a security instrument made solely for the purpose of correcting a clerical error will not be subject to a $10.00 fee. Any person who closes mortgage loans that are subject to regulation under Article 13, regardless of whether said person is required to be licensed or registered under the Georgia Residential Mortgage Act, shall act as collecting agent for payment to the department of said per loan fee for each mortgage loan closed by that person. A mortgage loan shall be deemed to have been closed by a person if such person is indicated as the secured party on the security deed or any other loan document that establishes a lien on the residential real estate taken as collateral for the mortgage loan.

(b) The fees payable under the provisions of subsection (a) shall be payable to the department by the collecting agent, who is the person responsible for remittance of such fees on a semiannual basis. More specifically, such fees for the period January 1 through June 30 of each year shall be remitted to the department no later than the first business day of September of each year and such fees for the period July 1 through December 31 of each year shall be remitted to the department no later than the first business day of March of each year. A fee statement indicating the number of mortgage loans closed during the applicable reporting period by the collecting agent shall accompany the fees remitted. The per loan fees and the corresponding fee statement shall be remitted to the Department through its online reporting and payment system located on the Department's website. Failure to timely remit per loan fees along with the corresponding fee statement via the online reporting and payment system may result in the imposition of a fine.

Cite as Ga. Comp. R. & Regs. R. 80-5-1-.04
Authority: Ga. L. 1974, pp. 732, 733; Ga. L. 1988, p. 243; 1993, p. 543; O.C.G.A. § 7-1-41; § 7-1-61; § 7-1-1011; § 7-1-1012.
History. Original Rule entitled "Other Charges" adopted. F. Nov. 4, 1975; eff. Nov. 24, 1975.
Amended: F. June 28, 1984; eff. August 1, 1984, as specified by the Agency.
Amended: F. June 10, 1988; eff. June 30, 1988.
Repealed: New Rule entitled "Georgia Residential Mortgage Act Per Loan Fee" adopted. F. Oct. 15, 1993; eff. Nov. 4, 1993.
Amended: Rule retitled "Levy, Collection and Remittance of Georgia Residential Mortgage Act Per Loan Fee" adopted. F. Jan. 27, 1995; eff. Feb. 16, 1995.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.
Amended: F. Oct. 22, 2001; eff. Nov. 11, 2001.
Amended: Rule retitled "Levy, Collection, Remittance and Refunds of Georgia Residential Mortgage Act Per Loan Fee." F. July 28, 2003; eff. August 17, 2003.
Amended: F. Aug. 2, 2011; eff. Aug. 22, 2011.
Amended: F. Sep. 18, 2012; eff. Oct. 8, 2012.
Amended: F. Nov. 7, 2013; eff. Nov. 27, 2013.
Amended: New title "Levy, Collection, and Remittance of Georgia Residential Mortgage Act Per Loan Fee." F. Dec. 5, 2014; eff. Dec. 25, 2014.

Rule 80-5-1-.05. Other Charges and Fees.

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

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

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

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

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

department a fee to cover the cost of the required number of fingerprints for each individual background check.

Cite as Ga. Comp. R. & Regs. R. 80-5-1-.05
Authority: Ga. L. 1974, pp. 732, 733; Ga. L. 1988, p. 243; 1993, p. 543; O.C.G.A. § 7-1-41; § 7-1-61; § 7-1-1004.
History. Original Rule entitled "Other Charges" adopted. F. Oct. 15, 1993; eff. Nov. 4, 1993.
Amended: F. Sept. 26, 1995; eff. Oct. 16, 1995.
Amended: Rule retitled "Other Charges and Fees" adopted. F. July 14, 1998; eff. August 3, 1998.
Amended: F. July 28, 2003; eff. August 17, 2003.
Amended: F. Nov. 2, 2010; eff. Nov. 22, 2010.
Amended: F. Nov. 7, 2013; eff. Nov. 27, 2013.
Amended: F. Jun. 10, 2014; eff. Jun. 30, 2014.

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

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

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

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

(d) Applicants for Department approval of a credit union subsidiary shall pay a processing fee of $500 for each application that is processed as a regular application. Applicants for approval of a credit union subsidiary are not required to pay a processing fee for each application that is processed as an expedited application.

(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) Applicants for new branch offices or relocations of branches shall pay an investigation fee of $1,250 for each application that is processed as a regular application. Applicants for new branch offices or relocations of branches are not required to pay an investigation fee for each application that is processed as an expedited application. A simple redesignation of an existing credit union location, which does not entail the closure or opening of a location, only requires a written application but does not require a fee.

(g) Applicants for approval of a new credit union shall pay an investigation fee of $20,000 for each application.

(h) If a credit union satisfies the 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 credit union that desires to exercise full trust powers files a regular application. A complete application will be reviewed in 30 days; the fee is $1,250.

(i) Applicants for Department approval of the acquisition of the majority of the assets of a bank shall pay an investigative fee of $5,000.

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

Cite as Ga. Comp. R. & Regs. R. 80-5-1-.06
Authority: O.C.G.A. §§ 7-1-41, 7-1-61, 7-1-663.
History. Original Rule entitled "Fees for Credit Unions" adopted. F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: F. Jun. 10, 2014; eff. Jun. 30, 2014.
Amended: F. June 15, 2015; eff. July 5, 2015.
Amended: F. July 9, 2019; eff. July 29, 2019.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-5-1-.07. Collection and Remittance of Per Loan Fee on Loans Made by Installment Lenders.

(1) For installment loans made on or after July 1, 2022, the fees payable on the gross loan amount of each loan under the provisions of O.C.G.A. § 7-3-16 shall be payable to the Department by the licensee on a semiannual basis. More specifically, such fees for the period January 1 through June 30 of each year shall be remitted to the Department no later than the first business day of September of each year and such fees for the period July 1 through December 31 of each year shall be remitted to the Department no later than the first business day of March of each year. A fee statement indicating the number of installment loans made during the applicable reporting period by the installment lender, the gross loan amount of such loans, and the total amount of fees remitted for the period shall accompany the fees remitted. The per loan fees and the corresponding fee statement shall be remitted to the Department through its online reporting and payment system.

(2) In the event that any licensee fails to timely remit fees along with the corresponding fee statement via the online reporting and payment system, the unpaid fees shall bear interest at the rate of one percent (1%) per month from the date the fees are due until the date the fees are paid, and there shall be added to the fees a penalty equivalent to twenty-five percent (25%) of the fees, or not less than five dollars ($5). In the event that any licensee fraudulently remits the incorrect fees, there shall be added to the fees a penalty equivalent to fifty percent (50%) of the fees, or not less than five dollars ($5).

(3) For purposes of this rule, the "gross loan amount" is the total of all of the borrower's precomputed payments related to the loan. For loans requiring multiple payments, the

obligations that have to be disclosed as the total of payments under 12 CFR 1026.18 shall be included in the gross loan amount.

Cite as Ga. Comp. R. & Regs. R. 80-5-1-.07
Authority: O.C.G.A. §§ 7-3-16, 7-3-51.
History. Original Rule entitled "License Renewal Periods and Requirements for Mortgage Brokers and Lenders" adopted. F. Dec. 15, 2008; eff. Jan. 4, 2009.
Repealed: New Rule entitled "License Renewal Periods and Requirements for Mortgage Brokers, Mortgage Lenders, and Mortgage Originators" adopted. F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Aug. 2, 2011; eff. Aug. 22, 2011.
Amended: F. June 20, 2016; eff. July 10, 2016.
Repealed: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Adopted: New Rule entitled "Collection and Remittance of Per Loan Fee on Loans Made by Installment Lenders." F. July 7, 2022; eff. July 27, 2022.

Rule 80-5-1-.08. Collection and Remittance of Per Loan Fee on Loans Made by Installment Lenders Through June 30, 2022.

(1) A tax shall be paid on a semiannual basis on all interest charged on loans made under Chapter 3 of Title 7 (Georgia Installment Loan Act) through June 30, 2022. A licensee may report such tax on interest either on a "cash basis" or on an "accrual basis" as those terms are defined in subsection (b). However, once a licensee has made such an initial election, such basis shall not be changed without the prior written approval of the Commissioner, with any such approved change becoming effective at the commencement of the next semiannual reporting period.

(2) A licensee shall report this tax by use of one of the following methods:

(a) "Cash Method" is based on actual interest charged during the month as reported in the daily cash report. The charges of interest shall be increased by recoveries of interest on accounts previously written off and the interest may be reduced by interest on accounts to be presently written off and interest being refunded on accounts prepaid by cash, renewal, and refinancing. The net interest is subject to the tax.

(b) "Accrual method" is based principally on collections during the month of accounts under the Act. An accurate percentage comparison of interest charged to the gross loan is obtained by dividing the outstanding loans at the beginning of the month into unearned interest at the beginning of the month. The percent obtained is then multiplied by the collections for the month. The total obtained is subject to be taxed.

(3) The taxes payable under the provisions of subsection (a) shall be payable to the Department by the licensee on a semiannual basis. More specifically, such taxes for the period January 1 through June 30 of each year shall be remitted to the Department no later than the first business day of September of each year and such taxes for the period

July 1 through December 31 of each year shall be remitted to the Department no later than the first business day of March of each year. A return indicating the amount of the tax, the method of calculation, and such other information as may be required by the Department shall accompany the taxes remitted. The taxes and the corresponding return shall be remitted to the Department through its online reporting and payment system. In the event that any licensee fails to timely remit taxes along with the corresponding return via the online reporting and payment system, the unpaid tax shall bear interest at the rate of one percent (1%) per month from the date the tax is due until the date the tax is paid, and there shall be added to the tax a penalty equivalent to twenty-five percent (25%) of the tax, or not less than five dollars ($5). In the event that any licensee fraudulently remits the incorrect tax, there shall be added to the tax a penalty equivalent to fifty percent (50%) of the tax, or not less than five dollars ($5).

(4) The requirement to pay the taxes pursuant to Chapter 3 of Title 7 (Georgia Installment Loan Act) and this rule shall apply to interest charged on all installment loans through June 30, 2022.

Cite as Ga. Comp. R. & Regs. R. 80-5-1-.08
Authority: O.C.G.A. §§ 7-3-16, 7-3-17, 7-3-18.
History. Original Rule entitled "Levy, Collection, and Remittance of Tax on Interest Paid to Installment Lenders" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.
Amended: New title, "Collection and Remittance of Per Loan Fee on Loans Made by Installment Lenders Through June 30, 2022." F. July 7, 2022; eff. July 27, 2022.

Subject 80-5-2. TEMPORARY CHANGES IN OPERATING HOURS; CLOSINGS.

Rule 80-5-2-.01. Temporary Changes in Operating Hours.

(1) Any financial institution (except certain credit unions which operate under special operating hours authorized by Code Section 7-1-110) desiring to change temporarily the days that it normally conducts business may do so by posting a notice at least thirty (30) days in advance of the change at the impacted locations as well as on the financial institution's website, provided the institution has at least one office open for business during at least five days of each week in which the temporary change is to take place.

(2) In the discretion of its Board of Directors or Chief Executive Officer, and after notice to the Department, any financial institution may close in commemoration of local events generally recognized by the local governments in the communities they serve or in memory of deceased directors, officers, or employees of such financial institutions, provided such financial institutions are open for at least half of their normal business hours on that date and notice is posted with regard to such closing at the locations that will be closed as well as on the financial institution's website at least twenty-four (24) hours in advance.

Cite as Ga. Comp. R. & Regs. R. 80-5-2-.01
Authority: O.C.G.A. §§ 7-1-61; 7-1-110.
History. Original Rule entitled "Temporary Changes in Operating Hours" was filed on December 19, 1983; effective January 8, 1984.
Amended: F. Jul. 14, 1998; eff. Aug. 3, 1998.
Amended: F. Jul. 12, 1999; eff. Aug. 1, 1999.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Rule 80-5-2-.02. Temporary Closings.

(1) Whenever, in the discretion of a financial institution's Board of Directors or Chief Executive Officer, the safety of the customers, employees, or assets of a financial institution would be in jeopardy due to civil disorder, fire, acts of God, disruption or failure of utility, transportation, communication or information systems, or whenever a financial institution is rendered unable to conduct business due to like circumstances, the financial institution shall not be obligated to open for business.

(2) The financial institution shall make a continuing diligent effort to contact the Department or the Commissioner with regard to the emergency and for further direction as to a temporary closing.

(3) If unable to reach the Department, the Chief Executive Officer or a majority of the Board of Directors may, by implied order of the Commissioner, close all or part of the institution for such period as is necessary to alleviate the emergency. It is not expected that this period should exceed 24 hours. Upon being contacted by a financial institution, the Department shall either concur in the temporary closing or order the institution to reopen in normal or modified form as appropriate under the circumstances.

(4) The Commissioner or the Governor may declare that a state of emergency exists and such declaration shall authorize the closing of one or more financial institutions in this State in the impacted area. Whenever such closings are declared, the declaration will be disseminated through the various news media of the State or by specific direction to affected financial institutions. Such declaration shall be effective until modified by executive order of the Governor or, if the emergency was declared by the Commissioner, until the Commissioner or the Governor declares the emergency has ceased and affected institutions may reopen.

Cite as Ga. Comp. R. & Regs. R. 80-5-2-.02
Authority: O.C.G.A. §§ 7-1-61; 7-1-111.
History. Original Rule entitled "Emergency Closings" was filed on December 19, 1983; effective January 8, 1984.
Amended: F. Jul. 14, 1998; eff. Aug. 3, 1998.
Amended: Rule retitled "Temporary Closings". F. Jul. 12, 1999; eff. Aug. 1, 1999.
Amended: F. June 20, 2016; eff. July 10, 2016.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Rule 80-5-2-.03. Permanent Closings.

(1) The management of a financial institution may permanently close a banking location in accordance with O.C.G.A. § 7-1-110.1 by satisfying the following requirements:

(a) Deliver to the Department a copy of the federal notice, or a letter form notification that contains the following information:

(i) The banking location to be closed;

(ii) A statement of the reason for the proposed closing and a summary of any supporting information; and

(iii) The proposed closing date.

(b) The financial institution shall post a notice of intent to close in a conspicuous place at the banking location to be closed and on the financial institution's website for at least 30 days prior to the proposed closing date. Such notice must remain posted for at least 30 consecutive days. Within two days of providing these notices, the financial institution must forward a copy of the notice posted at the banking location as well as the disclosure contained on its website to the Department.

Cite as Ga. Comp. R. & Regs. R. 80-5-2-.03
Authority: O.C.G.A. §§ 7-1-61; 7-1-110.1.
History. Original Rule entitled "Effects of Compliance" was filed on December 19, 1983; effective January 8, 1984.
Repealed: New Rule entitled "Permanent Closings" adopted. F. Jul. 14, 1998; eff. Aug. 3, 1998.
Amended: F. Jul. 12, 1999; eff. Aug. 1, 1999.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Rule 80-5-2-.04. [Repealed].

Cite as Ga. Comp. R. & Regs. R. 80-5-2-.04
Authority: O.C.G.A. § 7-1-61.
History. Original Rule 80-5-2-.03 entitled "Effects of Compliance" renumbered to 80-5-2-.04. F. Jul. 14, 1998; eff. Aug. 3, 1998.
Amended: F. Jul. 1, 1999; eff. Aug. 12, 1999.
Repealed: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Subject 80-5-3. REGULATIONS REGARDING THE SALE OF ANNUITIES BY FINANCIAL INSTITUTIONS.

Rule 80-5-3-.01. Sale of Annuities by Financial Institutions; Definitions.

(1) Fixed and variable annuities may be sold by financial institutions in Georgia, subject to regulations of the Department of Banking and Finance, regulations of the Department of Insurance and other applicable law.

(2) Financial institutions may sell or market fixed and variable annuities through state licensed insurance/annuity agents. The agents may be either employees of the financial institution or independent agents who have contracted with the financial institution to sell annuities. Prior approval of the Department of Banking and Finance is not required for a financial institution to sell annuities.

(3) As used in this chapter, the term:

(a) "Agency" means a person, including corporations, subsidiary corporations, partnerships, non-natural persons, etc., associated with or in the form of a financial institution who represents one or more insurers and is engaged in the business of soliciting or procuring or accepting applications for annuity sales;

(b) "Agent" means an individual appointed or employed by an insurer who solicits or procures applications for insurance; who in any way, directly or indirectly, makes or causes to be made any insurance contract for or on account of an insurer; or who as a representative of an insurer receives money for transmission to the insurer for an insurance contract, anything in the application or contract to the contrary withstanding, and who has on file with the Commissioner of Insurance a certificate of authority from each insurer with whom the agent places insurance;

(c) An "annuity" is a contract of insurance underwritten by an insurance company that pays an income benefit (monthly, quarterly, semiannually, or annually) for:

1) the life of a person (annuitant),

2) the lives of two or more persons, or

3) a specified period of time. Payments are made for a stated period of time or for the life or lives of the person or persons specified in the contract. The term does not cover the proceeds of life insurance no matter how payable;

(d) "Financial institution" means a state or national bank, savings and loan association, bank holding company, or a subsidiary or affiliate of any of the above;

(e) A "fixed annuity" means one party agrees to pay to the annuitant a stipulated amount (monthly, quarterly, semiannually, or annually, as desired) throughout the annuitant's lifetime whereby the dollar amount will not fluctuate regardless of adverse changes in the insurance company's mortality experience, investment return, and expenses;

(f) "Insurance/annuity agent" means an individual appointed or employed by a financial institution who solicits or procures applications for annuities; who in any way, directly or indirectly, makes or causes to be made any annuity contract for or on account of an insurer; and who has on file with the Commissioner of Insurance a certificate of authority from each insurer with whom the agent places annuities;

(g) A "variable annuity" means a contract that pays an annuitant income payments of which the amounts vary in accordance with the market value of the securities in the separate account of the insurer on the respective valuation days.

Cite as Ga. Comp. R. & Regs. R. 80-5-3-.01
Authority: O.C.G.A. §§ 7-1-61, 7-1-261(10), 7-1-288.
History. Original Rule entitled "Sale of Annuities by Financial Institutions; Definitions" adopted. F. July 18, 1996; eff. August 7, 1996.
Amended: F. June 20, 2016; eff. July 10, 2016.

Rule 80-5-3-.02. Notification of Intent to Sell Annuities.

A financial institution that wishes to sell annuities must give prior notification to the Office of the Commissioner of Insurance pursuant to Rule 120-2-71-.03.

Cite as Ga. Comp. R. & Regs. R. 80-5-3-.02
Authority: O.C.G.A. §§ 7-1-61, 7-1-261(11), 7-1-288.
History. Original Rule entitled "Notification of Intent to Sell Annuities" adopted. F. July 18, 1996; eff. August 7, 1996.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-5-3-.03. Licensure of Agents and Agency.

(1) A financial institution that intends to sell annuities either through an independent agent or through its own licensed employees shall be considered an Agency under Department of Insurance Regulation § 120-2-71-.04 and must meet any requirements of that Regulation Chapter

(2) Any individual who solicits, sells or markets annuities in association with a financial institution located in Georgia must be licensed as an insurance/annuity agent by the Department of Insurance.

Cite as Ga. Comp. R. & Regs. R. 80-5-3-.03
Authority: O.C.G.A. Secs. 7-1-61, 7-1-261(11), 7-1-288.
History. Original Rule entitled "Licensure of Agents and Agency" adopted. F. July 18, 1996; eff. August 7, 1996.

Rule 80-5-3-.04. Agreement Between Independent Insurance/Annuity Agent or Agency and Financial Institution.

(1) An arrangement for the sale of annuities between an independent insurance/annuity agent or agency and a financial institution must be governed by a written agreement approved

by the financial institution's board of directors. Such agreements will not be required if the agent is an employee of the financial institution. Compliance with the agreement should be periodically monitored by the financial institution's senior management. The agreement must set forth the responsibilities of the parties, the terms and conditions of the arrangement, and the compensation to be received by the financial institution. The agreement must also, at a minimum, contain provisions which:

(a) Specify that each insurance/annuity agent will comply with all applicable laws and regulations;

(b) Authorize the financial institution, the Department of Banking and Finance, and the Department of Insurance to have access to the financial institution's premises where the insurance/annuity agent conducts annuities sales in order to inspect books and records and other relevant information maintained by the insurance/annuity agent with respect to such annuity sales and to perform such related regulatory functions;

(c) Authorize the financial institution to monitor the insurance/annuity agent and periodically review and verify that the insurance/annuity agent or agency and its representatives are complying with the agreement with the financial institution; and

(d) Require the insurance/annuity agent or agency contracting with the financial institution to indemnify the institution from any liability resulting from unlawful, wrongful, improper actions or representations on the part of the insurance/annuity agent with regard to the sale of annuities in its association with the financial institution.

Cite as Ga. Comp. R. & Regs. R. 80-5-3-.04
Authority: O.C.G.A Secs. 7-1-61, 7-1-261(11), 7-1-288.
History. Original Rule entitled "Agreement Between Independent/Annuity Agent or Agency and Financial Institution" adopted. F. July 18, 1996; eff. August 7, 1996.

Rule 80-5-3-.05. Location of Sale of Annuities.

(1) When insurance/annuity agent services are provided on the premises of a financial institution, the insurance/annuity agent and the financial institution have a heightened responsibility to ensure appropriate measures are implemented to clearly segregate and distinguish the insurance/annuity agent services from retail deposit taking operations of the financial institution. Insurance/annuity agent services shall be conducted in a physical location distinct from the area where the financial institution's insured deposits are routinely taken.

(2) No insurance/annuity agent services shall be conducted from the teller area.

Cite as Ga. Comp. R. & Regs. R. 80-5-3-.05
Authority: O.C.G.A Secs. 7-1-61, 7-1-261(11), 7-1-288.
History. Original Rule entitled "Location of Sale of Annuities" adopted. F. July 18, 1996; eff. August 7, 1996.

Rule 80-5-3-.06. Signage.

(1) Advertisements for fixed or variable annuities physically located in financial institutions shall be subject to Department of Insurance law (O.C.G.A. § 33-6) and regulation and applicable Department of Banking and Finance law and regulation.

(2) The insurance/annuity agent must display his/her name and status as an agent in the area where annuity transactions occur.

Cite as Ga. Comp. R. & Regs. R. 80-5-3-.06
Authority: O.C.G.A Secs. 7-1-61, 7-1-261(11), 7-1-288.
History. Original Rule entitled "Signage" adopted. F. July 18, 1996; eff. August 7, 1996.

Rule 80-5-3-.07. Advertisements.

(1) "Advertisement" for the purposes of these regulations shall mean, consistent with Chapter 120-2-11 of the regulations of the Department of Insurance, any oral or written promotional or sales material which is directed to the public and concerns annuity products offered through an insurance/annuity agent in association with a financial institution.

(2) Such advertisement shall conform to all the applicable law and regulations of the Department of Insurance, in addition to the regulations herein.

(3) All advertisements sent to prospective customers shall clearly reflect the source of the communication. If the insurance/annuity agent is an employee of the financial institution, he/she shall be identified as representing both the financial institution and the insurer. If the insurance/annuity agent is an independent agent not employed by the financial institution, he/she must disclose that fact.

(4) No advertisement shall suggest or convey any inaccurate or misleading impression about the nature of the annuity product. Premiums shall not be referred to as deposits. Terminology used in connection with annuity contracts must he distinguishable from that used in connection with traditional banking products. All advertisements must conspicuously disclose:

   (a) The annuity product is not insured by the FDIC;

   (b) The annuity product is not a deposit or other obligation of, and is not underwritten or guaranteed by, the financial institution; and

(c) The annuity product is subject to investment risks. The market value of the investment may fluctuate, causing possible loss of the principal amount invested.

(5) If the product or program name under which an annuity contract is marketed includes the name of a financial institution or the name of a program associated with the financial institution, the product or program name must also identify the insurance company which is issuing and underwriting the annuity contract.

Cite as Ga. Comp. R. & Regs. R. 80-5-3-.07
Authority: O.C.G.A. Secs. 7-1-61, 7-1-261(11), 7-1-288.
History. Original Rule entitled "Advertisements" adopted. F. July 18, 1996; eff. August 7, 1996.

Rule 80-5-3-.08. Disclosures.

(1) At the time of sale of an annuity product, the written disclosure below or one which contains all its elements shall be made. The annuity products described or referred to:

(a) Are not deposits and are not insured by the FDIC;

(b) Are not obligations of or guaranteed by the financial institution; and

(c) Are subject to investment risk, including interest rate risk. The market value of the investment may fluctuate, causing possible loss of the principal amount invested; and

(d) Are unrelated to and not a condition to the provision or term of any banking service or activity.

(2) At the time of sale of an annuity product, the insurance/annuity agent shall deliver to and receive back from the customer a disclosure conforming to paragraph (1) of this Rule accompanied by a signed statement that the customer has read and understands the meaning of the disclosures. A copy of this signed statement shall be given to the customer and to the financial institution.

(3) The disclosures given to the customer shall be conspicuous and presented in a clear and concise manner, with no qualifying remarks.

(4) In addition to paragraph (1) of this Rule, the insurance/annuity agent shall, during discussions of annuity products with the customer, make these disclosures orally.

(5) Where applicable, the following disclosures shall also be included in the written disclosure given to the customer:

(a) The existence of an advisory or other material relationship between the financial institution, or an affiliate of the financial institution, and a company whose products are offered or sold by the insurance agent on the premises of the financial institution;

(b) The existence of any affiliate or subsidiary relationship between the financial institution and the insurance agent that is providing such insurance agent services on the premises of the financial institution; or

(c) The existence of any fees, penalties or surrender charges associated with the annuity product that is being offered or sold

(6) The insurance/annuity agents shall identify themselves to the customer as being either an employee of the financial institution or an independent licensed insurance/annuity agent.

Cite as Ga. Comp. R. & Regs. R. 80-5-3-.08
Authority: O.C.G.A. Secs. 7-1-61, 7-1-261(11), 7-1-288.
History. Original Rule entitled "Disclosures" adopted. F. July 18, 1996; eff. August 7, 1996.

Rule 80-5-3-.09. Activities of Licensed Agents; Bank Personnel.

(1) Solicitation and sale of annuity products in association with a financial institution may be provided only by appropriately licensed insurance/annuity agents. Unlicensed employees of the insurance/annuity agent or financial institution may, however, provide clerical or ministerial assistance. Unlicensed employees of the financial institution may refer customers of the financial institution interested in the purchase of annuity products to the appropriate agent in the financial institution or may inform the customer how to reach the agent.

(2) Except as permitted by these regulations, an unlicensed employee of the financial institution shall not discuss or promote annuity products or respond to questions about such investments.

Cite as Ga. Comp. R. & Regs. R. 80-5-3-.09
Authority: O.C.G.A. Secs. 7-1-61, 7-1-261(11), 7-1-288.
History. Original Rule entitled "Activities of Licensed Agents; Bank Personnel" adopted. F. July 18, 1996; eff. August 7, 1996.

Rule 80-5-3-.10. Severability.

If any provision of the rules in this Chapter 80-5-3 or the application of them to any financial institution or circumstance is held invalid, such invalidity shall not affect the provisions or

applications of the rules herein which can be given effect without the invalid portion. To that end, the provisions of these rules are declared to be severable.

Cite as Ga. Comp. R. & Regs. R. 80-5-3-.10
Authority: O.C.G.A. Secs. 7-1-61, 7-1-261(11), 7-1-288.
History. Original Rule entitled "Severability" adopted. F. July 18, 1996; eff. August 7, 1996.

Subject 80-5-4. REGULATIONS REGARDING THE SALE OF INSURANCE BY FINANCIAL INSTITUTIONS.

Rule 80-5-4-.01. Sale of Insurance by Financial Institutions; Definitions.

(1) Insurance may be sold by financial institutions in Georgia, subject to regulations of the Department of Banking and Finance, regulations of the Office of the Commissioner of Insurance and other applicable state law including but not limited to O.C.G.A. § 33-3-23. Sale of annuities by financial institutions is covered in Regulation Chapter 80-5-3. These regulations do not negate or affect the following: exceptions set out in O.C.G.A. § 33-3-23 such as sale and underwriting of credit insurance (§ 33-3-23(b)); sale of products regulated by O.C.G.A. § 33-23-12(b)(3); and insurance sold pursuant to Insurance Regulation § 120-2-11, all of which are otherwise regulated by the Office of the Commissioner of Insurance.

(2) Financial institutions may sell or market insurance through state licensed insurance agents. The agents may be either employees of the financial institution or independent agents who have contracted with the financial institution to sell insurance. Prior approval of the Department of Banking and Finance is not required for a financial institution to sell insurance, but policies and rules of the Department of Banking and Finance should be consulted.

(3) As used in this chapter, the term:

(a) "Agency" means a person, including corporations, subsidiary corporations, partnerships, non-natural persons, etc., associated with or in the form of a financial institution who represents one or more insurers and is engaged in the business of soliciting or procuring or accepting applications for insurance sales or countersigning, issuing, or delivering contracts of insurance for one or more insurers;

(b) "Agent" means an individual appointed or employed by an insurer who solicits or procures applications for insurance; who in any way, directly or indirectly, makes or causes to be made any insurance contract for or on account of an insurer; or who as a representative of an insurer receives money for transmission to the insurer for an insurance contract, anything in the application or contract to the contrary notwithstanding, and who has on file with the Commissioner of Insurance a certificate of authority from each insurer with whom the agent places insurance;

(c) "Financial institution" means a domestic state bank, national bank, savings and loan association or other federally insured depository institution which is authorized to accept deposits in the state of Georgia; a bank holding company; or a subsidiary or affiliate of any of the above;

(d) "Insurance" means a contract which is an integral part of a plan for distributing individual losses whereby one undertakes to indemnify another or to pay a specified amount or benefits upon determinable contingencies. The term does not include credit insurance products referenced in O.C.G.A. § 33-23-12(b).

Cite as Ga. Comp. R. & Regs. R. 80-5-4-.01
Authority: O.C.G.A. §§ 7-1-61, 7-1-261(11).
History. Original Rule entitled "Sale Insurance by Financial Institutions; Definitions" was filed on Feb. 17, 1997; eff. Mar. 10, 1997.
Amended: F. June 20, 2016; eff. July 10, 2016.

Rule 80-5-4-.02. Notification of Intent to Sell Insurance.

A financial institution that wishes to sell insurance must give prior notification to the Office of the Commissioner of Insurance pursuant to Rule 120-2-76-.03.

Cite as Ga. Comp. R. & Regs. R. 80-5-4-.02
Authority: O.C.G.A. §§ 7-1-61, 7-1-261(11).
History. Original Rule entitled "Notification of Intent To Sell Insurance; Registration of Bank Holding Company" was f. on Feb. 17, 1997; eff. Mar. 10, 1997.
Amended: New title "Notification of Intent to Sell Insurance." F. Dec. 5, 2014; eff. Dec. 25, 2014.
Amended: F. July 7, 2021; eff. July 27, 2021.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-5-4-.03. Licensure of Agents and Agency.

(1) A financial institution that intends to sell insurance either through an independent agent or through its own licensed employees shall be considered an Agency under Department of Insurance Regulation § 120-2-3-.05 and must meet any requirements of that Regulation Chapter.

(2) Any individual who solicits, sells or markets insurance in association with a financial institution located in Georgia must be licensed as an insurance agent by the Office of Commissioner of Insurance.

Cite as Ga. Comp. R. & Regs. R. 80-5-4-.03
Authority: O.C.G.A. Secs. 7-1-61, 7-1-261(11).
History. Original Rule entitled "Licensure of Agents and Agency" was f. on Feb. 17, 1997; eff. Mar. 10, 1997.

Rule 80-5-4-.04. Agreement Between Independent Insurance Agent or Agency and Financial Institution.

(1) An arrangement for the sale of insurance between an independent insurance agent or agency and a financial institution must be governed by a written agreement approved by the financial institution's board of directors. Such agreements will not be required if the agent is an employee of the financial institution. Compliance with the agreement should be periodically monitored by the financial institution's senior management. The agreement must set forth the responsibilities of the parties, the terms and conditions of the arrangement, and the compensation to be received by the financial institution. The agreement must also, at a minimum, contain provisions which:

(a) Specify that each insurance agent will comply with all applicable laws and regulations;

(b) Authorize the financial institution, the Department of Banking and Finance, and the Department of Insurance to have access to the financial institution's premises where the insurance agent conducts insurance sales in order to inspect books and records and other relevant information maintained by the insurance agent with respect to such insurance sales and to perform related regulatory functions;

(c) Authorize the financial institution to monitor the insurance agent and periodically review and verify that the insurance agent or agency and its representatives are complying with the agreement with the financial institution and with state and other applicable law; and

(d) Require the insurance agent or agency contracting with the financial institution to indemnify the institution from any liability resulting from unlawful, wrongful, or improper actions or representations on the part of the insurance agent with regard to the sale of insurance in its association with the financial institution.

Cite as Ga. Comp. R. & Regs. R. 80-5-4-.04
Authority: O.C.G.A. Secs. 7-1-61, 7-1-261(11).
History. Original Rule entitled "Agreement Between Independent Insurance Agent or Agency and Financial Institution" was f. on Feb. 17, 1997; eff. Mar. 10, 1997.

Rule 80-5-4-.05. Location of Sale of Insurance.

(1) When insurance agent services are provided on the premises of a financial institution, the insurance agent and the financial institution have a heightened responsibility to ensure appropriate measures are implemented to clearly segregate and distinguish the insurance agent services from retail deposit taking operations of the financial institution. Insurance agent services shall be conducted in a physical location distinct from the area where the financial institution's insured deposits are routinely taken.

(2) No insurance agent services shall be conducted from the teller area. The acceptance of mortgage payments which include insurance escrow payments will not be considered to be insurance agent services.

Cite as Ga. Comp. R. & Regs. R. 80-5-4-.05
Authority: O.C.G.A. Secs. 7-1-61, 7-1-261(11).
History. Original Rule entitled "Location of Sale of Insurance" was f. on Feb. 17, 1997; eff. Mar. 10, 1997.

Rule 80-5-4-.06. Signage.

(1) Advertisements for insurance products physically located in financial institutions shall be subject to Department of Insurance law (O.C.G.A. § 33-6-1*et seq.*) and regulation and any applicable Department of Banking and Finance law and regulation.

(2) The insurance agent must display his/her name and status as a licensed agent in the area where insurance transactions occur.

Cite as Ga. Comp. R. & Regs. R. 80-5-4-.06
Authority: O.C.G.A. Secs. 7-1-61, 7-1-261(11).
History. Original Rule entitled "Signage" was f. on Feb. 17, 1997; eff. Mar. 10, 1997.

Rule 80-5-4-.07. Advertisements.

(1) "Advertisement" for the purposes of these regulations shall mean, consistent with O.C.G.A. § 33-6-1*et seq.* and related regulations of the Department of Insurance, any oral or written promotional or sales material which is directed to the public and concerns insurance products offered through an insurance agent in association with a financial institution.

(2) Such advertisement shall conform to all the applicable law and regulations of the Department of Insurance, in addition to the regulations herein.

(3) All advertisements sent to prospective customers shall clearly reflect the source of the communication. If the insurance agent is an employee of the financial institution, he/she shall be identified as representing both the financial institution and the insurer. If the insurance agent is an independent agent not employed by the financial institution, he/she must disclose that fact.

(4) No advertisement shall suggest or convey any inaccurate or misleading impression about the nature of the insurance product. Premiums shall not be referred to as deposits. Terminology used in connection with insurance products must be distinguishable from that used in connection with traditional banking products. All advertisements must disclose:

(a) The insurance product is not insured by the FDIC;

(b) The insurance product is not a deposit or other obligation of, and is not underwritten or guaranteed by, the financial institution; and

(c) The insurance product is not a condition to the provision or term of any banking service or activity.

(5) If the product or program name under which an insurance contract is marketed includes the name of a financial institution or the name of a program associated with the financial institution, the product or program name must also identify the insurance company which is issuing and underwriting the insurance contract.

Cite as Ga. Comp. R. & Regs. R. 80-5-4-.07
Authority: O.C.G.A. Secs. 7-1-61, 7-1-261(11).
History. Original Rule entitled "Advertisements" was f. on Feb. 17, 1997; eff. Mar. 10, 1997.

Rule 80-5-4-.08. Disclosures.

(1) In order to determine what types of disclosure are required, banks must be diligent in their assessment of the nature of any nondeposit product. Products may take various forms: e.g., investment products such a mutual funds or annuities, and insurance products such as homeowners' insurance or life insurance. Hybrid products with features of more than one category will necessitate compliance with each category's requirements.

(2) Insurance Products. Many of the concerns about customer confusion in bank sales of investment products may also be present in bank sales of insurance products. Consequently, the disclosures required for sale of insurance will be similar to those required for sale of annuities and other investment products.

(a) At the time of sale of an insurance product, the written disclosure below or one which contains all its elements shall be made, except that if a financial institution does not take deposits and is not insured by the FDIC, (i) may be omitted.

1. The insurance products described or referred to:

(i) Are not deposits and are not insured by the FDIC;

(ii) Are not obligations of, underwritten or guaranteed by the financial institution selling the insurance product; and

(iii) Are not a condition to the provision or term of any banking service or activity.

(b) The disclosures given to the customer shall be conspicuous and presented in a clear and concise manner, with no qualifying remarks.

(c) The insurance agent shall deliver the written disclosure described in (a) to the customer and shall receive back from the customer a signed statement that the customer has read and understands the meaning of the disclosures. A copy of this signed statement shall be given to the customer and retained by the financial institution.

(d) In addition to paragraph (2) of this Rule, the insurance agent shall, during discussions of insurance products with the customer, make these disclosures orally.

(3) Annuity products. Disclosures are covered in Chapter 80-5-3 of the Department of Banking and Finance's regulations.

(4) Nondeposit Investment Products. If an insurance product contains investment features, compliance with federal law and policy, such as the Interagency Statement on Retail Sales of Nondeposit Investment Products including the disclosure requirements therein, where applicable, as well as with the Department of Banking and Finance's statement of policy for state chartered banks is required.

(5) Insurance agents shall identify themselves to the customer as being either employees of the financial institution or independent licensed insurance agents, as applicable. Business cards and stationery shall indicate the agent's status as a state licensed agent.

Cite as Ga. Comp. R. & Regs. R. 80-5-4-.08
Authority: O.C.G.A. Secs. 7-1-61, 7-1-261(11).
History. Original Rule entitled "Disclosures" was f. on Feb. 17, 1997; eff. Mar. 10, 1997.

Rule 80-5-4-.09. Activities of Licensed Agents; Bank Personnel.

(1) Solicitation and sale of insurance products in association with a financial institution may be provided only by state licensed and regulated insurance agents. Unlicensed employees of the insurance agent or financial institution may, however, provide clerical or ministerial assistance. Unlicensed employees of the financial institution may refer customers of the financial institution interested in the purchase of insurance products to the appropriate agent in the financial institution or may inform the customer how to reach the agent.

(2) Except as permitted by these regulations, an unlicensed employee of the financial institution shall not discuss or promote insurance products or respond to questions about such products.

Cite as Ga. Comp. R. & Regs. R. 80-5-4-.09
Authority: O.C.G.A. Secs. 7-1-61, 7-1-261(11).
History. Original Rule entitled "Activities of Licensed Agents; Bank Personnel" was f. on Feb. 17, 1997; eff. Mar. 10, 1997.

Rule 80-5-4-.10. Severability.

If any provision of the rules in this Chapter 80-5-4 or the application of them to any financial institution or circumstance is held invalid, such invalidity shall not affect the provisions or applications of the rules herein which can be given effect without the invalid portion. To that end, the provisions of these rules are declared to be severable.

Cite as Ga. Comp. R. & Regs. R. 80-5-4-.10
Authority: O.C.G.A, Secs. 7-1-61, 7-1-261(11).
History. Original Rule entitled "Severability" was f. on Feb. 17, 1997; eff. Mar. 10, 1997.

Subject 80-5-5. INCIDENTAL POWERS.

Rule 80-5-5-.01. Incidental Powers; Approval Procedures.

(a) The Commissioner may, by a letter opinion, grant to an institution a power which does not already have a specified application process, so long as the exercise of such power is consistent with the objectives of Chapter 1 of Title 7, provided the activity is deemed by the Commissioner to be financial in nature or incidental to the business of banking, and provided the nature of the activity does not pose significant risks to the financial institution. The Commissioner at his or her discretion may seek public comment before he or she approves such an incidental power, if the Commissioner determines that an appropriate public purpose would be served. If such a determination is made, a 30 days' notice and request for comment shall be published in the department's regular monthly bulletin and to such other parties as the Commissioner deems necessary. The Commissioner shall take any comments received into account in making the final decision.

(b) An institution seeking such a specific power shall make a written application in letter form to the Commissioner. Such application shall set out the power or activity desired, the reason for it, the safeguards or protections which will be employed to ensure the continuing sound operation of the institution, any competitive reasons for the request, such as the ability of institutions not primarily regulated by the state of Georgia to perform such an activity, the need or convenience to customers which this activity would serve, any legal justification required under state law, and the financial ability of the institution to support the activity (including compliance with any investment limitations in a separate corporation pursuant to O.C.G.A. § 7-1-288).

(c) The Commissioner shall review such requests, may request additional information, and after review of the overall economic and managerial condition of the institution, the complexity and risks involved in the activity, and the factors set out in this rule, as well as any other information deemed pertinent to the facts presented, shall reply by letter to the institution within 10 business days of receipt of complete information either granting, denying, or conditioning approval of the activity.

(d) The Department shall keep a record of all such powers granted, which shall be available at its office for review upon prior notice.

Cite as Ga. Comp. R. & Regs. R. 80-5-5-.01
Authority: O.C.G.A. Secs. 7-1-61, 7-1-261.
History. Original Rule entitled "Incidental Powers" adopted. F. Aug. 26, 1997; eff. Sept. 15, 1997. Amended: Rule retitled "Incidental Powers; Approval Procedures". F. Dec. 6, 1999; eff. Dec. 26, 1999. Amended: F. July 28, 2003; eff. Aug. 17, 2003.

Subject 80-5-6. QUALIFIED INTERMEDIARY.

Rule 80-5-6-.01. Financial Institutions Serving as a Qualified Intermediary Related to IRS Section 1031 Like-Kind Property Exchanges.

(1) Any financial institution authorized to exercise full trust powers is permitted to act as a qualified intermediary on an IRS 1031 property exchange. Banks meeting this requirement should have qualified and trained personnel conducting this activity and should maintain the financial records related to these transactions separate from the financial records of the bank or its subsidiaries and shall meet the agency accounting requirements of GAAP in maintaining such records.

(2) If a bank that is not authorized to conduct full trust powers wishes to act as a 1031 qualified intermediary, either through the bank or a subsidiary of the bank, it should provide a written notification to the Department that it wishes to act in this capacity.

(a) The following should be fully documented in the notification to the Department:

1. A summary should be provided regarding the qualifications and training of the bank personnel that will be conducting this activity;

2. Written policies and procedures should be submitted to be utilized in the conduct of this activity that sufficiently mitigates risk, documents the activities of the bank and establishes proper controls over this activity;

3. The bank should provide an indication of what the impact of this activity will be on the fidelity and liability coverage of the bank, and if necessary, obtain coverage riders to protect the financial institution from liability in conducting this activity;

4. Procedures should be established for the bank, in the event of a customer default during a 1031 exchange; and

5. An indication should be given regarding the accounting for these transactions that reflects how these transactions will be segregated from the bank's records and how agency accounting in accordance with GAAP shall be maintained for these transactions.

(3) The Department reserves the right to deny approval for any financial institution that fails to demonstrate the ability to safely and soundly conduct this activity based on the above-required documentation, or which reflected a less than satisfactory condition, or which is operating under an administrative action with the Department or Federal Regulators.

Cite as Ga. Comp. R. & Regs. R. 80-5-6-.01
Authority: Authority O.C.G.A. Sec. 7-1-61.
History. Original Rule entitled "Financial Institutions Serving as a Qualified Intermediary Related to IRS Section 1031 Like-Kind Property Exchanges" adopted. F. Aug. 15, 2007; eff. Sept. 4, 2007.

Chapter 80-6. HOLDING COMPANIES.

Subject 80-6-1. APPLICATIONS AND ACQUISTIONS.

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

(1) Georgia's holding company statutes govern all holding companies which have or wish to acquire, by purchase or formation, banks chartered by the Department. Once a holding company acquires a Georgia bank, 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. 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-.03 or 80-6-1-.04, depending on the transaction. A holding company lawfully owning a bank chartered by the Department that meets the criteria in Rule 80-6-1-.04 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 which acquires a bank chartered by the Department must apply and seek approval from the Department pursuant to O.C.G.A. § 7-1-622. Approval to become a bank holding company of a Georgia bank as defined in O.C.G.A. § 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 O.C.G.A. § 7-1-608(b)(3).

(5) 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.

(6) A Georgia bank holding company for the purposes of Chapter 80-6 shall be defined as in O.C.G.A. § 7-1-621.

Cite as Ga. Comp. R. & Regs. R. 80-6-1-.01
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Initial Registration of Bank Holding Companies Existing on July 1, 1976" was filed on June 8, 1976; effective June 28, 1976.
Amended: Rule repealed. Filed July 13, 1981; effective August 2, 1981.
Amended: New Rule entitled "Holding Companies, Generally" adopted. F. Jul. 14, 1998; eff. Aug. 3, 1998.
Amended: F. Jul. 12, 1999; eff. Aug. 1, 1999.
Amended: F. Dec. 6, 1999; eff. Dec. 26, 1999.
Amended: F. June 15, 2015; eff. July 5, 2015.
Amended: F. June 20, 2016; eff. July 10, 2016.
Amended: F. Dec. 16, 2021; eff. Jan. 5, 2022.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-6-1-.02. Regular Applications.

(1) Regular applications for permission to become a bank holding company as defined in O.C.G.A. § 7-1-605, to acquire control of a banking subsidiary, to acquire 5% or more of the shares of another bank holding company, or to continue to be a holding company after becoming a holding company under circumstances contemplated by O.C.G.A. § 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-.05, if notice is required.

(2) Reserved.

(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) Reserved.

(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) Reserved.

(7) Reserved.

(8) No application filed pursuant to Paragraphs (3) or (5) 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.

(12) In lieu of submitting the application required by this Rule, an applicant may submit a copy of the application filed with the Federal Reserve to the Department and supplement the application with any additional required information.

Cite as Ga. Comp. R. & Regs. R. 80-6-1-.02
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Applications" adopted. F. June 8, 1976; eff. June 28, 1976.
Amended: F. Dec. 3, 1980; eff. Jan. 2, 1981, as specified by the Agency.
Repealed: New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. Aug. 26, 1997; eff. Sept. 15, 1997.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: F. July 12, 1999; eff. August 1, 1999.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.
Amended: F. June 15, 2015; eff. July 5, 2015.
Amended: New title, "Regular Applications." F. Dec. 16, 2021; eff. Jan. 5, 2022.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-6-1-.03. Qualifying Criteria for Expedited Processing; Acquisitions and One-bank Holding Company Formations.

(1) The qualifying criteria for a bank holding company to be eligible for expedited processing for an acquisition is as follows:

(a) Well-capitalized organization.

1. Bank holding company (BHC). Both at the time of and immediately after the proposed transaction, the acquiring BHC is well capitalized.

2. Insured depository institutions. Both at the time of and immediately after the proposed transaction.

(i.) The lead insured depository institution of the acquiring BHC is well capitalized;

(ii.) Well-capitalized insured depository institutions control at least eighty (80) percent of the total average total assets of insured depository institutions controlled by the acquiring BHC; and

(iii.) No insured depository institution controlled by the acquiring BHC is undercapitalized.

(3) Well capitalized and undercapitalized shall be as defined in the appropriate capital regulation and guidance of the applicable institution's primary federal regulator.

(b) Well-managed organization.

(1) Satisfactory examination ratings. At the time of the transaction, the acquiring BHC, its lead insured depository institution, and insured depository institutions that control eighty (80) percent of the total risk-weighted assets of insured depository institutions controlled by the BHC are well managed as defined by the Board of Governors of the Federal Reserve System, and have received "satisfactory" or better composite ratings at the most recent examination.

(2) No poorly managed institutions. No insured depository institution controlled by the acquiring BHC has received one of the two lowest composite ratings at the institution's most recent examination or subsequent review by the state or appropriate federal banking agency for the institution.

(a) Established CRA performance record. At the time of the transaction, the lead insured depository institution of the acquiring BHC and insured depository institutions that control at least eighty (80) percent of the total risk-weighted assets of insured institutions controlled by the BHC have received a satisfactory or better composite rating at the most recent CRA examination.

(d) Public comment. No comment that is timely and substantive in response to any notice of a transaction is received by the Department or is made known to it by any other regulatory agency, other than a comment that supports approval of the proposal.

(e) Competitive criteria. Without regard to any divestitures proposed by the acquiring BHC, the acquisition does not cause:

1. Insured depository institutions controlled by the acquiring BHC to control in excess of thirty (30) percent of market deposits in any relevant banking market; or

2. The Herfindahl-Hirschman index to increase by more than 200 points in any relevant banking market with a post-acquisition index of at least 1800 and with a population in excess of 10,000.

3. Any state or federal agency with authority to find that the consummation of the transaction is likely to have a significant adverse effect on competition in any relevant banking market.

(f) Size of acquisition.

1. Limited growth. Except as provided below, the sum of the aggregate average total assets to be acquired in the proposal and the aggregate average total assets acquired by the acquiring BHC in all other qualifying transactions does not exceed thirty-five (35) percent of the consolidated average total assets of the acquiring BHC. For purposes of this paragraph "other qualifying transactions" means any transaction approved under 12 CFR § 225.14 or 12 CFR § 225.23 during the 12 months prior to filing the notice; and

2. Individual size limitation. The average total assets to be acquired do not exceed $7.5 billion;

3. Small bank holding companies. The limited growth section shall not apply if, immediately following consummation of the proposed transaction, the consolidated average total assets of the acquiring BHC are less than $300 million.

(g) Supervisory Actions. During the 12 month period ending on the date on which the BHC proposes to consummate the proposed transaction, no formal administrative order, including a written agreement, cease and desist order, capital directive, prompt corrective action directive, asset-maintenance agreement or other formal enforcement action, is or was outstanding against the BHC or any depository institution subsidiary of the BHC, and no formal administrative enforcement proceeding involving any such enforcement action, order, or directive is or was pending.

(h) Consummation of the transaction must not violate any provision of the Bank Holding Company Act.

(i) In addition, the Department may deny or remove from expedited processing, any institution's application where it finds that:

1. Safety and soundness concerns of the Department dictate a more comprehensive review;

2. Any material adverse comment is received by the Department;

3. Other supervisory concerns, legal issues, or policy issues come to the attention of the Department; or

4. Any other good cause exists for denial or removal.

   In this event, the institution will be notified that expedited processing is not available, the reason, and instructions as to how to proceed.

(2) The qualifying criteria for a one-bank holding company formation to be eligible for expedited processing is as follows:

(a) The shareholder or shareholders who control at least 67 percent of the shares of the bank will control, immediately after the reorganization, at least 67 percent of the shares of the holding company in substantially the same proportion, except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under state or federal law;

(b) No shareholder or group of shareholders acting in concert will, following the reorganization, own or control 10 percent or more of any class of voting shares of the BHC unless that shareholder or group of shareholders was authorized by the Department and the appropriate federal banking agency for the bank, to own or control 10 percent or more of any class of voting shares of the bank;

(c) The bank is adequately capitalized as defined in Section 38 of the Federal Deposit Insurance Act (12 USC § 1831o);

(d) The bank has received at least a composite "1" or "2" rating at its most recent examination, in the event that the bank was examined;

(e) At the time of the reorganization, neither the bank nor any of its officers, directors, or shareholders is involved in any unresolved supervisory or enforcement matters with any appropriate state or federal banking agency;

(f) The company demonstrates that any debt that it incurs at the time of the reorganization, and the proposed means of retiring this debt, will not place undue burden on the holding company or its subsidiary on a pro forma basis;

(g) The holding company would not, as a result of the reorganization, acquire control of any additional bank or engage in any activities other than those of managing and controlling banks; and

(h) In addition, the Department may deny or remove from expedited processing, any institution's application where it finds that:

1. Safety and soundness concerns of the Department dictate a more comprehensive review;

2. Any material adverse comment is received by the Department;

3. Other supervisory concerns, legal issues, or policy issues come to the attention of the Department;

4. Any other good cause exists for denial or removal.

   In this event, the institution will be notified that expedited processing is not available, the reason, and instructions as to how to proceed.

(i) If the application satisfies the requirements for expedited treatment and it is not removed from expedited consideration by the Department, then the applicant is not required to issue the public notice required by Rule 80-6-1-.05.

(3) In the event an applicant qualifies for expedited processing and is not removed from expedited consideration by the Department, the expedited application will be processed within 30 days of the Department receiving a completed application.

Cite as Ga. Comp. R. & Regs. R. 80-6-1-.03
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Public Notices" adopted. F. June 8, 1976; eff. June 28, 1976.
Repealed: New Rule of the same title adopted. F. Dec. 3, 1980; eff. Jan. 2, 1981, as specified by the Agency.
Amended: F. June 28, 1984; eff. August 1, 1984, as specified by the Agency.
Repealed: New Rule of the same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: F. July 12, 1999; eff. August 1, 1999.
Amended: New title, "Qualifying Criteria for Expedited Processing: Acquisitions and One-bank Holding Company Formations." F. Dec. 16, 2021; eff. Jan. 5, 2022.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-6-1-.04. 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 O.C.G.A. § 7-1-608(b)(3). 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;

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

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

In this event, the institution will be notified that expedited processing is not available, the reason, and instructions as to how to proceed.

(5) In the event an applicant qualifies for expedited processing and is not removed from expedited consideration by the Department, the expedited application will be processed within 30 days of the Department receiving a completed application.

Cite as Ga. Comp. R. & Regs. R. 80-6-1-.04
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Audits" adopted. F. June 8, 1976; eff. June 28, 1976.
Amended: F. Dec. 3, 1980; eff. Jan. 2, 1981, as specified by the Agency.
Repealed: New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: New title, "Qualifying Criteria for Expedited Processing: Establishment of a De Novo Wholly Owned Bank Subsidiary By a Holding Company Lawfully Operating in Georgia." F. Dec. 16, 2021; eff. Jan. 5, 2022.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-6-1-.05. Public Notices.

(1) The applicant shall publish not more than thirty (30) days prior to filing the application the following notice in a newspaper of general circulation in the county where the bank or holding company to be acquired is located:

NOTICE OF PROPOSED ACQUISITION OR MERGER BY A COMPANY OR A HOLDING COMPANY

Pursuant to the Official Code of Georgia and regulations of the Department of Banking and Finance, notice is given that (name of company in boldface type), (city and state of principal place of business), (a holding company) (company), proposes to (acquire shares of) (merge with) (name of bank or holding company), (city and state of principal place of business), and has applied to the Department of Banking and Finance for permission to take such actions.

Persons wishing to comment on this proposal should submit their views in writing within thirty (30) days of the date of publication of this notice to the Department of Banking and Finance, (insert address).

(2) Where an application for a de novo bank is made by a qualified holding company, a charter application notice for public comment will be required in such form as the Department may prescribe.

(3) In lieu of the foregoing, such publication may be in a form and location prescribed by the Federal Reserve Bank or other Regulatory Authority having concurrent jurisdiction, for such a transaction, provided it contains a reference to the Department of Banking and Finance with its address, as a regulator to whom comments should be sent.

Cite as Ga. Comp. R. & Regs. R. 80-6-1-.05
Authority: O.C.G.A. §§ 7-1-61, 7-1-607.
History. Original Rule entitled "Reports" was filed on June 8, 1976; effective June 28, 1976.
Amended: Filed December 3, 1980; effective January 2, 1981, as specified by the Agency.
Amended: Filed June 28, 1984; effective August 1, 1984, as specified by the Agency.
Repealed: New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. July 14, 1998; eff. August 3, 1998.

Amended: New title, "Public Notices." F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-6-1-.06. Public Information.

Applications and registration statements filed with the Department and documents submitted to the Department in connection with such filings shall be public information, subject to Rule 80-1-11-.01. Requests for confidential treatment shall be subject to review by the Department. Comments received pursuant to Rule 80-6-1-.05 shall be public information.

Cite as Ga. Comp. R. & Regs. R. 80-6-1-.06
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Non-Banking Acquisitions" was filed on June 8, 1976; effective June 28, 1976.
Repealed: New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: New title, "Public Information." F. Dec. 16, 2021; eff. Jan. 5, 2022.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-6-1-.07. Hearings.

(1) Notwithstanding the provisions of Rule 80-6-1-.05, the Commissioner may, in his discretion, require public hearings to be held with respect to an application pending before him. Such hearings shall be held in accordance with the provisions of Rule 80-1-1-.05.

(2) Whenever the Commissioner, in his/her discretion, has reason to believe that a company directly or indirectly exercises a controlling influence over the management or policies of a bank or another company, the Commissioner shall cause reasonable notice to be given to the banks or companies involved to show cause why such company should not be found to be a holding company as defined in O.C.G.A. § 7-1-605 at a hearing to be held at such time and place as shall be specified in the notice. The form of the heretofore required notice and hearings shall be in accordance with the Georgia Administrative Procedures Act.

Cite as Ga. Comp. R. & Regs. R. 80-6-1-.07
Authority: O.C.G.A. §§ 7-1-61, 7-1-607.
History. Original Rule entitled "Georgia Bank Holding Companies not Covered by Federal Bank Holding Company Act of 1956, as amended" was filed on June 8, 1976; effective June 28, 1976.
Repealed: New Rule entitled "Georgia Holding Companies not Covered by Federal Bank Holding Company Act of 1956, as Amended" adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: New title, "Hearings." F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-6-1-.08. Proxies, Offering Circulars, Disclosure Statements.

(1) It shall be a basis for denial of an application for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive or manipulative acts or practices in connection with any offer to purchase or exchange shares of stock in a bank or a holding company which is the subject of an application hereunder.

(2) No Georgia bank holding company or holding company owning a Georgia bank shall offer to purchase or exchange any stock of any banking subsidiary, either directly or indirectly, unless such offer is accompanied by an offering statement prepared in accordance with standards prescribed for securities required to be registered under The Georgia Securities Act of 2008, as amended. Purchases or exchanges of stocks which are subject to the registration requirements of The Securities Act of 1933, as amended (federal), or The Georgia Securities Act of 2008, as amended, or non-registered securities being acquired by a holding company whose securities are subject to registration under such acts, shall comply with the requirements under those acts.

Cite as Ga. Comp. R. & Regs. R. 80-6-1-.08
Authority: O.C.G.A. §§ 7-1-61, 7-1-607.
History. Original Rule entitled "Public Information" was filed on June 8, 1976; effective June 28, 1976.
Repealed: New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: New title, "Proxies, Offering Circulars, Disclosure Statements." F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-6-1-.09. Non-Banking Acquisitions.

(1) Whenever a Georgia bank holding company or a holding company owning a Georgia bank plans to engage in, or to acquire shares of stock in a company to be or which is currently engaged in, non-banking activities, the Department shall be notified of such intention contemporaneously with the filing of any application with the Federal Reserve System for approval to engage in such activities or acquire such shares. In the event such approval is not required, the Department shall be notified of such intention within ten (10) days after the Board of Directors of the holding company authorizes such specific activities or acquisition or, alternatively, contemporaneously with any notice of engagement in such activities or acquisitions is filed with the Federal Reserve.

(2) Notice to the Department required pursuant to Section (1) of this Rule shall be in letter form and, insofar as is known at the time, shall state the following:

(a) Name and principal location of the company to be acquired, if any;

(b) Number of shares to be acquired, percentage of shares to be acquired to total shares outstanding, and price to be paid for such shares;

(c) Sources of funds to be used to pay for such shares and, if borrowed funds are to be used, the terms of any borrowings;

(d) Statement of Assets and Liabilities and Statement of Income for the most recent fiscal year and year-to-date on the company to be acquired or to otherwise be engaged in non-banking activities;

(e) Nature of business in which company is engaged or is to be engaged; and

(f) Description of additional markets to be served and additional nonbanking activities to be performed.

(3) In the event an application or notice to the Federal Reserve is required, a bank holding company may provide only a copy of that application or notice to the Department in lieu of the information required in Paragraph 2.

Cite as Ga. Comp. R. & Regs. R. 80-6-1-.09
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Hearings" was filed on June 8, 1976; effective June 28, 1976.
Repealed: New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: New title, "Non-Banking Acquisitions." F. Dec. 16, 2021; eff. Jan. 5, 2022.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-6-1-.10. Unlawful Acquisitions, Corporate Restructuring.

Transactions determined by the Commissioner to in substance constitute an internal corporate restructuring by a Georgia bank holding company shall not be considered to be an acquisition of control within the meaning of O.C.G.A. § 7-1-608.

Cite as Ga. Comp. R. & Regs. R. 80-6-1-.10
Authority: O.C.G.A. §§ 7-1-61, 7-1-607.
History. Original Rule entitled "Proxies, Offering Circulars, Disclosure Statements" was filed on December 3, 1980; effective January 2, 1981, as specified by the Agency.
Repealed: New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: F. June 20, 2016; eff. July 10, 2016.
Amended: New title, "Unlawful Acquisitions, Corporate Restructuring." F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-6-1-.11. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-6-1-.11
Authority: Ga. L. 1976, pp. 168, 175; Ga. L. 1980, p. 542.
History. Original Rule entitled "Acquisitions Through Merger Across County Boundaries" was filed on July 13, 1981; effective August 2, 1981.
Repealed: New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.

Repealed: F. July 14, 1998; eff. August 3, 1998.

Rule 80-6-1-.12. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-6-1-.12
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Liability Funding of Corporate Activities" was filed on June 28, 1984; effective August 1, 1984, as specified by the Agency.
Repealed: New Rule of same title adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. July 14, 1998; eff. August 3, 1998.
Note: Correction of non-substantive typographical error in Rule by deletion of "No" from the rule title as requested by the agency. Effective Effective Aug. 12, 2015.
Note: Correction of non-substantive typographical error,"Note" effective Aug. 12, 2015 revised to include "...and addition of "No" at the beginning of the paragraph..." Effective Sep. 1, 2015.
Repealed: F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-6-1-.13. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-6-1-.13
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Combination Bank and Thrift Holding Companies-Branching" adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Repealed: F. Sept. 26, 1995; eff. Oct. 16, 1995.
Amended: New Rule entitled "Qualifying Criteria for Expedited Processing; Acquisitions and One-bank Holding Company Formations" adopted. F. July 14, 1998; eff. August 3, 1998.
Repealed: F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-6-1-.14. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-6-1-.14
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Unlawful Acquisitions, Corporate Restructuring" adopted. F. Sept. 26, 1995; eff. Oct. 16, 1995.
Amended: F. July 14, 1998; eff. August 3, 1998.
Repealed: F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-6-1-.15. Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-6-1-.15
Authority: O.C.G.A. Secs. 7-1-61, 7-1-607.
History. Original Rule entitled "Unlawful Acquisition, Predecessor Institution" adopted. F. Sept. 26, 1995; eff. Oct. 16, 1995.
Amended: F. July 14, 1998; eff. August 3, 1998.
Repealed: Rule reserved. F. July 12, 1999; eff. August 1, 1999.

Rule 80-6-1-.16. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-6-1-.16
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Qualifying Criteria for Expedited Processing: Establishment of a De Novo Wholly Owned Bank. Subsidiary By a Holding Company Lawfully Operating in Georgia." F. July 12, 1999; eff. August 1, 1999.
Amended: F. June 15, 2015; eff. July 5, 2015.
Amended: F. June 20, 2016; eff. July 10, 2016.
Repealed: F. Dec. 16, 2021; eff. Jan. 5, 2022.

Subject 80-6-2. OPERATIONS.

Rule 80-6-2-.01. Audits.

(1) Every Georgia bank holding company or a holding company that owns a Georgia bank and its non-banking subsidiaries shall be audited at least annually by independent public accountants in accordance with generally accepted auditing standards with copies of such audit maintained on file in the offices of the holding company.

(2) Audit reports in which the auditor expresses an unqualified opinion shall be provided to the Department upon request. Audit reports in which the auditor expresses anything other than an unqualified opinion, including, but not limited to, a qualified opinion, an adverse opinion, or a disclaimer of opinion, shall be provided to the Department within fifteen (15) days following receipt by the holding company. Audit reports submitted to the Department shall be accompanied by the Letter to Management, if applicable, detailing any reportable conditions discovered during the audit engagement. Failure to obtain the required opinion audit, or the auditor's report thereof, shall be reported to the Department within fifteen (15) days of discovery.

Cite as Ga. Comp. R. & Regs. R. 80-6-2-.01
Authority: O.C.G.A. §§ 7-1-61; 7-1-607.
History. Original Rule entitled "Audits" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-6-2-.02. Reports.

(1) On or before the date of the annual stockholders' meeting of a Georgia bank holding company or a holding company owning a Georgia bank, the shareholders of the holding company, regardless of class or voting rights, shall be provided a copy of the audit report required in Rule 80-6-2-.01, or the following schedules prepared on the equity basis of accounting for the last fiscal year on a comparative basis with the preceding fiscal year:

(a) Year-end balance sheet on both a consolidated basis and a holding company only basis;

(b) Statement of income and expenses on both a consolidated and a holding company only basis;

(c) Reconcilement of changes in capital accounts on both a consolidated and a holding company only basis; and

(d) A statement of cash flows (holding company only).

(2) Changes in control of voting shares of a Georgia bank holding company or a holding company owning a Georgia bank shall be reported to the Department in the same manner as changes in control of bank shares pursuant to O.C.G.A. § 7-1-236 and Rule 80-1-6-.01.

(3) Failure to file required reports on a timely basis shall subject the holding company to the penalties imposed by O.C.G.A. § 7-1-68.

(4) Notwithstanding the provisions of Paragraph (1), any company complying with the financial disclosure requirements promulgated by the Securities and Exchange Commission shall be deemed to have complied with Paragraph (1).

Cite as Ga. Comp. R. & Regs. R. 80-6-2-.02
Authority: O.C.G.A. §§ 7-1-61, 7-1-607.
History. Original Rule entitled "Reports" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-6-2-.03. Liability Funding of Corporate Activities.

No Georgia bank holding company or holding company owning a Georgia bank may enter into contractual debt obligations which in the aggregate are dependent upon revenues produced by subsidiaries for annual servicing during the term of the debt in excess of fifty (50) percent of the average annual consolidated net operating earnings of such subsidiaries for the three fiscal years immediately preceding the date of the extension of credit. The Department, upon specific written request of the holding company, may waive this requirement.

Cite as Ga. Comp. R. & Regs. R. 80-6-2-.03
Authority: O.C.G.A. §§ 7-1-61, 7-1-607.
History. Original Rule entitled "Liability Funding of Corporate Activities" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

Rule 80-6-2-.04. Georgia Bank Holding Companies not Covered by Federal Bank Holding Company Act of 1956.

Companies determined to be holding companies pursuant to O.C.G.A. § 7-1-605, but not subject to the Federal Bank Holding Company Act of 1956, as amended, are required to file all reports and applications required by Rule Chapter 80-6-1 and Rule Chapter 80-6-2 notwithstanding such federal exemptions.

Cite as Ga. Comp. R. & Regs. R. 80-6-2-.04
Authority: O.C.G.A. §§ 7-1-61, 7-1-607.
History. Original Rule entitled "Georgia Bank Holding Companies not Covered by Federal Bank Holding Company Act of 1956" adopted. F. Dec. 16, 2021; eff. Jan. 5, 2022.

Chapter 80-7. FOREIGN BANKING.

Subject 80-7-1. BANKING ACTIVITIES IN GEORGIA BY ORGANIZATIONS DOMICILED OUTSIDE OF GEORGIA.

Rule 80-7-1-.01. Definitions.

(1) Unless further defined herein, definitions contained in provisions of Georgia Code Ann. Title 7, the Financial Institutions Code of Georgia (FIC), shall be applicable to this Chapter.

(2) Definitions contained herein shall be applicable to FIC Sections 7-1-590 and 7-1-710 through 7-1-734.

(3) Further Definitions:

(a) "Parent Organization" shall mean the corporate entity containing any FBO located in this State and any affiliate (see FIC subsection 7-1-4(1)) of such entity.

(b) "Foreign Banking Organization (FBO)" shall mean an "International Bank Agency", an "International Bank Representative Office," a "Domestic International Banking Facility", and a "Business Production Office".

(c) "Business Production Office" shall mean a "Representative Office" as discussed in FIC Section 7-1-590 and shall include any corporate subsidiary (see FIC subsection 7-1-4(37)), of a bank domicile outside of this State which maintains an office within this State.

(d) "Temporary Advances" shall mean credit balances which bear interest.

Cite as Ga. Comp. R. & Regs. R. 80-7-1-.01
Authority: Ga. L. 1974, pp. 705, 733.
History. Original Rule entitled "Definitions" was filed on October 15, 1981; effective November 4, 1981.

Rule 80-7-1-.02. Status of Georgia Institutions.

Banks chartered by this State or National Banking Associations domiciled in this State shall, unless otherwise restricted, have the same rights, privileges, and responsibilities as are granted to FBO's herein or by statute.

Cite as Ga. Comp. R. & Regs. R. 80-7-1-.02
Authority: Ga. L. 1974, pp. 705, 733, 922.
History. Original Rule entitled "Status of Georgia Institutions" was filed on October 15, 1981; effective November 4, 1981.

Rule 80-7-1-.03. Applications and Registrations.

(1) Applications and registrations of FBO's shall be on forms prescribed by and available through the Department.

(2) Applications and registration forms shall be accompanied by such additional information as is required by FIC Sections 7-1-713 and 7-1-715 in the case of an applicant for an International Bank Agency license or FIC Section 7-1-732 in the case of an applicant for a Domestic International Banking Facility.

(3) Domestic International Banking Facilities shall pay the same fees as an International Bank Agency under the provisions of Rule Chapter 80-5-1. Other FBO's shall pay fees in accordance with Rule 80-5-1.

(4) Applications and registrations shall be accepted only where the parent organization of the applicant or an affiliate of such organization is recognized by its chartering authority or other appropriate governmental body in the country of its domicile as a banking institution with the legal authority to accept deposits from the citizens of that country.

Cite as Ga. Comp. R. & Regs. R. 80-7-1-.03
Authority: Ga. L. 1974, pp. 705, 733, 919; 1978, pp. 712, 713; 1981, pp. 770, 771.
History. Original Rule entitled "Applications and Registrations" was filed on October 15, 1981; effective November 4, 1981.

Rule 80-7-1-.04. Interpretations.

(1) The phrase "deposits subject to check or draft" as used in FIC Sections 7-1-730 through 7-1-734 shall not include deposits withdrawn by wire transfer or by check or draft where the check or draft is payable to the owner of the deposit or an affiliate of the owner and where there are five or fewer checks/drafts in any thirty-day (30) period.

(2) For purposes of distinguishing between "deposits" and "credit balances", the following guidelines shall be applicable:

(a) The maintenance of all credit balances shall be supported by appropriate file memorandum relating to the class of credit balances generally, e.g. compensating loan balances, letter of credit transactions, or to the specific credit balance being maintained and its related exercise of lawful power. Such memorandum shall recite the terms under which the credit balance(s) is maintained, the nature of the

transaction out of which the credit balance arose, and the terms under which the credit balance must be terminated.

(b) Access to credit balance accounts (other than by internally generated entry) may be by draft or transfer. Such items should not represent any significant volume relative to the nature of the account and should be two-party items, i.e. the payee should also be either the maker, the international bank, or an affiliate of the maker or international bank.

(c) The foregoing shall not be applicable to accounts (operating expenses) payable arising out of the operations of the International Bank Agency in the ordinary course of business, nor shall it curtail the right of such an Agency to borrow money and issue obligations to evidence such borrowings.

(d) Balances maintained by corporations and divisions affiliated with an International Bank Agency shall not be considered to be deposits even though not maintained in strict compliance with the foregoing.

(e) Balances maintained by salaried employees of an International Bank Agency shall not be considered deposits even though not maintained in strict compliance with the foregoing.

(3) The phrase "through its parent organization" as used in FIC Section 7-1-731 includes funds placed with and used internally for the benefit of the parent organization.

Cite as Ga. Comp. R. & Regs. R. 80-7-1-.04
Authority: Ga. L. 1974, pp. 705, 733.
History. Original Rule entitled "Interpretations" was filed on October 15, 1981; effective November 4, 1981.

Rule 80-7-1-.05. Operating Restrictions.

(1) Balances maintained in violation of restrictions against deposits shall be returned to the owner within ninety (90) days of receipt of a notice from the Department to terminate the account unless a review by the Department at the written request of the FBO results in a determination that the balance should be allowed to remain on the books of the FBO.

(2) Each FBO shall maintain separate accounting records covering its assets, liabilities, income and expenses resulting from the operations located in this State. Such records may be reviewed by the Department to determine that the scope of the activities of the FBO in this state are within the limitations prescribed by law. The results of the Department review shall be maintained and treated by the Department in the same manner as Reports of Examination and may, in the discretion of Department, be provided to other regulatory authorities to whom the parent organization is accountable.

(3) No FBO shall be eligible to act as a fiduciary in the State or to provide fiduciary services as a consequence of its maintaining a place of business within this State or of its licensing or registration by the Department.

Cite as Ga. Comp. R. & Regs. R. 80-7-1-.05
Authority: Ga. L. 1974, pp. 705, 733, 922; Ga. L. 1981, pp. 770, 773.
History. Original Rule entitled "Operating Restrictions" was filed on October 15, 1981; effective November 4, 1981.

Rule 80-7-1-.06. [Repealed].

Cite as Ga. Comp. R. & Regs. R. 80-7-1-.06
Authority: Ga. L. 1974, pp. 705, 733.
History. Original Rule entitled "Lockbox Operations Involving Banks Domiciled Outside of Georgia" was filed December 3, 1985; effective December 23, 1985.
Amended: F. Sept. 23, 1993; eff. Oct. 13, 1993.
Repealed: F. July 7, 2022; eff. July 27, 2022.

Chapter 80-8. AGENCY ORGANIZATION AND PROCEDURES.

Subject 80-8-1. AGENCY ORGANIZATION AND PROCEDURES.

Rule 80-8-1-.01. Organization.

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

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

money transmitters. Administration is responsible for personnel and all budgetary matters.

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

Cite as Ga. Comp. R. & Regs. R. 80-8-1-.01
Authority: Ga. L. 1964, p. 338; 1974, p. 733.
History. Original Rule entitled "Organization" adopted. F. June 22, 1982; eff. July 12, 1982.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: F. Dec. 6, 1999; eff. Dec. 26, 1999.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. June 10, 2014; eff. June 30, 2014.
Amended: F. June 20, 2016; eff. July 10, 2016.

Rule 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.

Cite as Ga. Comp. R. & Regs. R. 80-8-1-.02
Authority: Ga. L. 1964, p. 338; 1974, p. 733.
History. Original Rule entitled "Methods" was filed on June 22, 1982; effective July 12, 1982.
Amended: Filed July 24, 1986; effective September 1, 1986, as specified by the Agency.
Amended: Rule retitled "Methods of Operation" adopted. F. Jul. 14, 1998; eff. Aug. 3, 1998.

Amended: Rule retitled "Methods". F. Dec. 6, 1999; eff. Dec. 26, 1999.
Amended: F. June 15, 2015; eff. July 5, 2015.

Rule 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.

Cite as Ga. Comp. R. & Regs. R. 80-8-1-.03
Authority: Ga. L. 1964, p. 338; 1974, p. 733.
History. Original Rule entitled "Requests and Inquiries" was filed on June 22, 1982; effective July 12, 1982.
Amended: F. Jul 14, 1998; eff. August 3, 1998.
Amended: F. Dec. 6, 1999; eff. Dec. 26, 1999.
Amended: F. June 15, 2015; eff. July 5, 2015.

Rule 80-8-1-.04. Petition for Promulgation, Amendment, or Repeal of Rules.

(1) Any affected party may petition the DBF to promulgate, amend or repeal a rule or regulation. Such petition shall be submitted to the DBF and shall be in writing, signed by the petitioner(s). Such petition shall state concisely the proposed change, the legal authority under which the DBF could implement such change, and a detailed discussion of the positive and negative implications of the proposed change.

(2) Within thirty (30) days of receipt of the petition or supplemental information, DBF shall either request additional information of the petitioner(s), deny the petition, or advise the petitioner(s) that DBF is initiating Administrative Procedures Act processes to propose the change requested; provided, however, if the DBF determines that a request for opinion in the matter should be made to the Attorney General, such thirty-day (30) period shall not begin to run until the DBF has received a response from the Attorney General.

Cite as Ga. Comp. R. & Regs. R. 80-8-1-.04
Authority: Ga. L. 1964, p. 338; 1974, p. 733.
History. Original Rule entitled "Petition for Promulgation, Amendment, or Repeal of Rules" was filed on June 22, 1982; effective July 12, 1982.
Amended: F. Jul. 14, 1998; eff. Aug. 3, 1998.
Amended: F. Dec. 6, 1999; eff. Dec. 26, 1999.

Rule 80-8-1-.05. Petition for Declaratory Rulings.

Any affected party may petition the DBF for a declaratory ruling as to the applicability of any provision of law subject to the administration of the DBF or any Rule, order or policy of the DBF. Such petition shall be in writing, signed by the petitioner(s), and shall state concisely the situation involved and the law, rule or policy in question. Petitions shall be filed and processed in accordance with the provisions of Rule 80-8-1-.04.

Cite as Ga. Comp. R. & Regs. R. 80-8-1-.05
Authority: Ga. L. 1964, p. 338; 1974, p. 733.
History. Original Rule entitled "Petition for Declaratory Ruling" adopted. F. June 22, 1982; eff. July 12, 1982.
Amended: F. July 14, 1998; eff. August 3, 1998.

Rule 80-8-1-.06. Meetings.

(1) The Department of Banking and Finance has no governing board. It holds meetings to approve proposed rules. Such proposed rules are distributed from time to time in a special edition of the Department's bulletin to all affected entities regulated or supervised by the Department, and any other parties who have requested the bulletin. At least 30 days is given for the Department to receive comments. A notice giving the time and place (generally, the offices of the Department) for a meeting to finally approve or disapprove the proposed rules is given. Such meeting is held and following the approval of the rules in final form, such rules are again distributed. The public is invited to this final meeting, although comments during the comment period are encouraged, and the Department thoroughly reviews and evaluates all submitted comments.

(2) Notice of other matters such as applications for a new charter and other applications are published in the Department's monthly bulletin. Applications may require the applicant to publish a legal notice. The notice may request comments to be made to the regulator(s). The Department gathers comments on these applications and if necessary and requested, may hold a public hearing on an application (DBF Rule 80-1-1-.05). Information contained in applications is confidential except as provided in DBF Rule 80-1-11-.01. Public comment is encouraged in accordance with statutes and regulations in a format which recognizes the need of the Department of Banking and Finance to receive the highest quality of factual information and points of view precedent to its taking action as well as the confidential and proprietary nature of certain portions of that information. A final decision on an application is made by the Commissioner or his delegate and no meeting is held.

(3) Final actions taken by the Commissioner will, as required by law, be based upon the contents of the applications, both public and confidential, confidential file information relating to the applicant(s), public comment and applicant rebuttals where appropriate, confidential investigatory findings and confidential staff recommendations. Final action shall be recorded in minutes maintained by the Department and available for public inspection following the decision.

(4) In the course of fulfilling statutory responsibilities, the Commissioner or his designee will from time to time meet with Department of Banking and Finance personnel, representatives of other state and federal regulatory agencies, representatives of supervised institutions or proposed institutions, and customers of such institutions. Final action of a remedial or disciplinary nature may be taken at such meetings. Such meetings whether in consideration of statutory actions, supervisory actions, or remedial consultation shall be deemed confidential and not open to the public pursuant to the provisions of Section 7-1-70, O.C.G.A.

Cite as Ga. Comp. R. & Regs. R. 80-8-1-.06
Authority: Ga. L. 1974, p. 733; 1988, Act 916.
History. Original Rule entitled "Governing Body Meetings" was filed July 7, 1988; effective July 27, 1988.
Amended: Rule retitled "Meetings and Final Decisions" adopted. F. Jul. 14, 1998; eff. Aug. 3, 1998.
Amended: Rule retitled "Meetings". F. Dec. 6, 1999; eff. Dec. 26, 1999.

Chapter 80-9. SUSPICIOUS ACTIVITIES.

Subject 80-9-1. CURRENCY TRANSACTION REPORTS AND SUSPICIOUS ACTIVITIES.

Rule 80-9-1-.01. State Requirements.

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

(2) Banks and credit unions are required to follow federal guidelines for detecting abuses or the structuring of transactions designed to avoid Bank Secrecy Act reporting.

Cite as Ga. Comp. R. & Regs. R. 80-9-1-.01
Authority: O.C.G.A. §§ 7-1-61, 7-1-689, 7-1-706.
History. Original Rule entitled "Application of Reporting Requirements" adopted. F. July 24, 1986; eff. September 1, 1986, as specified by the Agency.
Repealed: F. Sept. 4, 1990; eff. Sept. 24, 1990.
Amended: New Rule entitled "State Requirements" adopted. F. Aug. 26, 1997; eff. Sept. 15, 1987.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. Jun. 10, 2014; eff. Jun. 30, 2014.
Amended: F. Dec. 16, 2021; eff. Jan. 5, 2022.

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

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

Cite as Ga. Comp. R. & Regs. R. 80-9-1-.02
Authority: O.C.G.A. §§ 7-1-61, 7-1-704.
History. Original Rule entitled "Suspicious Activities: State Financial Institutions" adopted. F. Aug. 26, 1997; eff. Sept. 15, 1997.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. June 20, 2016; eff. July 10, 2016.
Amended: F. June 29, 2017; eff. July 19, 2017.
Amended: F. June 27, 2018; eff. July 17, 2018.

Rule 80-9-1-.03. Exemptions.

All financial institutions should review applicable exemptions from filing in the Bank Secrecy Act and such lawful exemptions shall apply under this chapter.

Cite as Ga. Comp. R. & Regs. R. 80-9-1-.03
Authority: O.C.G.A. Secs. 7-1-61, 7-1-704.
History. Original Rule entitled "Exemptions" adopted. F. Aug. 26, 1997; eff. Sept. 15, 1997.

Chapter 80-10. RECORDS RETENTION.

Subject 80-10-1. RECORDS RETENTION.

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

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

(a) Permanent:

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

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

(b) 20 years:

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

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

(c) 5 years:

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

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

(d) 5 years after payout or disposition:

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

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

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

Cite as Ga. Comp. R. & Regs. R. 80-10-1-.01
Authority: O.C.G.A. §§ 7-1-61; 7-1-63.
History. Original Rule entitled "Minimum Records Retention Periods" adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. Sep. 18, 2012; eff. Oct. 8, 2012.
Amended: F. Nov. 7, 2013; eff. Nov. 27, 2013.
Amended: F. June 27, 2018; eff. July 17, 2018.

Rule 80-10-1-.02. Format for Retaining Records and EDP Processing.

(1) Consistent with applicable laws, records may be maintained in the following formats: original, microfilm, electronic, photocopy, or by other storage techniques capable of being used to reproduce the data contained in the records into legible form. The retention of records via the resultant medium for the periods of time designated in the applicable regulations shall be considered as complying with the regulations and the law. Notwithstanding this discretion, records must be maintained in a format that makes them readily accessible in a reasonable period of time.

(2) Electronic Data Processing operations are considered merely as extensions of the bookkeeping mechanics and shall not alter the retention requirements of the regulation. Print-outs of EDP records which provide essentially the same information as the conventional records listed herein may be retained in lieu of the records listed.

Cite as Ga. Comp. R. & Regs. R. 80-10-1-.02
Authority: Ga. L. 1974, p. 733.
History. Original Rule entitled "Effects of Microfilm and EDP Processing" adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: Title changed to "Format for Retaining Records and EDP Processing." F. Aug. 29, 2014; eff. Sept. 18, 2014.

Rule 80-10-1-.03. Applicability of Regulation to National Banks and Others.

(1) To the extent that this regulation does not contravene any law or regulation of the United States regarding retention of records, the provisions contained herein shall apply to all financial institutions doing business in this State.

(2) The provisions of this regulation shall extend to service corporations performing services pursuant to Regulation 80-1-2 to the extent that they are maintaining records for financial institutions subject to the regulation.

Cite as Ga. Comp. R. & Regs. R. 80-10-1-.03
Authority: Ga. L. 1974, p. 733.
History. Original Rule entitled "Applicability of Regulation to National Banks and Others" adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.

Rule 80-10-1-.04. Reimbursement for Cost of Production of Records.

(1) A financial institution shall be reimbursed for costs which are reasonably necessary and which have been directly incurred in searching for, reproducing or transporting books, papers, records or other data of a customer required or requested to be produced pursuant to a lawful subpoena, summons, warrant or court order where the financial institution is not a party to the action or in cases of garnishment or attachment of funds held by the financial institution. Such costs shall be reasonably determined according to time spent, materials provided, and personnel level required, and any pertinent state law.

(2) Allowable reimbursements for costs incurred on the request of a state government or state law enforcement agency, other than the Department of Banking and Finance, are as follows:

(a) Search and processing costs for time spent in locating, retrieving, reproducing and preparing records shall be reimbursed at actual cost but in no event in excess of $15 per hour per person.

(b) Reproduction costs incurred in making copies of documents shall be reimbursed at 25 cents per page. Photographs, films and other material shall be reimbursed at actual costs.

(c) Transportation costs which are necessary to transport personnel to locate and retrieve material, or transportation costs necessary to convey the material to the place of examination shall be reimbursed at actual cost.

(3) Conditions for Payment:

(a) Actual, reasonable cost shall be reimbursed.

(b) Costs are reimbursable only if they are directly incurred as a consequence of searching for, reproducing or transporting customer's financial records.

(4) Documentation---The financial institution shall provide to the person requesting such records an itemized invoice indicating in specific detail the searching and processing, reproduction, and transportation costs.

(5) Advances and Payment of Costs:

(a) Within five business days of service, the financial institution may mail or deliver to the party for whom the documents are to be produced a reasonable written estimate of the costs that will be incurred in making the production; and, after so giving such an estimate, the amount of such estimate shall be paid as an advance to the financial institution before it begins the production.

(b) Upon making the production or upon being released from the obligation to do so, the financial institution will submit the invoice required by (4) above and refund any excess received as an advance. The party for whom the documents are to be produced shall, upon the submission of the invoice, pay to the financial institution any amount not covered by an advance.

(c) The amount of any advance and the amount invoiced shall be subject to review by a court of competent jurisdiction after giving due notice and hearing to the financial institution.

(6) The Department of Banking and Finance may waive or modify the provisions of this Regulation 80-10-1-.04 whenever in its opinion the financial burden on any public agency or official prohibits proper access to records necessary to any criminal investigation or prosecution in this State.

(7) Certain federal laws and regulations may apply to production of documents to a federal government agency.

Cite as Ga. Comp. R. & Regs. R. 80-10-1-.04
Authority: Ga. L. 1974, p. 73.
History. Original Rule entitled "Reimbursement for Cost of Production of Records" adopted. F. Oct. 12, 1989; eff. Nov. 1, 1989.
Amended: F. Aug. 26, 1997; eff. Sept. 15, 1997.
Amended: F. June 20, 2016; eff. July 10, 2016.

Chapter 80-11. RESIDENTIAL MORTGAGE BROKERS, LENDERS AND ORIGINATORS.

Subject 80-11-1. DISCLOSURE, ADVERTISING AND OTHER REQUIREMENTS.

Rule 80-11-1-.01. Disclosure Requirements.

(1) The disclosures and all other provisions of this Rule only apply to persons licensed, registered, or required to be licensed or registered under Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated.

(2) Every mortgage lender or mortgage broker shall make the following disclosures in writing to applicants for residential mortgage loans:

(a) within three business days of receipt of the application but no later than seven business days before settlement or closing of the loan, a Loan Estimate, as required by federal law, including but not limited to 12 CFR § 1026.19 and 12 CFR § 1026.37;

(b) no later than three business days before settlement or closing of the loan, a Closing Disclosure, as required by federal law, including but not limited to 12 CFR § 1026.19 and 12 CFR § 1026.38;

(c) prior to the acceptance of a fee, including, but not limited to, an application fee, credit report fee, property appraisal fee, and all other third-party fees, the amount of the fee;

(d) prior to the acceptance of a fee, whether all or any part of the fee or charge is refundable prior to settlement of the mortgage loan, and the terms and conditions for obtaining a refund if all or any part of the fee or charge is refundable;

(e) prior to the acceptance of any fees, the specific services which will be provided or performed for the application fee; and

(f) in cases where the fees are being accepted by a mortgage lender or mortgage broker that such lender or broker cannot guarantee approval of the loan application or acceptance into a particular loan program.

(3) Mortgage lenders or mortgage brokers shall provide applicants for a home equity line of credit, a residential mortgage loan not secured by real property, such as a mobile home, or a residential mortgage loan related to a reverse mortgage, all disclosures required by federal law instead of the specific disclosures set forth in paragraph (2)(a) and (b).

(4)

(a) For purposes of this Rule, the term "settlement" or "closing" means the process of executing legally binding documents regarding a lien on residential property.

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

(c) For purposes of paragraph (2) of this Rule, "application fee" means any fee advanced prior to settlement by the applicant to the mortgage broker or mortgage lender in connection with an application for a mortgage loan, including any charge for soliciting, processing, placing or negotiating a mortgage loan. The term does not include payments to be remitted to third party service providers, such as appraisal fees or fees for credit reports.

(5) Some or all of the disclosures required by paragraphs (2), (3), (7), (8), and (9) of this Rule may appear on forms used to comply with otherwise applicable state or federal laws, including but not limited to 12 CFR § 1026.37 and 12 CFR § 1026.38.

(6) The disclosures required in paragraphs (2), (3), (9), and (11) of this Rule shall be acknowledged in writing by the applicant and a copy of the acknowledgment maintained by the mortgage lender or mortgage broker required to make the disclosure, and a copy of the acknowledgment shall be given to the applicant. In instances of mail applications, the disclosures required by paragraphs (2), (3), (9), and (11) must be included in the mail application package with a request that a signed acknowledgment form be returned to the mortgage broker or lender required to make the disclosure. A copy of this request shall be kept by the mortgage broker or mortgage lender. In instances of applications taken by telephone, the disclosures required by paragraphs (2), (3), and (9) must be mailed or delivered to the applicant with a request that a signed acknowledgment form be returned to the mortgage broker or lender required to make the disclosure. A copy of this request shall be kept by the mortgage broker or mortgage lender.

(7) To the extent required by federal law including, but not limited to 12 CFR § 1026.20, a mortgage lender shall provide the borrower an Escrow Closing Notice no later than three business days before the borrower's escrow account is cancelled.

(8) In the event that the residential mortgage loan is transferred, the transferee mortgage lender shall provide the borrower with a Mortgage Transfer Disclosure on or before the

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

(9) Foreclosure Disclosure.

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

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

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

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

(11) Temporary Authority to Operate:

(a) A mortgage lender or mortgage broker sponsoring a mortgage loan originator who is unlicensed but operating as a mortgage loan originator pursuant to 12 U.S.C. § 5117 shall disclose in writing to each applicant that such mortgage loan originator has temporary authority to operate. The disclosure shall be made no later than the date the consumer signs an application or any disclosure, whichever event occurs first, and shall include the following language in at least ten-point bold-faced type:

"The Georgia Department of Banking and Finance requires that we inform you that our company is licensed but the mortgage loan originator responsible for your loan is not currently licensed by the Georgia Department of Banking and Finance. The mortgage loan originator has applied for a mortgage loan originator license with the Georgia Department of Banking and Finance. Federal law (12 U.S.C. § 5117) authorizes certain mortgage loan originators to operate on a temporary basis in the state of Georgia while their application is pending. The Georgia Department of Banking and Finance may grant or deny the license. Further, the Georgia Department of Banking and Finance may take administrative action against the mortgage loan originator that may prevent such

individual from acting as a mortgage loan originator before your loan closes. In such case, our company could still act as your broker or lender."

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

(c) This disclosure provision shall be effective April 1, 2020.

Cite as Ga. Comp. R. & Regs. R. 80-11-1-.01
Authority: O.C.G.A. §§ 7-1-61; 7-1-261; 7-1-1001.1; 7-1-1012.
History. Original Rule entitled "Disclosure Requirements" adopted. F. Oct. 22, 1993; eff. Nov. 11, 1993.
Amended: F. Sept. 19, 1994; eff. Oct. 9, 1994.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: F. July 12, 1999; eff. August 1, 1999.
Amended: F. Dec. 6, 1999; eff. Dec. 26, 1999.
Amended: F. June 8, 2000; eff. June 28, 2000.
Amended: F. July 28, 2003; eff. August 17, 2003.
Amended: F. Sept. 1, 2004; eff. Sept. 21, 2004.
Amended: F. Nov. 2, 2010; eff. Nov. 22, 2010.
Amended: F. Oct. 27, 2015; eff. Nov. 16, 2015.
Amended: F. Jan. 6, 2016; eff. Jan. 26, 2016.
Amended: F. July 9, 2019; eff. July 29, 2019.
Amended: F. Dec. 20, 2019; eff. Jan. 9, 2020.

Rule 80-11-1-.02. Advertising Requirements.

Any advertisement of a mortgage loan that is subject to regulation under O.C.G.A. Title 7, Chapter 1, Article 13 and that is made, published, disseminated or circulated in this state shall comply with the requirements set forth below.

(a) Advertisements for mortgage loans shall not be false, misleading, or deceptive.

(b) Advertisements for mortgage loans shall not indicate in any manner that the interest rates or charges for loans are in any way recommended, approved, set or established by the state or by any law of the state.

(c) All solicitations or advertisements, including business cards and websites, for mortgage loans disseminated in this state by persons required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 shall contain the name and unique identifier of the licensee or registrant advertising the mortgage loan, which name and unique identifier shall conform with the name and unique identifier on record with the Department of Banking and Finance.

(d) Reserved.

(e) All advertisements for mortgage loans shall comply with all applicable federal and state laws.

(f) For purposes of this Rule, "advertisement" means material used or intended to be used to induce the public to apply for a mortgage loan. Such term shall include any printed or published material, audio or visual material, website, or descriptive literature concerning a mortgage loan subject to regulation under O.C.G.A. Title 7, Chapter 1, Article 13 whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, electronic, billboard or similar display. The term advertisement shall not include promotional materials containing fifteen words or fewer relating to the mortgage business of the entity which material does not contain references to a specific rate or product, such as balloons, hats, pencils or pens, and calendars.

(g) Every mortgage broker or mortgage lender required to be licensed or registered shall maintain a record of samples of its advertisements (including commercial scripts of all radio and television broadcasts) for examination by the Department of Banking and Finance.

(h) An advertisement shall not include an individual's loan number, loan amount, or other publicly available information unless it is clearly and conspicuously stated in bold-faced type at the beginning of the advertisement that the person disseminating it is not authorized by, acting on behalf of, or otherwise affiliated with the individual's lender, which shall be identified by name. Such an advertisement shall also state that the loan information contained therein was not provided by the recipient's lender.

(i) In the event that a mortgage broker or lender sponsors a mortgage loan originator purporting to operate under the temporary authority requirements set forth in 12 U.S.C. § 5117, any advertisement by the mortgage broker or lender that mentions such mortgage loan originator's ability to act as mortgage loan originator in Georgia shall clearly and conspicuously indicate that the individual has temporary authority to operate in Georgia. Any such advertisement must also clearly and conspicuously indicate that the individual is unlicensed, has submitted a license application to the Department, and the Department may grant or deny the license application.

Cite as Ga. Comp. R. & Regs. R. 80-11-1-.02
Authority: O.C.G.A. §§ 7-1-61; 7-1-1001.1; 7-1-1004.3; 7-1-1012; 7-1-1016.
History. Original Rule entitled "Advertising Requirements" adopted. F. Oct. 22, 1993; eff. Nov. 11, 1993.
Amended: F. Sept. 19, 1994; eff. Oct. 9, 1994.
Amended: F. Jan. 27, 1995; eff. Feb. 16, 1995.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: F. July 28, 2003; eff. August 17, 2003.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Nov. 2, 2010; eff. Nov. 22, 2010.
Amended: F. June 20, 2016; eff. July 10, 2016.
Amended: F. Dec. 20, 2019; eff. Jan. 9, 2020.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Note: Rule 80-11-1-.02, the incorrect version of the Rule was inadvertently filed (i.e., January 8, 2021; effective

January 28, 2021) and appeared on the Rules and Regulations website February 5, 2021 through July 14, 2021. The correct Rule, as originally promulgated and adopted, was updated on the Rules and Regulations website July 15, 2021, with the original filed and effective date, as specified by the Agency. Effective July 15, 2021.
Note: Rule 80-11-1-.02 (Supersede "Note" effective July 15, 2021.), the incorrect version of the Rule was inadvertently filed January 8, 2021 (effective January 28, 2021) and was posted on the Rules and Regulations website February 5, 2021 through August 4, 2021. The correct Rule, as originally promulgated and adopted, was updated on the Rules and Regulations August 5, 2021; with the original filed and effective date, January 8, 2021 and January 28, 2021 respectively, as specified by the Agency. Effective August 5, 2021.

Rule 80-11-1-.03. Place of Business Requirements; Definitions.

(1) Each licensee with a physical place of business in Georgia shall provide to the Department a complete listing of all such offices or locations.

(2) Reserved.

(3) A "physical place of business" in this state shall mean an enclosed room or building where a licensee alone, if it has no employees, otherwise where one or more supervised employees conduct a residential mortgage business.

(4) A location, including a personal residence, shall be considered a branch for purposes of the Georgia Residential Mortgage Act if any of the following conditions are met:

(a) The location address is printed on or contained in letterheads, business cards, announcements, advertisements, solicitations for business, flyers, brochures, or the like;

(b) Georgia consumers are received at the location or are directed to deliver any information by any means to the location;

(c) Loan files, applications (approved, denied, pending and pre-qualification) and any other books and records required by Georgia Residential Mortgage Act or Department rules are located at the location;

(d) The licensee directly or indirectly reimburses for rent, utility bills or other expenses incurred for use of a location as a branch; or

(e) An independent contractor of a licensed mortgage broker operates from the location and all of the conditions for the exemption contained in O.C.G.A. § 7-1-1001(a)(17) are satisfied.

(5) Notwithstanding Paragraph (4) of this rule, a location, including a personal residence, will not be deemed a branch and will be required to have its own license if:

(a) It is a franchise arrangement;

(b) It is separate entity that may be referred to as a "net branch," and it is an independent business or mortgage operation which is not under the direct control, management, supervision and responsibility of the licensee;

(c) The licensee is not the lessee or owner of the branch and the branch is not under the direct and daily ownership, control, management, and supervision of the licensee;

(d) All employees exempt from individual licensing, including the branch manager, do not meet the requirements for such exemption in Article 13 and the rules of the Department;

(e) All assets and liabilities of the branch are not assets and liabilities of the licensee and income and expenses of the branch are not income and expenses of the licensee and are not properly accounted for in the financial records and tax returns of the licensee; or

(f) All practices, policies, and procedures, including but not limited to those relating to employment and operations, are not originated and established by the licensee and are not applied consistently to the main office and all branches.

(6) An unstaffed storage facility shall not constitute a branch.

(7) The "main office" is the location indicated on the application as the principal place of business, where the books and records are kept.

(8) The mailing address of a licensee or registrant may be different from the main office address but shall be the address where the Department is authorized to send all correspondence, official notices and orders. The licensee or registrant is responsible for keeping the Department informed of any changes in this mailing address.

(9) The "contact person for consumer complaints" referred to in O.C.G.A. § 7-1-1006. shall be a person who is available and has authority to investigate and resolve questions and complaints from consumers which have come to the Department for resolution. Each licensee must keep the Department informed of the name and telephone number of the current contact person.

Cite as Ga. Comp. R. & Regs. R. 80-11-1-.03
Authority: O.C.G.A. §§ 7-1-61; 7-1-1012.
History. Original Rule entitled "Place of Business Requirements" adopted. F. July 14, 1998; eff. August 3, 1998.
Amended: Rule retitled "Place of Business Requirements; Definitions." F. Dec. 6, 1999; eff. Dec. 26, 1999.
Amended: F. Oct. 22, 2001; eff. Nov. 11, 2001.
Amended: F. July 28, 2003; eff. August 17, 2003.
Amended: F. Sept. 1, 2004; eff. Sept. 21, 2004.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-11-1-.04. Branch Managers.

(1) A "branch manager" shall mean an individual who supervises daily activities in Georgia of a licensee, whether at a main or branch location, and regardless of job title. Branch manager shall include an independent contractor of a mortgage broker as contemplated under O.C.G.A. § 7-1-1001(a)(17) if such independent contractor works from a branch under 80-11-1-.03(3)(e).

(2) In order to be approved as a branch manager, an individual must be licensed by the Department as a mortgage loan originator.

(3) No individual shall be permitted to manage a location in Georgia without being approved by the Department as a branch manager. A branch manager may be put in place subject to departmental approval, but the Department must receive a complete application for approval within 15 calendar days of the placement. No individual may serve as the branch manager of more than one location of a licensee unless the licensee can demonstrate that the proposed branch manager will be able to effectively manage these locations to ensure that they operate in compliance with state and federal law, and that the manager can adequately supervise the daily functions performed by the employees at the locations. In order to qualify for the employee exemption, an employee must be supervised on a daily basis by the licensee. Considerations by the Department in determining whether a branch manager may supervise more than one location will include: proximity of branches to each other, volume of business at each, experience level of proposed manager and plans to handle the supervision.

(4) The Department shall conduct a background check, obtain a credit report, and require a financial statement and such other pertinent information as it may require to satisfy itself that the location will be operated by the branch manager responsibly and in compliance with the laws and rules of this state.

(5) The applicant must submit two sets of fingerprints, along with a money order or certified check payable to the Department in the appropriate amount set by the Department in order for the Department to cause to be administered the expanded background check as required by O.C.G.A. § 7-1-1004(k).

Cite as Ga. Comp. R. & Regs. R. 80-11-1-.04
Authority: O.C.G.A. §§ 7-1-61, 7-1-1006, 7-1-1012.
History. Original Rule entitled "Knowing Purchase of Loan from Unlicensed Entity" adopted. F. July 14, 1998; eff. August 3, 1998.
Amended: Rule renumbered to 80-11-4-.05; New Rule entitled "Approval of Branch Managers" adopted. F. June 8, 2000; eff. June 28, 2000.
Amended: Rule retitled "Branch Managers". F. July 28, 2003; eff. August 17, 2003.
Amended: F. Sept. 1, 2004; eff. Sept. 21, 2004.
Amended: F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Nov. 2, 2010; eff. Nov. 22, 2010.
Amended: F. Nov. 7, 2013; eff. Nov. 27, 2013.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-11-1-.05. Employee Background Checks; Covered Employees.

(1) As required by O.C.G.A. § 7-1-1004(k), applicants and licensees must complete background checks on all covered employees as defined in O.C.G.A. § 7-1-1000(5.1). Background checks on all covered employees must be completed and found satisfactory by the applicant or licensee within ninety (90) days of the initial date of hire. Employers should submit background information to the proper law enforcement authorities promptly upon initial hire in order to meet the ninety (90) day requirement. A background check must be initiated for a person in the employ of a licensee or applicant within ten (10) days of the date of initial hire.

(2) The term "access to residential mortgage loan origination, processing, or underwriting information" in O.C.G.A. § 7-1-1000(5.1), shall mean any prospective borrower's personal electronic or printed information and documents, including but not limited to bank statements, W-2 forms, income tax returns, employment records, and other personal financial information required to be submitted in the course of making an application for a mortgage loan. It also includes access to documents maintained and generated by the licensee in the course of the application and administration of the mortgage loan, including but not limited to electronic or printed/written information on the mortgagor and their loan, including personal and loan database information, payments and payment history information, past due reports and schedules, coupon books, information generated for tax purposes, including escrow information, and any other information generated which would include the financial and loan history of the mortgagor. Documents would also include computer displays of personal and mortgage loan information on an individual borrower or client which may be disseminated by the licensee's personnel in the course of verifying information for customers and other business related inquiries.

(3) Applicant's and licensee's requests for background checks are handled by the Georgia Crime Information Center (GCIC) following their rules and regulations (see also O.C.G.A. § 35-3-34.). 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 licensee. The background checks may be arranged for through a local law enforcement office, so long as the background check is done 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 licensee 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. A money order or certified check in an amount as directed by the Department made payable to the Department shall be submitted with the cards in order to have the cards processed. Applicant or licensee shall discuss the Georgia Residential Mortgage Act's legal requirements for employment with the subject employee.

(b) An employee may remain employed by the applicant or licensee 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. § 7-1-1004(h), or if the applicant or licensee knows that a disqualifying conviction is present, the applicant or licensee must immediately take action to comply with O.C.G.A. § 7-1-1004(h).

(4) Notwithstanding any conflicting terminology in O.C.G.A. § 7-1-1004(i), for all purposes of the Georgia Residential Mortgage Act, including O.C.G.A. § 7-1-1004, and this Rule Chapter, a covered employee is any employee of a mortgage lender or mortgage broker who is involved in residential mortgage loan related activities for property located in Georgia and includes, but is not limited to: a mortgage loan originator, a processor, an underwriter, or other employee who has access to residential mortgage loan origination, processing, or underwriting information.

Cite as Ga. Comp. R. & Regs. R. 80-11-1-.05
Authority: O.C.G.A. §§ 7-1-61, 7-1-1004, 7-1-1012.
History. Original Rule entitled "Licensing Requirements" adopted. F. Dec. 6, 1999; eff. Dec. 26, 1999.
Repealed: F. June 8, 2000; eff. June 28, 2000.
Amended: New Rule entitled "Employee Background Checks; Covered Employees" adopted. F. July 28, 2003; eff. August 17, 2003.
Amended: F. Sept. 1, 2004; eff. Sept. 21, 2004.
Amended: F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Aug. 2, 2011; eff. Aug. 22, 2011.
Amended: F. July 7, 2022; eff. July 27, 2022.

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

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

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

(3) Records required to be maintained under this Rule shall be maintained in accordance with Rule Chapter 80-11-2. Loan or finance companies may consult

https://www.fincen.gov/resources/financial-institutions/mortgage-co-broker [File Link Not Available] for questions about the federal requirements.

Cite as Ga. Comp. R. & Regs. R. 80-11-1-.06
Authority: O.C.G.A. §§ 7-1-61; 7-1-1012.
History. Original Rule entitled "Compliance with Federal Requirements" adopted. F. June 27, 2018; eff. July 17, 2018.

Rule 80-11-1-.07. Notice of Unauthorized Access to Personal Information.

(1) In the event that a licensee provides notice under applicable federal or state law of an information security incident involving unauthorized access to personal information, then the licensee shall simultaneously provide a duplicate of such disclosure to the Department. For purposes of this rule, personal information is any record containing nonpublic personal information about a customer or potential customer whether in paper, electronic, or other form maintained by or on behalf of the licensee.

(2) Pursuant to O.C.G.A. § 10-1-912, a business that satisfies the definition of an information broker is required to provide notice to Georgia residents in the event of a data breach that results in access or likely access to unencrypted personal information. In the event a licensee or an affiliate of a licensee is required to make such notification to Georgia residents, then a duplicate of the notification will simultaneously be submitted to the Department.

Cite as Ga. Comp. R. & Regs. R. 80-11-1-.07
Authority: O.C.G.A. §§ 7-1-61, 7-1-1012.
History. Original Rule entitled "Notice of Unauthorized Access to Personal Information" adopted. F. July 7, 2022; eff. July 27, 2022.

Rule 80-11-1-.08. Information Security Safeguards for Consumer Financial Information.

All licensees shall create and maintain an information security program to safeguard the nonpublic personal information of customers to the extent required by 16 C.F.R. Part 314 (the "Safeguards Rule"). As part of its regulatory oversight, the Department shall review, to the extent applicable, licensee's information security programs, risk assessments, incident response plans, and other required elements of the Safeguards Rule.

Cite as Ga. Comp. R. & Regs. R. 80-11-1-.08
Authority: O.C.G.A. §§ 7-1-61, 7-1-1012.
History. Original Rule entitled "Information Security Safeguards for Consumer Financial Information" adopted. F. July 7, 2022; eff. July 27, 2022.

Subject 80-11-2. BOOKS AND RECORDS.

Rule 80-11-2-.01. Mortgage Broker and Lender Location Requirement and Minimum Retention Period.

(1) Any mortgage broker or lender required to be licensed or registered under Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated ("licensee" or "registrant") must maintain required books, accounts and records at the principal place of business. Should a licensee or registrant wish to maintain such records elsewhere, it must notify the department in writing via the Nationwide Multistate Licensing System and Registry prior to said books, accounts, and records being maintained in any place other than the designated principal place of business.

(2) Books, accounts and records maintained at a location other than the principal place of business shall be made available to the department within five (5) business days from the date of written request by the department and at a reasonable and convenient location acceptable to the department.

(3) "Principal place of business" means the location designated as the main office by the licensee or registrant in the initial written application for licensure or registration or as amended thereafter in writing to the department.

(4) All books, records and accounts required by Rule 80-11-2-.02(1)(b), (c), (d), (e), (f), (g), (h), (j), (m) and (n) and Rule 80-11-2-.03 must be maintained for a period of five (5) years. All books, records and accounts required by Rule 80-11-2-02(1)(a), (i), (k) and (l) and by Rule 80-11-2-.04 must be maintained and kept complete for a period of five (5) years from the final disposition of the loan application to which the records relate (e.g. five (5) years from date application denied or cancelled or five years from date mortgage loan closed).

(5) Any books, accounts or records required to be maintained by Chapter 80-11-2 of the Rules of the Department of Banking and Finance may be maintained in their original form, on microfiche or other electronic media, provided:

(i) that the records shall be made available to the department as provided in this Rule; and

(ii) at the request of the department, the records shall be printed on paper for inspection or examination.

(6)

(a) The penalty for maintaining books, accounts and records at a location other than the principal place of business without written notification to the department may be suspension of the license or registration, other appropriate administrative action or fine.

(b) The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the department) shall be revocation of the license or registration.

Cite as Ga. Comp. R. & Regs. R. 80-11-2-.01
Authority: O.C.G.A. §§ 7-1-61; 7-1-1012.
History. Original Rule entitled "Location Requirement and Minimum Retention Period" adopted. F. July 11, 1994; eff. July 31, 1994.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: F. July 28, 2003; eff. August 17, 2003.
Amended: F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: F. Aug. 4, 2008; eff. Aug. 24, 2008.
Repealed: New Rule entitled "Mortgage Broker and Lender Location Requirement and Minimum Retention Period" adopted. F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

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

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

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

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

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

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

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

(f) Copies of all payroll records, including federal and state withholding tax forms, W-2's, and 1099 forms filed with the Internal Revenue Service by the licensee or registrant, or its agent on behalf of individuals employed by the licensee or

registrant or on behalf of individuals acting as independent contractors in the mortgage brokerage and/or lending business of the licensee or registrant;

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

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

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

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

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

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

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

(n) Employee file for each employee. The employee file must contain all documents related to hiring the employee, including criminal background check, date employment began, and a print out or screenshot confirming that the Department's public records were reviewed on NMLS Consumer Access to verify eligibility for employment with such review taking place prior to the date of hire;

(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;

(p) Documentation showing that a sale or other transfer of closed mortgage loans to an unlicensed entity who is not otherwise exempt from licensure is for the sole purpose of securitization of the loans in the secondary market and that the historical practices and documented intent of the unlicensed entity is to hold such

loans for not more than seven (7) days as required by O.C.G.A. § 7-1-1001(a)(19). Examples of such documentation may include, but are not limited to, a copy of the mortgage loan purchase agreement, evidence of the securitization into a secondary market, the dates of purchase and securitization, and a sworn document executed at or before purchase by an executive officer of the loan purchaser to the effect that the sole purpose of the loan purchase is securitization of the loan in the secondary market and the purchaser will not hold the loan for more than seven (7) days; and

(q) Information security program materials maintained by the licensee in accordance with 16 C.F.R. Part 314, ("the Safeguards Rule") and Rule 80-3-1-.05, including, but not limited to, any risk assessment and incident response plan.

(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.

Cite as Ga. Comp. R. & Regs. R. 80-11-2-.02
Authority: O.C.G.A. §§ 7-1-61; 7-1-1012.
History. Original Rule entitled "Minimum Requirements for Books and Records" adopted. F. July 11, 1994; eff. July 31, 1994.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: F. June 8, 2000; eff. June 28, 2000.
Amended: F. Sept. 1, 2004; eff. Sept. 21, 2004.
Amended: F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: F. Aug. 4, 2008; eff. Aug. 24, 2008.
Amended: F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Nov. 2, 2010; eff. Nov. 22, 2010.
Amended: F. Jun. 10, 2014; eff. Jun. 30, 2014.
Amended: F. June 15, 2015; eff. July 5, 2015.
Amended: F. July 9, 2019; eff. July 29, 2019.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-11-2-.03. Mortgage Loan Transaction Journal.

(1) Any person who is acting as a mortgage broker and who is required to be licensed under Article 13 of Title 7, whether as a broker or a lender ("licensee"), shall maintain a journal of mortgage loan transactions which shall include, at a minimum, the following information:

(a) Full name of proposed borrower and all co-borrowers, and the last four digits of their social security number(s);

(b) Date customer applied for the mortgage loan;

(c) Name and Nationwide Mortgage Licensing System and Registry (NMLSR) unique identifier of the loan officer responsible for the loan application whose name also appears on the application; and

(d) Disposition of the mortgage loan application and date of disposition. The journal shall indicate the result of the loan transaction. The disposition of the application shall be categorized as one of the following: loan closed, loan denied, application withdrawn, application in process or other (explanation).

(e) The journal shall clearly identify if the mortgage loan originator utilized temporary authority to operate at any point in the application or loan process. For such mortgage loan originators that utilize temporary authority, the journal should also identify the final status of the mortgage loan originator's Georgia license application as one of the following: approved, withdrawn, or denied.

(2) A complete mortgage loan transaction journal shall be maintained in the principal place of business. The journal shall be kept current. Records may be kept at a branch but the principal place of business must have a current journal updated no less frequently than every seven (7) days. The failure to initiate an entry to the journal within seven (7) business days from the date of the occurrence of the event required to be recorded in the journal shall be deemed a failure to keep the journal current.

(3) Failure to maintain the mortgage loan journal or to keep the journal current (incidental and isolated clerical errors or omissions shall not be considered a violation) may be grounds for suspension or revocation of the license or other appropriate administrative action and will subject the licensee to fines in accordance with regulations prescribed by the department.

(4) Loan processors who are required to be licensed shall be required to keep a mortgage loan transaction journal to the extent they receive information that is required by law or rule to be in the journal. Such journal shall at a minimum include for each loan the full name of the borrower(s), the name and NMLSR unique identifier of the mortgage broker or lender for whom the processing was performed; the name and the NMLSR unique identifier of the mortgage loan originator for whom the processing was performed, and the dates the loan application was received and returned to such lender or broker. If a processor performs other duties of a broker aside from processing the loan, the processor/broker shall be responsible for keeping the same information as a broker, as provided in subsection (1) of this rule.

Cite as Ga. Comp. R. & Regs. R. 80-11-2-.03
Authority: O.C.G.A. §§ 7-1-1001.1; 7-1-1012.
History. Original Rule entitled "Mortgage Loan Transaction Journal" adopted. F. July 11, 1994; eff. July 31, 1994.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: F. Oct. 22, 2001; eff. Nov. 11, 2001.
Amended: F. Sept. 1, 2004; eff. Sept. 21, 2004.
Amended: F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: F. Aug. 17, 2009; eff. Sept. 6, 2009.

Amended: F. June 20, 2016; eff. July 10, 2016.
Amended: F. Dec. 20, 2019; eff. Jan. 9, 2020.

Rule 80-11-2-.04. Mortgage Loan Files.

(1) Any person who is acting as a mortgage broker and who is required to be licensed under O.C.G.A. Title 7, Article 13, whether as a broker or a lender ("licensee"), shall maintain a loan file for each mortgage loan transaction. The files shall be maintained in an alphabetical or numerical sequence in the principal place of business or in each branch office where mortgage loans are originated, provided that the branch office is indicated on the licensee's initial written application for licensure or written amendment thereto.

(2) Each loan file shall contain the following:

(a) Copy of the signed mortgage loan application with the Nationwide Multistate Licensing System and Registry (NMLSR) unique identifier of the mortgage loan originator if the application form is received by the licensee;

(b) Copy of credit report if the credit report is pulled or ordered by the licensee;

(c) Copy of the appraisal and the order for such appraisal if the appraisal is ordered by the licensee;

(d) Copy of signed closing statement (HUD-1) or documentation of denial or cancellation of loan application;

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

(f) Copies of all contracts, letters, notes and memos regarding the customer, including but not limited to lock-in agreements and commitment agreements; and

(3) For canceled loans, a licensee shall maintain a copy of any unsigned mortgage loan application if taken.

(4) Failure to maintain files and required documentation (incidental and isolated clerical errors or omissions shall not be considered a violation) may be grounds for suspension of the license or other appropriate administrative action and will subject the licensee to fines in accordance with regulations prescribed by the Department.

Cite as Ga. Comp. R. & Regs. R. 80-11-2-.04
Authority: Ga. L. 1993, p. 543.
History. Original Rule entitled "Mortgage Loan Files" adopted. F. July 11, 1994; eff. July 31, 1994.
Amended: F. July 14, 1998; eff. August 3, 1998.
Amended: F. July 12, 1999; eff. August 1, 1999.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Nov. 2, 2010; eff. Nov. 22, 2010.

Amended: F. June 20, 2016; eff. July 10, 2016.

Rule 80-11-2-.05. Repealed.

Cite as Ga. Comp. R. & Regs. R. 80-11-2-.05
Authority: O.C.G.A. Secs. 7-1-61, 7-1-1012.
History. Original Rule entitled "Audits" adopted. F. July 12, 1999; eff. August 1, 1999.
Amended: F. June 8, 2000; eff. June 28, 2000.
Amended: F. Oct. 22, 2001; eff. Nov. 11, 2001.
Amended: F. July 28, 2003; eff. August 17, 2003.
Repealed: F. Aug. 15, 2005; eff. Sept. 4, 2005.

Subject 80-11-3. ADMINISTRATIVE FINES AND PENALTIES.

Rule 80-11-3-.01. Administrative Fines.

(1) The Department establishes the following fines and penalties for violation of the Georgia Residential Mortgage Act ("GRMA") or its rules. Except as otherwise indicated, these fines and penalties apply to any person who is acting as a mortgage lender or broker and who is required to be licensed or registered under Article 13 of Chapter 1 of Title 7 ("licensee" or "registrant"). The Department, at its sole discretion, may waive or modify a fine based upon the financial resources of the person, gravity of the violation, history of previous violations, and such other facts and circumstances deemed appropriate by the Department.

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

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

(4) Permitting unlicensed persons to engage in mortgage loan originator activities. Any licensee or registrant who employs a person who does not hold a mortgage loan originator's license or does not satisfy the temporary authority to operate requirements set forth in 12 U.S.C. § 5117 but engages in licensed mortgage loan originator activities as set forth in O.C.G.A. § 7-1-1000(22) shall be subject to a fine of one thousand dollars ($1,000) per occurrence and the licensee or registrant shall be subject to suspension or revocation. Licensees are responsible for the actions of their employees.

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

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

(7) Change in Ownership. Any person who acquires ten percent (10%) or more of the capital stock or a ten percent (10%) or more ownership of a mortgage broker or mortgage lender licensee without the prior approval of the Department in violation of O.C.G.A. § 7-1-1008 shall be subject to a fine of one thousand dollars ($1,000) and their license or registration will be subject to revocation or suspension.

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

(9) Hiring a Felon. Any mortgage broker or mortgage lender licensee or registrant who hires or retains a covered employee as defined in O.C.G.A. § 7-1-1000(5.1) who is a felon as described in O.C.G.A. § 7-1-1004(h), which covered employee has not complied with the remedies provided for in O.C.G.A. § 7-1-1004(h), may be fined five thousand dollars ($5,000) per covered employee found to be in violation of such provision and their license or registration will be subject to revocation or suspension.

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

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

(12)

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

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

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

(14) Failure to Maintain Documentation for Securitization Transfer Exemption. Any licensee who sells or otherwise transfers closed mortgage loans to an unlicensed person who purports to be exempt from licensure pursuant to O.C.G.A. § 7-1-1001(a)(19) and fails to maintain documentation showing the purpose of the transfer and applicable time limitation as required by Rule 80-11-2-.02(1)(p) shall be subject to a fine of one thousand dollars ($1,000) per loan transferred to the unlicensed entity.

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

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

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

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

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

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

(e) false or altered credit report; and

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

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

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

(18) Unauthorized Access to Customer Information. Any mortgage broker or mortgage lender licensee that fails to provide the Department with notice of unauthorized access to customer information as required by Rule 80-11-1-.07 shall be subject to a fine of one thousand dollars ($1,000) a day until the notice is provided.

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

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

(21) Failure to Submit to Examination or Investigation. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request

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

(22) Failure to Review Public Records Prior to Hiring. Any licensee who fails to examine the Department's public records on NMLS Consumer Access to determine if a job applicant is subject to an order set forth in O.C.G.A. § 7-1-1004(o) prior to hiring such individual shall be subject to a fine of one thousand dollars ($1,000) for each employee on whom the public records were not timely examined.

(23) Background Checks. Any licensee who fails to perform proper background checks on covered employees as defined in O.C.G.A. § 7-1-1000(5.1) in accordance with the provisions of O.C.G.A. § 7-1-1004(h), (i), and (k) shall be subject to a fine of one thousand dollars ($1,000) for each employee on whom the required background check was not conducted.

(24) Change in Executive Officers. Any licensee who fails to notify the Department of a change in executive officers of the company in violation of O.C.G.A. § 7-1-1006(e) shall be subject to a fine of five hundred dollars ($500).

(25) Georgia Fair Lending Act. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or mortgage lender who violates any provision of Chapter 6A of Article 13, the Georgia Fair Lending Act, shall be subject to a fine of one thousand dollars ($1,000) per violation or transaction that is in violation and their license will be subject to revocation or suspension.

(26) Consumer Complaints. Any licensee or registrant who fails to respond to a consumer complaint or fails to respond to the Department within the time periods specified in the Department's correspondence to such person shall be subject to a fine of one thousand dollars ($1,000) for each occurrence. Repeated failure to properly respond to consumer complaints may result in revocation of license.

(27) Failure to Perform Timely Background Checks. If the ten (10) day requirement for submission of background information to the proper law enforcement authorities is not met, the employer shall be subject to a one thousand dollar ($1,000) fine for each employee for whom the background was not timely submitted.

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

(29) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensed mortgage lender, mortgage broker, or registrant that fails to disclose that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the

licensee or registrant within ten (10) business days of the date of the event necessitating the disclosure, shall be subject to a fine of one thousand dollars ($1,000). Any licensed mortgage broker, mortgage lender, or registrant that fails to submit a new lawful presence affidavit from a current owner or executive officer within ten (10) business days of the owner or executive officer that executed the previous lawful presence affidavit no longer being in that position with the licensee or registrant, shall be subject to a fine of one thousand dollars ($1,000) per day until the new affidavit is provided.

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

(31) Bank Secrecy Act. If the Department in the course of an examination or investigation, finds that a licensee that satisfies the definition of loan or finance company has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or the requirements referred to in Rule 80-11-1-.06, such licensee shall be subject to a fine of one thousand dollars ($1,000) for each instance of non-compliance.

Cite as Ga. Comp. R. & Regs. R. 80-11-3-.01
Authority: O.C.G.A. § 7-1-61, 7-1-1001.1, 7-1-1004.1, 7-1-1012.
History. Original Rule entitled "Administrative Fines" adopted. F. July 14, 1998; eff. August 3, 1998.
Amended: F. July 12, 1999; eff. August 1, 1999.
Amended: F. Dec. 6, 1999; eff. Dec. 26, 1999.
Amended: F. June 8, 2000; eff. June 28, 2000.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.
Amended: F. Oct. 22, 2001; eff. Nov. 11, 2001.
Amended: F. July 28, 2003; eff. August 17, 2003.
Amended: F. Sept. 1, 2004; eff. Sept. 21, 2004.
Amended: F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: F. Aug. 4, 2008; eff. Aug. 24, 2008.
Amended: F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Aug. 2, 2011; eff. Aug. 22, 2011.
Amended: F. Sep. 18, 2012; eff. Oct. 8, 2012.
Amended: F. Nov. 7, 2013; eff. Nov. 27, 2013.
Amended: F. June 10, 2014; eff. June 30, 2014.
Amended: F. Dec. 5, 2014; eff. Dec. 25, 2014.

Amended: F. Jan. 6, 2016; eff. Jan. 26, 2016.
Amended: F. June 20, 2016; eff. July 10, 2016.
Amended: F. June 29, 2017; eff. July 19, 2017.
Amended: F. June 27, 2018; eff. July 17, 2018.
Amended: F. July 9, 2019; eff. July 29, 2019.
Amended: F. Dec. 20, 2019; eff. Jan. 9, 2020.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Note: Rule 80-11-3-.01, the incorrect version of the Rule was inadvertently filed (i.e., January 8, 2021; effective January 28, 2021) and appeared on the Rules and Regulations website February 5, 2021 through July 14, 2021. The correct Rule, as originally promulgated and adopted, was updated on the Rules and Regulations website July 15, 2021, with the original filed and effective date, as specified by the Agency. Effective July 15, 2021.
Note: Rule 80-11-3-.01 (Supersede "Note" effective July 15, 2021.), the incorrect version of the Rule was inadvertently filed January 8, 2021 (effective January 28, 2021) and was posted on the Rules and Regulations website February 5, 2021 through August 4, 2021. The correct Rule, as originally promulgated and adopted, was updated on the Rules and Regulations August 5, 2021; with the original filed and effective date, January 8, 2021 and January 28, 2021 respectively, as specified by the Agency. Effective August 5, 2021.
Amended: F. July 7, 2022; eff. July 27, 2022.

Subject 80-11-4. LICENSING.

Rule 80-11-4-.01. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-11-4-.01
Authority: O.C.G.A. §§ 7-1-61, 7-1-1004, 7-1-1012.
History. Original Rule entitled "Experience and Education Requirements" adopted. F. June 8, 2000; eff. June 28, 2000.
Amended: F. Sept. 1, 2004; eff. Sept. 21, 2004.
Repealed: New Rule entitled "Initial Experience and Education Requirements; Continuing Education" adopted. F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. Dec. 15, 2008; eff. Jan. 4, 2009.
Amended: F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Aug. 2, 2011; eff. Aug. 22, 2011.
Amended: F. June 15, 2015; eff. July 5, 2015.
Repealed: F. June 20, 2016; eff. July 10, 2016.

Rule 80-11-4-.02. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-11-4-.02
Authority: O.C.G.A. §§ 7-1-61, 7-1-1003.7, 7-1-1004, 7-1-1012.
History. Original Rule entitled "Approved Schools" adopted. F. June 8, 2000; eff. June 28, 2000.
Amended: F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: F. Aug. 17, 2009; eff. Sept. 6, 2009.
Repealed: F. June 20, 2016; eff. July 10, 2016.

Rule 80-11-4-.03. Licensing Requirements; Registrants; Exemptions.

(1) The Department will take appropriate action against all persons found to be improperly engaging in mortgage brokerage or lending activities without a license or valid exemption. In accordance with O.C.G.A. § 7-1-1018(a), if proper evidence is provided to the Department within thirty (30) days of the date the Order is issued that shows the person had the proper license or was acting pursuant to a valid exemption at the time noted in the Order, the Order shall be rescinded by the Department.

(2) The exemption from licensing provided pursuant to O.C.G.A. § 7-1-1001(a)(14) to an employee of a licensee or exemptee applies only to natural persons who meet all of the following criteria:

(a) An employee must be employed by just one licensee or exemptee and work exclusively for that person;

(b) An employee may not solicit, process, or place loans for anyone else while claiming the exemption;

(c) An employee's procedures and activities must be supervised by the licensee or exemptee on a daily basis, and the licensee or exemptee is responsible for the actions of such employees. This requirement is intended to make it clear that employers control and are accountable for the actions of their employees; and

(d) An employee may not be paid or compensated for performance of mortgage activity as an independent contractor or on a 1099 basis, except as specifically provided for in O.C.G.A. § 7-1-1001(a)(17).

(3) Registrants shall complete all information as indicated on the Department's application. Registrants must submit financial information as provided in O.C.G.A. § 7-1-1003.2 and § 7-1-1010, are subject to books and records requirements as provided in O.C.G.A. § 7-1-1009, and must submit an annual fee to the Department. Registrants must provide updated consumer contact information to the Department, and are responsible for resolving consumer complaints satisfactorily and in conformity with the Department's guidelines and timeframes. Fines will apply for failure to comply with any Georgia mortgage laws or rules.

Cite as Ga. Comp. R. & Regs. R. 80-11-4-.03
Authority: O.C.G.A. §§ 7-1-61, 7-1-1003.2, 7-1-1012.
History. Original Rule entitled "Licensing Requirements; Employees Exemption" adopted. F. June 8, 2000; eff. June 28, 2000.
Amended: Rule retitled "Licensing Requirements; Employee Exemption; Term for Bond" adopted. F. Oct. 22, 2001; eff. Nov. 11, 2001.
Amended: F. July 28, 2003; eff. August 17, 2003.
Repealed: New Rule entitled "Licensing Requirements; Registrants; Exemptions; Term for Bond" adopted. F. Sept. 1, 2004; eff. Sept. 21, 2004.
Repealed: New Rule entitled "Licensing Requirements; Registrants; Exemptions; Term for Bond" adopted. F. Aug. 22, 2006; eff. Sept. 11, 2006.
Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Amended: New title, "Licensing Requirements; Registrants; Exemptions." F. July 7, 2022; eff. July 27, 2022.

Rule 80-11-4-.04. Temporary License. Repealed and Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-11-4-.04
Authority: O.C.G.A. Sec. 7-1-1012.
History. Original Rule entitled "Temporary License" adopted. F. Oct. 22, 2001; eff. Nov. 11, 2001.
Repealed: F. Aug. 2, 2011; eff. Aug. 22, 2011.

Rule 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 licensure or qualified to operate under the temporary authority provisions of 12 U.S.C. § 5117. It is expected that all persons who purchase, sell, or transfer mortgage loans use reasonable diligence to determine whether the entities they do business with are licensed or exempt from licensure. To that end, the Department makes available through NMLS Consumer Access information as to whether an entity is licensed.

(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 or exempt from licensure 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 Multistate 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) unless qualified to operate under the temporary authority provisions of 12 U.S.C. § 5117.

Cite as Ga. Comp. R. & Regs. R. 80-11-4-.05
Authority: O.C.G.A. §§ 7-1-1012, 7-1-1002.
History. Original Rule entitled "Knowing Purchase, Sale or Transfer of Loan or Loan Application from Unlicensed Entity" adopted. F. June 8, 2000; eff. June 28, 2000.
Amended: F. Dec. 18, 2000; eff. Jan. 7, 2001.
Amended: F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Aug. 2, 2011; eff. Aug. 22, 2011.
Amended: F. June 15, 2015; eff. July 5, 2015
Amended: F. June 20, 2016; eff. July 10, 2016.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-11-4-.06. Reserved.

Cite as Ga. Comp. R. & Regs. R. 80-11-4-.06
Authority: Authority O.C.G.A. Secs. 7-1-1001, 7-1-1003.4, 7-1-1012.
History. . Original Rule entitled "Wholly Owned Subsidiaries of Lenders; Notification Statement; When Registration Required" adopted. F. June 8, 2000; eff. June 28, 2000.
Amended: F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: F. Dec. 15, 2008; eff. Jan. 4, 2009.
Repealed: Rule reserved. F. Aug. 17, 2009; eff. Sept. 6, 2009.

Rule 80-11-4-.07. Loan Processors as Brokers.

(1) Mortgage brokers include persons who directly or indirectly solicit, process, place or negotiate or offer mortgage loans for others. A loan processor is a mortgage broker and will require a mortgage broker license to process loans on Georgia real property that meet the definition of "mortgage loan" in O.C.G.A. § 7-1-1000(21).

(2) A loan processor employed as a W-2 employee of a Georgia Residential Mortgage Act licensee who meets all of the qualifications for exemption under O.C.G.A. § 7-1-1001 does not require a license. A loan processor who works as an independent contractor or who owns or controls a company that does loan processing is required to have a license.

(3) Generally, to process a loan means to collect and/or verify from a borrower or other person, information that is necessary to underwrite or to submit for underwriting, a mortgage loan application package. Activities including but not limited to the following may qualify as loan processing:

   (a) Reviewing, and processing real estate loan applications.

   (b) Ordering, obtaining and evaluating credit reports, real estate appraisals, flood certifications, location surveys, termite inspections, well/septic inspections, surveys, etc.

   (c) Ordering, obtaining, and evaluating real property ownership information, including a title insurance policy insuring lender's valid lien position. Title insurance companies that handle only title insurance for a particular loan are not loan processors.

   (d) Communicating with applicants as necessary to obtain additional information needed to process a loan.

   (e) Obtaining verifications of income, employment, address, etc. as requested by a broker, lender or mortgage loan originator.

(f) Performing escrow account analyses; taking steps required to establish escrow accounts.

(g) Providing certain real estate loan disclosures on behalf of lender.

(h) Compiling and transmitting completed real estate loan application packages to lenders.

(i) Maintaining, collecting, and/or reporting any data necessary to comply with applicable statutory and regulatory requirements.

(4) Persons who are otherwise exempt from licensing in O.C.G.A. § 7-1-1001, so long as they provide only the services contemplated in their exemption, will not be considered loan processors.

Cite as Ga. Comp. R. & Regs. R. 80-11-4-.07
Authority: O.C.G.A. § 7-1-61; § 7-1-1012.
History. Original Rule entitled "Loan Processors as Brokers" adopted. F. July 28, 2003; eff. August 17, 2003.
Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: F. Nov. 2, 2010; eff. Nov. 22, 2010.
Amended: F. Nov. 7, 2013; eff. Nov. 27, 2013.

Rule 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) Licensees are responsible for ensuring that no covered employees or individuals that direct the affairs of their business are convicted felons.

(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 covered employee with an unremedied felony conviction subjects a licensee to revocation of its license.

(c) If a licensee discovers that a covered employee or director/officer is a felon at the time of hire or subsequently becomes a felon and 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.

Cite as Ga. Comp. R. & Regs. R. 80-11-4-.08
Authority: O.C.G.A. §§ 7-1-61, 7-1-1004, 7-1-1012, 7-1-1018.
History. Original Rule entitled "Restrictions on Employment and Licensing" adopted. F. July 28, 2003; eff. August 17, 2003.
Amended: F. Aug. 15, 2005; eff. Sept. 4, 2005.
Amended: F. Aug. 15, 2007; eff. Sept. 4, 2007.
Amended: F. Aug. 2, 2011; eff. Aug. 22, 2011.
Amended: F. June 15, 2015; eff. July 5, 2015.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-11-4-.09. Challenges to Information Entered into the Nationwide Multistate Licensing System and Registry.

A mortgage broker or lender licensee or registrant may challenge information entered by the Department into the Nationwide Multistate Licensing System and Registry. All challenges must be sent to the Department in writing addressed to the attention of the Deputy Commissioner of Non-Depository Financial Institutions. Once received, the Department shall consider the merits of the challenge raised and provide the licensee or registrant with a written reply that shall be the agency's final decision in response thereto.

Cite as Ga. Comp. R. & Regs. R. 80-11-4-.09
Authority: O.C.G.A. § 7-1-1004.2.
History. Original Rule entitled "Challenges to Information Entered into the Nationwide Mortgage Licensing System and Registry" adopted. F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: New title "Challenges to Information Entered into the Nationwide Multistate Licensing System and Registry." F. June 20, 2016; eff. July 10, 2016.

Rule 80-11-4-.10. Verification of Lawful Presence Citizenship Affidavit.

(1) Pursuant to O.C.G.A. § 50-36-1, the Department is required to obtain an affidavit verifying the lawful presence of every natural person that submits an application for a license as a mortgage broker or mortgage lender or a registration on behalf of an individual, business, corporation, partnership, limited liability company, or any other business entity. For businesses, corporations, partnerships, limited liability companies, and other business entities (collectively "company applicant"), only an owner or executive officer that is authorized to act on behalf of the company applicant is authorized to submit the required signed and sworn affidavit.

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

Cite as Ga. Comp. R. & Regs. R. 80-11-4-.10
Authority: O.C.G.A. § 7-1-1003; § 7-1-1004; § 7-1-1012.
History. Original Rule entitled "Verification of Lawful Presence Citizenship Affidavit" adopted. F. Nov. 7, 2013; eff. Nov. 27, 2013.

Rule 80-11-4-.11. Information on the Nationwide Multistate Licensing System and Registry.

(1) It shall be the sole responsibility of each applicant for a mortgage lender or mortgage broker licensee, each applicant for a registration, each licensed mortgage broker and mortgage lender, and each registrant to keep current at all times its information on the Nationwide Multistate Licensing System and Registry ("NMLSR"). Amendments to any information on file with the NMLSR must be made by the applicant, licensee, or registrant within ten (10) business days of the date of the event necessitating the change. The Department shall have no responsibility for any communication not received by an applicant, licensee, or registrant due to its failure to maintain current contact information on the NMLSR as required.

(2) Amendments to any responses to disclosure questions on an NMLSR MU-1 by an applicant for a mortgage lender or mortgage broker license, an applicant for a registration, a licensed mortgage lender or mortgage broker, or a registrant must be made within ten (10) business days following the date of the event necessitating the change. Failure by an applicant for a mortgage lender or mortgage broker license or an applicant for a registration to timely update the applicant's NMLSR MU-1 may result in the denial of the

application. In the case of a licensed mortgage lender or mortgage broker or a registrant, failure to timely update any disclosure information on the NMLSR MU-1 may result in the revocation of its license or registration.

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

(4) Amendments to any responses to disclosure questions on an NMLSR MU-2 by a control person must be made within ten (10) business days following the date of the event necessitating the change. Failure by a control person of an applicant for a mortgage lender or mortgage broker license or an applicant for a registration to timely update the control person's NMLSR MU-2 may result in the denial of the application. In the case of a licensed mortgage lender or mortgage broker or a registrant, failure by a control person to timely update any disclosure information on the NMLSR MU-4 may result in the revocation of the mortgage broker or mortgage lender license or registration.

(5) All written notices required pursuant to O.C.G.A. §§ 7-1-1007(a) and 7-1-1007(d) and Rule 80-11-1-.07 shall be submitted to the Department via NMLSR. Such notices shall be uploaded as state specific documents under the document type "Additional Requirements." The file name for each document shall begin with "Georgia Required Written Notice" but may contain additional words at the option of the licensee.

Cite as Ga. Comp. R. & Regs. R. 80-11-4-.11
Authority: O.C.G.A. §§ 7-1-61, 7-1-1003, 7-1-1003.5, 7-1-1012.
History. Original Rule entitled "Information on the Nationwide Multi-State Licensing System and Registry" adopted. F. Nov. 7, 2013; eff. Nov. 27, 2013.
Amended: New title, "Information on the Nationwide Multistate Licensing System and Registry." F. July 7, 2022; eff. July 27, 2022.

Rule 80-11-4-.12. License Renewal Periods and Requirements for Mortgage Brokers, Mortgage Lenders, and Mortgage Originators.

(a) For purposes of this rule the Nationwide Multistate Licensing System and Registry (NMLSR) is defined as a uniform multi-state administration of an automated licensing system for mortgage brokers, mortgage lenders, and mortgage loan originators. The department's participation in NMLSR is authorized by O.C.G.A. § 7-1-1003.5.

(b) All applications for new licenses or registrations must be made through NMLSR. Fees for new applications include an initial Department investigation fee and the appropriate application fee for the application type. Applications for new licenses and registrations which are approved between November 1 and December 31 in any year will not be required to file a renewal application for the next calendar year. All fees are non-refundable.

(c) All licenses and registrations issued pursuant to the Georgia Residential Mortgage Act shall expire on December 31 of each year, and an application for renewal shall be made annually between November 1 and December 31 each year. Subsequent renewal applications and/or license fees must be received on or before December 1 of each year or the applicant will be assessed a late fee as set forth in these rules by license or registration type. A renewal application is not deemed received until all required information, including documentation of any required continuing education coursework, and corresponding fees, has been provided by the licensee. A proper renewal application not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Unless a proper application has been received any license or registration which is not renewed on or before December 31 will require the applicant to file a reinstatement application in order to conduct mortgage business in the State after that date.

Cite as Ga. Comp. R. & Regs. R. 80-11-4-.12
Authority: O.C.G.A. § 7-1-1003.5.
History. Original Rule entitled "License Renewal Periods and Requirements for Mortgage Brokers, Mortgage Lenders, and Mortgage Originators" adopted. F. Jan. 8, 2021; eff. Jan. 28, 2021.

Subject 80-11-5. MORTGAGE LOAN ORIGINATOR LICENSURE AND OTHER REQUIREMENTS.

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

(1) A mortgage loan originator may not engage in the business of mortgage loan origination for a licensed residential mortgage broker or lender without first obtaining and maintaining a current Georgia mortgage loan originator's license issued by the Department through the Nationwide Multistate Licensing System and Registry ("NMLSR") or unless qualified to operate under the temporary authority provisions of 12 U.S.C. § 5117.

(2) An applicant for mortgage loan originator's license must have a sponsor at and during the time his or her application is being considered for approval or renewal by the Department. Failure to have a sponsor at the time application for licensure is made on the NMLSR or while it is pending shall result in the application being administratively withdrawn by the Department, except that an applicant qualified to operate under the temporary authority

provisions of 12 U.S.C. § 5117 shall be subject to administrative action to deny the license application. In the event the applicant wishes to submit a new application after the application has been administratively withdrawn or denied, then the applicant shall be required to submit a new application as well as pay all associated fees. For purposes of this Rule Chapter, "sponsorship" means the authorization for a properly licensed mortgage loan originator to conduct business as an employee under and on behalf of a specific mortgage broker or mortgage lender's license or registration. Sponsorship must be initiated and maintained by the licensed or registered mortgage broker or mortgage lender employing a mortgage loan originator.

(3)

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

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

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

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

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

(7) An application for a mortgage loan originator license, which is missing material information, shall be held in an incomplete status for a period of five (5) business days after the issuance of written notice by the Department or NMLSR specifying the identified deficiency. If any such deficiency remains outstanding for more than five (5) business days, the license application will be considered abandoned by the applicant and will be administratively withdrawn by the Department. Notwithstanding the foregoing, an applicant qualified to operate under the temporary authority provisions of 12 U.S.C. § 5117, or who purports to be so qualified, shall be subject to administrative action to deny the license application at any time. In the event the applicant wishes to submit a new application after it has been administratively withdrawn or denied, then the applicant shall be required to submit a new application as well as pay all associated fees.

Cite as Ga. Comp. R. & Regs. R. 80-11-5-.01
Authority: O.C.G.A. §§ 7-1-1001.1; 7-1-1002; 7-1-1003.2; 7-1-1004.
History. Original Rule entitled "Mortgage Loan Originator Licensure Requirements" adopted. F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Aug. 2, 2011; eff. Aug. 22, 2011.
Amended: F. June 10, 2014; eff. June 30, 2014.
Amended: F. June 20, 2016; eff. July 10, 2016.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Rule 80-11-5-.02. Books and Records Requirements; Examination.

(1) The Department may examine the mortgage related books and records of any licensed mortgage loan originator as specified in O.C.G.A. § 7-1-1009.

(2) Any person who is acting as a mortgage loan originator and is required to be licensed shall maintain a journal of mortgage loan transactions, which shall include, at a minimum, the following information:

(a) Full name of proposed borrower and all co-borrowers;

(b) Date the mortgage loan originator took application for the mortgage loan;

(c) Name and the unique identifier or Federal Regulatory Number of the mortgage licensee or registrant sponsoring the loan originator;

(d) Disposition of the mortgage loan application and date of disposition. The journal shall indicate the result of the loan transaction. The disposition of the application shall be categorized as one of the following: loan closed, loan denied, application withdrawn, application in process or other (explanation to be provided);

(e) The journal shall be kept current, updated no less frequently than every seven (7) days. The failure to initiate an entry to the journal within seven (7) business days from the date of the occurrence of the event required to be recorded in the journal shall be deemed a failure to keep the journal current.

(f) The journal shall clearly identify if the mortgage loan originator utilized temporary authority to operate at any point in the application or loan process.

(g) Failure to maintain the mortgage loan journal or to keep the journal current (incidental and isolated clerical errors or omissions shall not be considered a violation) may be grounds for suspension or revocation of the license or other appropriate administrative action and will subject the licensee to fines in accordance with regulations prescribed by the department.

(3) All books and records and accounts required by this rule shall be maintained by a mortgage loan originator for a period of five (5) years.

Cite as Ga. Comp. R. & Regs. R. 80-11-5-.02
Authority: O.C.G.A. §§ 7-1-1001.1; 7-1-1009; 7-1-1012.
History. Original Rule entitled "Books and Records Requirements; Examination" adopted. F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Sep. 18, 2012; eff. Oct. 8, 2012.
Amended: F. Dec. 20, 2019; eff. Jan. 9, 2020.

Rule 80-11-5-.03. Licensed Location.

All licensed mortgage loan originators must maintain an office of record with the Department. If the mortgage loan originator is not domiciled in Georgia, then the main office location of the sponsoring/employing licensee or registrant shall serve as the official employment address of the loan originator. Those licensed mortgage loan originators domiciled within Georgia must reflect the office from which they are supervised by their employer, either the main office or an approved branch location.

Cite as Ga. Comp. R. & Regs. R. 80-11-5-.03
Authority: O.C.G.A. Sec. 7-1-1003.
History. Original Rule entitled "Licensed Location" adopted. F. Aug. 17, 2009; eff. Sept. 6, 2009.

Rule 80-11-5-.04. Renewals.

(1) Mortgage loan originator licenses shall expire on December 31st of each calendar year. A mortgage loan originator must meet the following requirements in order to have his or her license renewed:

(a) A mortgage loan originator must continue to meet the minimum standards for license issuance.

(b) Timely submission of a complete renewal application and corresponding fee.

(c) A mortgage loan originator must satisfy the continuing education requirements of O.C.G.A. § 7-1-1004(g). The applicant must obtain on an annual basis eight (8) hours of approved continuing education in mortgage courses from an NMLSR approved provider. Of these eight (8) hours, seven (7) hours must be obtained in course work addressing the subjects identified in O.C.G.A. § 7-1-1004(g)(1), and at least one (1) hour of continuing education must be obtained in coursework addressing the Georgia Residential Mortgage Act, specifically any changes made to the statute and its corresponding regulations.

(d) Courses taken to meet the approved continuing education requirements of the NMLSR for any state shall be accepted as credit towards continuing education requirements in Georgia, with the exception that one (1) hour of the required courses must cover laws and regulations related to Georgia mortgage licensure, not that of another state.

(e) Continuing education credits are only valid in the calendar year in which the courses are taken. Credits earned during November 1 through December 31 will be excluded from consideration for continuing education credit hours earned for the subsequent renewal period. When continuing education hours are obtained by a mortgage loan originator, only credit hours obtained from January 1 to October 31 shall be considered for purposes of meeting the eight (8) hours of continuing education required in the subsequent renewal period.

(f)

1. Upon submitting an application to renew a license, failure to document to the Department's satisfaction proof of completion of eight (8) continuing education hours by October 31 may subject the licensee to a fine. The failure to document proof of completion of these hours and to pay any assessed fine by December 31 shall result in the expiration of the mortgage loan originator's license without notice or hearing.

2. A mortgage loan originator whose license has been inactive for less than three (3) years shall provide proof of completion of the continuing education requirements for the last year in which the license was held in order to reinstate it. Should reinstatement of an expired license be sought for a license that has been inactive for five (5) years or more, such reinstatement application will require that the applicant again meet the testing requirements set forth in O.C.G.A. § 7-1-1004(f). If a person has worked as a registered loan originator at any time during the lapsed license period, the period of time the registered mortgage loan officer was employed in this capacity shall not count toward the calculation of the time period for the continuing education and testing requirements of this paragraph.

3. In the following circumstances the prelicensing education course will expire, which shall require the individual to complete an additional 20 hours of prelicensing education in order to be eligible for a mortgage loan originator license. An individual's prelicensing education shall expire if he/she:

   (i) fails to acquire a valid license or work as a registered loan originator within three years from the date of initial completion of any approved prelicensing education course;

   or

   (ii) has obtained a license or worked as a registered loan originator but subsequently did not maintain an active license or work as a registered loan originator for three years or more.

Cite as Ga. Comp. R. & Regs. R. 80-11-5-.04
Authority: O.C.G.A. §§ 7-1-1004(e)(4), 7-1-1004.2, 7-1-1005.
History. Original Rule entitled "Renewals" adopted. F. Aug. 17, 2009; eff. Sept. 6, 2009.

Amended: F. Aug. 2, 2011; eff. Aug. 22, 2011.
Amended: F. June 20, 2016; eff. July 10, 2016.

Rule 80-11-5-.05. Administrative Fines.

(1) The Department establishes the following fines and penalties for violation by mortgage loan originators of the Georgia Residential Mortgage Act ("GRMA") or its rules. The Department, in its sole discretion, may waive or modify any fine based upon the gravity of the violation, history of previous violations, and such other facts and circumstances as have contributed to the violation.

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

(3) All fines collected by the Department shall be paid into the state treasury to the credit of the general fund.

(4) The following fines shall be assessed for violations of GRMA and Department rules:

(a) Dealing with Unlicensed Persons. A mortgage loan originator that purchases, sells, places for processing or transfers (or performs activities which are the equivalent thereof) a mortgage loan or loan application to or from a person who is required to be but is not duly licensed under GRMA shall be subject to a fine of one thousand dollars ($ 1,000) per transaction and his or her license shall be subject to suspension or revocation.

(b) Unapproved Location. A mortgage loan originator that operates from a location in Georgia other than a required approved location on record with the Department shall be subject to a fine of five hundred dollars ($ 500) per unapproved location operated and his or her license may be subject to revocation or suspension.

(c) Doing Business Without a License or in Violation of Administrative Order. Any person who acts as a mortgage loan originator prior to receiving a current license or registration required under GRMA, unless such person satisfies the temporary authority to operate requirements in 12 U.S.C. § 5117, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars ($ 1,000) per transaction and the mortgage loan originator's application will be subject to denial or his or her license or registration will be subject to revocation or suspension.

(d) Books and Records Violations. If the Department, in the course of an examination or investigation, finds that a mortgage loan originator licensee or registrant has failed to maintain his or her books and records according to the requirements of Rule 80-11-5-.02, such licensee or registrant may be subject to a fine of one

thousand dollars ($ 1,000) for each violation of a books and records found to occur.

(e) Prohibited Acts. Any person who is required to be licensed under O.C.G.A. Title 7, Article 13 as a mortgage loan originator who violates the provisions of O.C.G.A. § 7-1-1013 shall be subject to a fine of one thousand dollars ($ 1,000) per violation or transaction that is in violation and his or her license shall be subject to suspension or revocation.

(f) Education Requirements. A mortgage loan originator who fails to meet the requirement that he or she timely obtain the type and number of continuing education hours each year as required shall be fined one hundred dollars ($ 100).

(g) Advertising. A mortgage loan originator that is required to be licensed who violates the regulations relative to advertising contained in O.C.G.A. §§ 7-1-1004.3 and 7-1-1016 or the advertising requirements of the Department shall be subject to a fine of five hundred dollars ($ 500) for each violation of law or rule.

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

(i) Permitting an unlicensed person to use a licensed mortgage loan originator's license and identity. Any licensed mortgage loan originator who permits an unlicensed person to use that licensee's name, Nationwide Mortgage Licensing System and Registry Number or other identifying information for the purpose of submitting loan documents to lenders shall be subject to a fine of one thousand dollars ($ 1,000) per occurrence, and the license of the mortgage loan originator shall be subject to revocation.

(j) Failure to Timely Update Information on the Nationwide Mortgage Licensing System and Registry. Any licensed mortgage loan originator that fails to update his or her information on the Nationwide Mortgage Licensing System Registry ("NMLSR") including, but not limited to, amendments to any responses to disclosure questions on an application or a licensee's NMLSR MU-4, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars ($1,000) per occurrence.

(k) Failure to Timely Report Certain Events. Any licensed mortgage loan originator that fails to report any of the events enumerated in O.C.G.A. § 7-1-1007(d) within ten (10) days of obtaining knowledge about the underlying events, shall be subject to a fine of one thousand dollars ($1,000) per occurrence.

Cite as Ga. Comp. R. & Regs. R. 80-11-5-.05
Authority: O.C.G.A. §§ 7-1-1001.1; 7-1-1012; 7-1-1018.
History. Original Rule entitled "Administrative Fines" adopted. F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Aug. 2, 2011; eff. Aug. 22, 2011.
Amended: F. Nov. 7, 2013; eff. Nov. 27, 2013.
Amended: F. Aug. 29, 2014; eff. Sept. 18, 2014.
Amended: F. June 20, 2016; eff. July 10, 2016.
Amended: F. Dec. 20, 2019; eff. Jan. 9, 2020.

Rule 80-11-5-.06. Administrative Actions; Nationwide Multistate Licensing System and Registry Information Challenges.

(1) Final administrative actions taken against mortgage loan originators shall be considered public information and may be disseminated through the Nationwide Multistate Licensing System and Registry (NMLSR) and by the Department.

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

Cite as Ga. Comp. R. & Regs. R. 80-11-5-.06
Authority: O.C.G.A. §§ 7-1-61, 7-1-1003.6, 7-1-1004.2, 7-1-1012.
History. Original Rule entitled "Administrative Actions; Nationwide Mortgage Licensing System and Registry Information Challenges" adopted. F. Aug. 17, 2009; eff. Sept. 6, 2009.
Amended: F. Aug. 2, 2011; eff. Aug. 22, 2011.
Amended: New title "Administrative Actions; Nationwide Multistate Licensing System and Registry Information Challenges. "F. June 20, 2016; eff. July 10, 2016.

Rule 80-11-5-.07. Information on the Nationwide Multistate Licensing System and Registry.

(1) It shall be the sole responsibility of each mortgage loan originator applicant and licensee to keep current at all times his or her information on the Nationwide Multistate Licensing System and Registry ("NMLSR"), including, but not limited to, his or her employment history, e-mail address, telephone numbers, facsimile number, and residential history. Amendments to any information on file with the NMLSR must be made by the applicant or licensee within ten (10) business days of the date of the event necessitating the change. The Department shall have no responsibility for any communication not received by an applicant or licensee due to his or her failure to maintain current contact information on the Nationwide Multistate Licensing System and Registry as required.

(2) Amendments to any responses to disclosure questions on a mortgage loan originator applicant or licensee's NMLSR MU-4 must be made within ten (10) business days following the date of the event necessitating the change. Failure by an applicant for a mortgage loan originator's license to timely update the applicant's MU-4 may result in the denial or administrative withdrawal of his or her license application. In the case of a licensed mortgage loan originator, failure to timely update any disclosure information on the NMLSR MU-4 may result in the revocation of his or her license.

Cite as Ga. Comp. R. & Regs. R. 80-11-5-.07
Authority: O.C.G.A. §§ 7-1-61, 7-1-1003, 7-1-1004.
History. Original Rule entitled "Information on the Nationwide Licensing System and Registry" adopted. F. Aug. 2, 2011; eff. Aug. 22, 2011.
Amended: F. Nov. 7, 2013; eff. Nov. 27, 2013.
Amended: New title "Information on the Nationwide Multistate Licensing System and Registry." F. June 20, 2016; eff. July 10, 2016.

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

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

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

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

(a) Loan terms that do not charge for the accrual of interest;

(b) Loan terms that charge interest at below market rates;

(c) Loan terms that require a borrower to qualify for the loan by the contribution of sweat equity; or

(d) Loan terms that forgive repayment in whole or in part, whether over a period of time, on a specified date, or subject to ownership or occupancy conditions.

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

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

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

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

Cite as Ga. Comp. R. & Regs. R. 80-11-5-.08
Authority: O.C.G.A. § 7-1-61; 7-1-1012.
History. Original Rule entitled "Bona Fide Nonprofit Corporations" adopted. F. Jun. 10, 2014; eff. Jun. 30, 2014.

Rule 80-11-5-.09. Temporary Authority to Operate.

(1) A mortgage loan originator purporting to operate under the temporary authority requirements set forth in 12 U.S.C. § 5117 is jointly responsible with the mortgage loan originator's sponsor for ensuring that the required disclosure under Rule 80-11-1-.01(11) is provided. Nothing herein shall be construed as requiring a mortgage loan originator and the mortgage loan originator's sponsor to provide a duplicate of the required disclosure under Rule 80-11-1-.01(11).

(2) A mortgage loan originator purporting to operate under the temporary authority requirements set forth in 12 U.S.C. § 5117 must indicate "TAO," "temporary authority to operate," or a substantially similar designation next to the signature line on any document, application, or disclosure signed by the mortgage loan originator in connection with any residential mortgage loan application, including but not limited to the negotiation of terms or the offering of a loan.

(3) Unless the following requirements have been satisfied, any mortgage loan originator who qualifies to operate under the temporary authority provisions of 12 U.S.C. § 5117 must submit proof to the Department of enrollment in a class to satisfy the education requirements set forth in O.C.G.A. § 7-1-1004(e) as well as registering to take the test as required by O.C.G.A. § 7-1-1004(f). Such proof shall be submitted to the Department within thirty (30) days of receipt of the mortgage loan originator's application.

Cite as Ga. Comp. R. & Regs. R. 80-11-5-.09
Authority: O.C.G.A. §§ 7-1-1001.1; 7-1-1012.
History. Original Rule entitled "Temporary Authority to Operate" adopted. F. Dec. 20, 2019; eff. Jan. 9, 2020.

Subject 80-11-6. MORTGAGE SERVICING.

Rule 80-11-6-.01. Definitions.

(1) As used in Chapter 80-11-6, the terms that are defined in O.C.G.A. §§ 7-1-4 and 7-1-1000 shall have the identical meaning.

(2) As used in Chapter 80-11-6, the below terms shall be defined as follows unless the term is otherwise defined in a specific rule:

(a) "Complete loss mitigation application" means an application in which a servicer has received all of the information that the servicer requires from a borrower in evaluating applications for loss mitigation options available to the borrower. A servicer shall exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application.

(b) "Notice of error" means any written notice from the borrower that asserts an error and that includes the name of the borrower, information that enables the servicer to identify the borrower's mortgage loan account, and the error the borrower believes has occurred. A notice on a payment coupon or other payment form supplied by the servicer need not be treated by the servicer as a notice of error.

Cite as Ga. Comp. R. & Regs. R. 80-11-6-.01
Authority: O.C.G.A. §§ 7-1-61; 7-1-1012.
History. Original Rule entitled "Definitions" adopted. F. June 29, 2017; eff. July 19, 2017.

Rule 80-11-6-.02. Mortgage Servicing Standards.

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

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

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

(b) Shall not charge fees for:

1. Handling borrower disputes;

2. Facilitating routine borrower collections;

3. Arranging repayment or forbearance plans;

4. Sending borrowers notice of nonpayment;

5. Updating records to reinstate a mortgage loan; and

6. Late payment in excess of the initial late payment fee, as provided by 12 C.F.R. § 1026.36(c)(2).

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

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

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

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

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

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

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

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

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

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

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

2. Conduct a reasonable investigation; and

3. Within 45 days, except where prompter compliance is required by 12 C.F.R. § 1024.35(e)(3) or alternative compliance is provided in 12 C.F.R. § 1024.35(f), provide a borrower with a written notification of:

(i) the correction of error or

(ii) the servicer's determination that no error occurred and the reason for such determination.

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

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

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

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

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

(a) The number of mortgage loans serviced;

(b) Delinquency status of mortgage loans serviced;

(c) The number of mortgage loan modifications; and

(d) The number of foreclosures.

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

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

1. Complete and current schedule of servicing fees;

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

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

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

1. The effective date of the transfer of servicing;

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

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

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

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

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

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

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

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

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

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

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

(7)

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

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

servicer shall either notify the borrower that the loss mitigation application was duplicative or evaluate the loss mitigation application.

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

Cite as Ga. Comp. R. & Regs. R. 80-11-6-.02
Authority: O.C.G.A. §§ 7-1-61; 7-1-1012.
History. Original Rule entitled "Mortgage Servicing Standards" adopted. F. June 29, 2017; eff. July 19, 2017.
Amended: F. June 29, 2018; eff. July 19, 2018.

Rule 80-11-6-.03. Mortgage Servicer Location Requirements and Minimum Retention Periods.

(1) Each servicer must maintain required books, accounts, and records at the principal place of business. Should a servicer wish to maintain such records elsewhere, it must notify the department in writing prior to said books, accounts, and records being maintained in any place other than the designated principal place of business. Such notification shall be submitted to the Department of Banking and Finance, 2990 Brandywine Road, Suite 200, Atlanta, Georgia 30341.

(2) Books, accounts, and records maintained at a location other than the principal place of business shall be made available to the department within five (5) business days from the date of written request by the department and at a reasonable and convenient location acceptable to the department.

(3) "Principal place of business" means the location designated as the main office by the licensee or registrant in the initial written application for licensure or registration or as amended thereafter in writing to the department.

(4) All books, accounts, and records required by Rule 80-11-6-.04(1)(a) must be maintained in accordance with Rule 80-11-2-.01(4). All books, accounts, and records required by Rule 80-11-6-.04(1)(b) must be maintained for a period of five (5) years after the date a mortgage loan is discharged or servicing rights for a mortgage loan are transferred by the servicer to a transferee servicer or otherwise terminated.

(5) Any books, accounts or records required to be maintained by Rule Chapter 80-11-6 of the Rules of the Department of Banking and Finance may be maintained in their original form, on microfiche or other electronic media, provided:

(a) that the records shall be made available to the department as provided in this Rule; and

(b) at the request of the department, the records shall be printed on paper for inspection or examination.

(6)

(a) The penalty for maintaining books, accounts, and records at a location other than the principal place of business without written notification to the department may be suspension of the license or registration, other appropriate administrative action or fine.

(b) The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the department) shall be revocation of the license or registration.

Cite as Ga. Comp. R. & Regs. R. 80-11-6-.03
Authority: O.C.G.A. §§ 7-1-61; 7-1-1012.
History. Original Rule entitled "Mortgage Servicer Location Requirements and Minimum Retention Periods" adopted. F. June 29, 2017; eff. July 19, 2017.

Rule 80-11-6-.04. Minimum Requirements for Books and Records.

(1) Each servicer must maintain the following books, accounts, and records:

(a) Copies of all documents required by Rule Chapter 80-11-3;

(b) Servicer file for each mortgage loan that it services. The servicer file must contain the following:

1. the name of each borrower;

2. copies of all contracts, deeds, assignments, letters, notes, and memos regarding the borrower;

3. documents related to assignment, sale, or transfer of mortgage loan servicing;

4. copies of all disclosures or notices provided to the borrower by the servicer as required by law, including Rules 80-11-1-.01 and 80-11-6-.02;

5. copies of all written requests for information received from the borrower and the servicer's response to such requests as required by law;

6. full payment history that identifies and itemizes payments made by or on behalf of the borrower, all fees and charges assessed under the mortgage loan transaction, and escrow account activity;

7. a copy of any bankruptcy plan approved in a proceeding filed by the borrower or a co-owner of the property subject to the mortgage loan;

8. a communications log, which documents all verbal communication with the borrower or the borrower's representative;

9. a record of all efforts by the servicer to comply with the duties required under Rule 80-11-6-.02(2)(d), including all information utilized in the servicer's determination regarding loss mitigation proposals offered to the borrower;

10. a copy of all notices sent to the borrower related to any foreclosure proceeding filed against the encumbered property; and

11. records regarding the final disposition of the mortgage loan including a copy of any collateral release document, records of servicing transfers, charge-off information, or REO disposition.

(c) A list of all servicer's violations, if any, of the mortgage servicer standards set forth in Rule 80-11-6-.02.

(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.

Cite as Ga. Comp. R. & Regs. R. 80-11-6-.04
Authority: O.C.G.A. §§ 7-1-61; 7-1-1012.
History. Original Rule entitled "Minimum Requirements for Books and Records" adopted. F. June 29, 2017; eff. July 19, 2017.

Chapter 80-12. MERCHANT ACQUIRER LIMITED PURPOSE BANKS.

Subject 80-12-1. Definitions.

Rule 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. § 7-9-1etseq.

(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.

Cite as Ga. Comp. R. & Regs. R. 80-12-1-.01
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Definitions" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.
Amended: F. June 15, 2015; eff. July 5, 2015.

Subject 80-12-2. APPLICATION PROCESS.

Rule 80-12-2-.01. Eligibility.

A corporation, organized solely under the laws of Georgia, that performs or seeks to perform merchant acquiring activities or settlement activities may apply to the Department for an MALPB charter.

Cite as Ga. Comp. R. & Regs. R. 80-12-2-.01
Authority: O.C.G.A. §§ 7-9-3, 7-9-8, 7-9-13.
History. Original Rule entitled "Eligibility" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-2-.02. Applications Manual and Statement of Policies.

Specific requirements for documents, meetings with the Department and publication of notices are contained in the Applications Manual and the Statement of Policies of the Department. The Department can amend its Applications Manual and Statement of Polices at any time. In the event the Department amends either its Applications Manual or Statement of Policies while an application is pending, the applicant will amend its application in order to submit any additional information or documentation that the amendment may require.

Cite as Ga. Comp. R. & Regs. R. 80-12-2-.02
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Applications Manual and Statement of Policies" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-2-.03. MALPB Applications.

(1) Prior to submitting an MALPB charter application, an organizing group must schedule an initial meeting with the Department to discuss the charter proposal and the chartering process, at which time an application form and package will be distributed.

(2) The requirements for an MALPB charter application submission and documentation include, but are not limited to, the following items:

  (a) A completed application form and package for chartering an MALPB;

  (b) The applicant's articles of incorporation that satisfies the requirements of O.C.G.A. § 7-9-5. The suffix "MALPB" must follow the legal name of the MALPB applicant and, in the event a charter is issued, the suffix "MALPB" must be at all times utilized in the legal name of the MALPB;

  (c) After receipt of the completed application form and package, any additional information requested by the Department in order to fully evaluate the application for a charter;

  (d) A certificate from the Secretary of State showing that the proposed name of the applicant has been reserved pursuant to O.C.G.A. § 7-1-131. The name can be reserved by filing with the Department a form application to reserve a specified

name. If the Department concludes that the use of a proposed name complies with O.C.G.A. § 7-1-130, is consistent with the purposes of the Act, and is distinguishable upon the records of the Secretary of State from the name of any other corporation, it shall approve the name and notify the Secretary of State to issue such name reservation;

(e) All applicable fees established by the Department in Rule 80-12-12-.02 or set forth in the Applications Manual and the Statement of Policies of the Department to defray the expense of the investigation of the application. Such fees shall be remitted to the Department via certified check contemporaneously with the receipt of the application; and

(f) A copy of the application for Federal Deposit Insurance, if the applicant has filed such an application.

Cite as Ga. Comp. R. & Regs. R. 80-12-2-.03
Authority: O.C.G.A. §§ 7-9-3, 7-9-4, 7-9-6, 7-9-12, 7-9-13.
History. Original Rule entitled "MALPB Applications" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-2-.04. Receipt of MALPB Charter Application.

(1) An MALPB charter application will not be deemed to have been received by the Department until such time as all required fees have been paid, all portions of the application form and package have been completed and filed to the satisfaction of the Department, and all required documents have been provided.

(2) If the Department determines that the application form and package have not been satisfactorily completed, then the Department shall provide the applicant with notice of this fact. If the Department notifies the applicant of any deficiencies in the application or requests any additional information to evaluate the application, the applicant must complete the application by curing the deficiencies or providing the requested information within thirty (30) days after receipt of such notification from the Department. If the applicant fails to address and/or cure the deficiencies or provide the requested information to the Department within the thirty (30) day period, the application shall be denied. However, prior to the expiration of the thirty (30) day period, an applicant can make a written request for an extension of time to cure the deficiencies or provide the information requested by the Department and it shall be in the Commissioner's sole discretion to approve, conditionally or otherwise, or deny the request for an extension of time.

(3) In order to properly evaluate an MALPB charter application, the Department may provide an applicant with multiple notices of deficiencies in the application or multiple requests for additional information.

(4) After the MALPB charter applicant pays all of the required fees, satisfactorily completes and files the application form and package, and provides all required documents, the Department will issue an official acceptance letter of the application. The issuance of the official acceptance letter shall not be construed as evidence that the application will be approved.

(5) Within ninety (90) days after mailing the official acceptance letter, the Department will approve, conditionally or otherwise, or disapprove the MALPB charter application.

Cite as Ga. Comp. R. & Regs. R. 80-12-2-.04
Authority: O.C.G.A. §§ 7-9-3, 7-9-4, 7-9-6, 7-9-7, 7-9-13.
History. Original Rule entitled "Receipt of MALPB Charter Application" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-2-.05. Certification of Articles of Incorporation.

(1) Upon receipt of all required fees, an application form and package, and the articles of incorporation, the Department will certify one copy of the articles of incorporation and return it to the applicant in order for the applicant to comply with the provisions of O.C.G.A. § 7-9-5(c). The issuance of the certified articles of incorporation to the applicant shall not be construed as evidence that the application form and package has been completed to the satisfaction of the Department or that all required documentation has been provided to the Department to aid in its review of the MALPB charter application.

(2) The applicant shall provide the Department with an affidavit executed by the duly authorized agent or publisher of a newspaper attesting that the articles of incorporation or a summary statement was published once a week for two (2) consecutive weeks in the newspaper which is the official organ of the county where the applicant's main office is located.

Cite as Ga. Comp. R. & Regs. R. 80-12-2-.05
Authority: O.C.G.A. §§ 7-9-3, 7-9-5, 7-9-8, 7-9-13.
History. Original Rule entitled "Certification of Articles of Incorporation" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013

Rule 80-12-2-.06. Notification of Filing.

In addition to publishing the notice required by O.C.G.A. § 7-9-5(c) and Rule 80-12-2-.05, the applicant shall cause a notice, which notice must be approved by the Department, to be published informing any interested parties of the opportunity to provide written comments, whether favorable or unfavorable, to the Department regarding the MALPB charter application. The notice shall be published once a week for two (2) consecutive weeks in the newspaper which is the official organ of the county where the applicant's main office will be located as well as the

newspaper of general circulation in the county where the applicant's main office will be located. The applicant shall provide the Department with an affidavit executed by the duly authorized agent or publisher of a newspaper attesting that the notice required by this rule was published in the newspapers once a week for two (2) consecutive weeks.

Cite as Ga. Comp. R. & Regs. R. 80-12-2-.06
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Notification of Filing" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-2-.07. Public Comments.

(1) Upon issuance of the official acceptance letter required by Rule 80-12-2-.04, the Department shall publish on its website that an MALPB charter application has been received and that the Department will accept comments on the application. Any party desiring to comment upon an MALPB charter application must submit such comment to the Department in writing within thirty (30) days of the Department posting notice of the MALPB charter application.

(2) All comments filed on a timely basis shall be reviewed and considered by the Department in evaluating the MALPB charter application. If the Commissioner in his discretion determines that additional information is required in order to fully evaluate the comment, the Commissioner can request additional written information from the party providing the comment, require that the applicant provide a written response to the comment, or request that either the party providing the comment, the applicant, or both provide an oral presentation addressing the comment. Nothing herein shall be construed as providing any party with the right to make an oral presentation to the Commissioner.

Cite as Ga. Comp. R. & Regs. R. 80-12-2-.07
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Public Comments" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-2-.08. General Standards for Consideration of Applications.

In evaluating the merits of an MALPB charter application, the Department shall consider, among other items: the financial history and condition of the applicant; adequacy of applicant capital, including, but not limited to, leverage capital ratio, PV capital, risk capital, and statutory capital; the capital maintenance guaranty; future earnings prospects for the applicant; character, capacity and ability of applicant management and principal shareholders; consistency of corporate powers; the existence and implementation of sound merchant approval processes and systems in order to closely monitor merchant activities; adequate number of knowledgeable staff, appropriate technology and information security systems, comprehensive and effective operating procedures, and effective contingency plans; sound internal control environment; formal reconciliation processes; adequacy of insurance coverage and letters of credit; robust risk management systems; adequate corporate governance structure; a structured compliance

management program; whether there are sizable off-balance sheet or funding risks, chargeback risks, fraud risks, operational risks, technology or information security risks, compliance risks, or significant risks from concentrations of credit or nontraditional activities; the financial history and condition of the holding company; the adequacy of the holding company's capital; future earnings prospects for the holding company; character, capacity and ability of holding company management and principal shareholders; the activities of the holding company and MALPB affiliates; and the applicant's proposed relationship with eligible organizations and support organizations. Additional information regarding the Department's evaluations may be set forth in greater detail in the Department's Applications Manual or Statement of Policies or in the instructions accompanying the application.

Cite as Ga. Comp. R. & Regs. R. 80-12-2-.08
Authority: O.C.G.A. §§ 7-9-3, 7-9-7, 7-9-13.
History. Original Rule entitled "General Standards for Consideration of Applications" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 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 it needs to retain a third-party expert, to assist 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. 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 third-party expert agreement 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.

Cite as Ga. Comp. R. & Regs. R. 80-12-2-.09
Authority: O.C.G.A. §§ 7-1-66, 7-9-3, 7-9-13.
History. Original Rule entitled "Special Examiners Assisting in Application Process" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.
Amended: F. June 15, 2015; eff. July 5, 2015.
Amended: F. Oct. 27, 2015; eff. Nov. 16, 2015.

Rule 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 1681 a(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 1681 a(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.

Cite as Ga. Comp. R. & Regs. R. 80-12-2-.10
Authority: Authority O.C.G.A. §§ 7-9-3, 7-9-6, 7-9-7, 7-9-13.
History. Original Rule entitled "Approval of Executive Officers, Directors, Principal Shareholders, and Control Persons of MALPB Applicant and Proposed Holding Company of Applicant" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.
Amended: F. June 15, 2015; eff. July 5, 2015.

Rule 80-12-2-.11. Approval or Denial of Application.

(1) The determination to grant, conditionally or otherwise, or deny any application shall be in the sole discretion of the Department and such determination shall be a final action of the Department. The Department may impose conditions on any approval, including, but not limited to, conditions designed to address competitive, financial, managerial, safety and soundness, compliance and other concerns. Any conditions related to the approval of an application by the Department may be imposed on the MALPB, the holding company,

and the MALPB's affiliates. If the Department disapproves an application for an MALPB charter, the Department shall notify the applicant of its denial and state generally the unfavorable factors influencing its decision. In the event the Department denies an application for an MALPB charter, the denial shall be without prejudice to the applicant to submit a new application at any time following the denial.

(2) The Department may nullify a decision on any application if: the Department becomes aware of any material misrepresentation or omission by the applicant; the Department becomes aware that circumstances are substantially different from those upon which the decision was based; the decision is contrary to law, regulation, or Department policy; or the decision was granted due to clerical or administrative error or was based on a material mistake of law or fact.

Cite as Ga. Comp. R. & Regs. R. 80-12-2-.11
Authority: O.C.G.A. §§ 7-9-3, 7-9-7, 7-9-13.
History. Original Rule entitled "Approval or Denial of Application" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Subject 80-12-3. IN ORGANIZATION PERIOD.

Rule 80-12-3-.01. Requirement to Begin Business.

If an application is approved and a charter is issued, then, within one (1) year after the issuance of the charter, the MALPB must be operating in this State with the number of resident employees required by Rule 80-12-4-.04 that are devoted to performing merchant acquiring activities for the MALPB. If the MALPB fails to begin operations within one (1) year after the date of issuance of the charter, the MALPB charter shall expire and a new application will be required for the issuance of a new charter. Prior to the expiration of the one (1) year period, the MALPB can make a written request for an extension of time to begin operations and it shall be in the Commissioner's sole discretion to approve or deny the request for an extension of time. However, notwithstanding the above, under no circumstances will the Department grant an extension of time if the MALPB does not have the minimum number of resident employees required by Rule 80-12-4-.04 within one (1) year after the issuance of the charter.

Cite as Ga. Comp. R. & Regs. R. 80-12-3-.01
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Requirement to Begin Business" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 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.

Cite as Ga. Comp. R. & Regs. R. 80-12-3-.02
Authority: O.C.G.A. §§ 7-9-3, 7-9-9, 7-9-13.
History. Original Rule entitled "Notification Requirements Prior to Operation" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.
Amended: F. June 15, 2015; eff. July 5, 2015.

Subject 80-12-4. OPERATIONS OF MALPB.

Rule 80-12-4-.01. Scope of Merchant Acquiring Activities.

(1) Unless otherwise limited by the terms of a conditional approval, an MALPB is authorized to carry out the following merchant acquiring functions: obtaining and maintaining membership in one or more payment card networks; signing up and underwriting merchants to accept payment card network branded payment cards; providing the means to authorize valid card transactions at client merchant locations; facilitating the clearing and settlement of the transactions through a payment card network; engaging in settlement activities which is the processing of payment card transactions to send to a payment card network for processing, to make payments to a merchant and, ultimately, for card holder billing; providing access to one or more payment card networks to the MALPB's affiliates, customers, or customers of affiliates; sponsoring the participation of the MALPB affiliates, customers, or customers of its affiliates in one or more payment card networks; statement generation and other information reporting for client merchants; training and technical assistance for merchants; terminal support; encryption servicing; authorization and capture; and dispute processing.

(2) If an MALPB seeks to engage in incidental activities, then the MALPB must seek authorization from the Department to engage in the incidental activity. Such request for authorization shall set out the incidental activity desired, the reason for it, the safeguards or protections which will be employed to ensure the continuing sound operation of the MALPB, the need or convenience to customers which this activity would serve, any legal justification required under state law, and the financial ability of the MALPB to support

the incidental activity. In order to evaluate the requested authorization, the Department may request additional information to aid in its review of the overall economic and managerial condition of the MALPB, the complexity and risks involved in the proposed activity, the factors set out in this Paragraph, and any other information deemed pertinent to the request. The Department shall request additional information, approve, conditionally or otherwise, or deny a request for authorization to engage in incidental activities within sixty (60) days after receipt of the request. In the event the Department does not take any of the above actions within sixty (60) days after receipt, then the request will be deemed approved. The timeframe for the Department to act on a request by an MALPB applicant to engage in incidental activities shall be when the Department is required to act on the application as set forth in Rule 80-12-2-.04.

(3) An MALPB shall only engage in merchant acquiring activities originating in the United States and authorized by this rule with a merchant having a physical location in the United States. Similarly, for transactions over the internet or other similar electronic medium, an MALPB shall only engage in merchant acquiring activities authorized by this rule with a merchant who has a fixed place of business located in the United States where the economic activity is completed. For purposes of this rule, United States means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, America Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(4) An MALPB is precluded from performing functions not expressly authorized by rule or by the Department, which includes, but is not limited to: the business of banking; deposit taking other than as expressly authorized by O.C.G.A. § 7-9-12; money transmission as defined in O.C.G.A. § 7-1-680; acting as a fiduciary as defined in O.C.G.A. § 7-1-242(b); sponsoring ATMs or cash dispensing machines; issuing payment card network branded payment cards; merchant receivables factoring; merchant receivables financing; advance funding activities; and soliciting, processing, or making loans pursuant to payment cards or otherwise.

Cite as Ga. Comp. R. & Regs. R. 80-12-4-.01
Authority: O.C.G.A. §§ 7-9-2, 7-9-3, 7-9-13.
History. Original Rule entitled "Scope of Merchant Acquiring Activities" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-4-.02. Self-Acquiring Activities.

(1) An MALPB is prohibited from engaging in self-acquiring activities as defined by O.C.G.A. § 7-9-2. An MALPB performing authorized merchant acquiring activities shall not be deemed to be engaged in self-acquiring activities merely because it imposes fees or other charges to merchants related solely to the performance of authorized merchant acquiring activities.

(2) No merchant shall exercise control over an MALPB, the holding company of an MALPB, or the affiliate of an MALPB. For purposes of this rule, a merchant has control over an MALPB, an MALPB holding company, or an affiliate of an MALPB if the Department determines: the merchant directly or indirectly or acting through one (1) or more other persons owns, controls, or has the power to vote five (5) percent or more of any class of voting securities of the MALPB, holding company, or affiliate; the merchant controls in any manner the election of a majority of the directors or trustees of the MALPB, holding company, or affiliate; or the merchant exercises a controlling influence over the management or policies of the MALPB, holding company, or affiliate.

Cite as Ga. Comp. R. & Regs. R. 80-12-4-.02
Authority: O.C.G.A. §§ 7-9-2, 7-9-3, 7-9-12, 7-9-13.
History. Original Rule entitled "Self-Acquiring Activities" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-4-.03. Deposits.

The MALPB may only accept or hold deposits permitted under O.C.G.A. § 7-9-12 from a corporation that owns the majority of the shares of the MALPB and the corporation will be precluded from withdrawing its deposits by check or similar means for payment to third parties or to others. The MALPB can only take authorized deposits at its main office. Notwithstanding any provision in the Department's rules to the contrary, the records regarding the corporation's deposit account shall be maintained at the MALPB's main office.

Cite as Ga. Comp. R. & Regs. R. 80-12-4-.03
Authority: O.C.G.A. §§ 7-9-3, 7-9-12, 7-9-13.
History. Original Rule entitled "Deposits" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-4-.04. Minimum Number of MALPB Employees that Reside in Georgia.

(1) Within one year of the Department approving a charter, the MALPB shall have, and must continuously employ, at least fifty (50) employees that reside in this State and are devoted to performing merchant acquiring activities for the MALPB. The MALPB must immediately notify the Department in writing when it has satisfied this requirement. The MALPB must also immediately notify the Department in writing if it has failed to employ at least fifty (50) employees that reside in this State and are devoted to performing merchant acquiring activities for the MALPB within one year of obtaining the charter or if the number of individuals that reside in this State and are devoted to performing merchant acquiring activities for the MALPB falls below fifty (50) employees at any time thereafter.

(2) If an MALPB contracts with an eligible organization that is an affiliate of the MALPB, then the employees of the eligible organization or its parent, affiliates, or subsidiaries that

reside in this State and are devoted to performing merchant acquiring activities shall be considered employees of the MALPB for purposes of determining compliance with this rule.

(3) If an MALPB contracts with an eligible organization that is not an affiliate of the MALPB, the Commissioner has the discretion to determine the minimum number of employees that must continuously reside in this State in order to assure the continued and substantive presence of the MALPB in this State for the purpose of conducting its corporate affairs and operations. However, under no circumstances, shall the combined number of employees of the eligible organization and the MALPB that reside in the State and are devoted to performing merchant acquiring be less than fifty (50) employees. Further, under no circumstances, shall the eligible organization, its parent, affiliates, or subsidiaries, employ less than two hundred fifty (250) individuals residing in Georgia who are directly or indirectly engaged in merchant acquiring or settlement activities.

Cite as Ga. Comp. R. & Regs. R. 80-12-4-.04
Authority: O.C.G.A. §§ 7-9-2, 7-9-3, 7-9-4, 7-9-13.
History. Original Rule entitled "Minimum Number of MALPB Employees that Reside in Georgia" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 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.

Cite as Ga. Comp. R. & Regs. R. 80-12-4-.05
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Restrictions on Employment and Ownership" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.
Amended: F. June 15, 2015; eff. July 5, 2015.

Rule 80-12-4-.06. Advertising Limitations.

Any advertisement of an MALPB that is made, published, disseminated or circulated, shall not suggest that it can accept deposits from the general public or otherwise attract depositors from the general public. All advertisements, whether print or electronic, shall contain the suffix "MALPB" following the name of the MALPB. The MALPB must maintain a record of its advertisements for examination by the Department including, but not limited to, samples of all of its advertisements.

Cite as Ga. Comp. R. & Regs. R. 80-12-4-.06
Authority: O.C.G.A. §§ 7-9-3, 7-9-12, 7-9-13.
History. Original Rule entitled "Advertising Limitations" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-4-.07. Compliance with Other Requirements.

(1) An MALPB shall comply with: the Unlawful Internet Gambling Enforcement Act of 2006, 31 U.S.C. § 5361et seq., and the related rules and regulations found at 12 CFR Part

233 and 31 CFR Part 132; and all international, federal, and state laws, rules, and regulations that are applicable to the MALPB.

(2) Solely for purposes of the following laws, an MALPB shall be deemed to be a "financial institution" for purposes of complying with: information security requirements set forth in 12 CFR Part 364, including, but not limited to, Appendix B (Interagency Guidelines Establishing Information Security Standards) and Supplement A to Appendix B (Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice); the rules and regulations in 31 CFR Chapter X, including, but not limited to, customer identification standards set forth at 31 U.S.C. § 5318(l) and 31 CFR § 1020.220, suspicious transaction reporting as set forth in 31 U.S.C. § 5318(g) and 31 CFR § 1020.320, and anti-money laundering requirements set forth at 31 U.S.C. § 5318(h) and 31 CFR § 1020.210; and the regulations set forth in 31 CFR Chapter V by the Office of Foreign Asset Control.

(3) An MALPB filing a suspicious activity report ("SAR") with a federal authority must provide a copy of such report to the Department at the same time the SAR is filed.

(4) An MALPB shall comply with the Payment Card Industry Data Security Standard ("PCI DSS") and such other data security standards recognized by the payment card networks in which the MALPB participates.

Cite as Ga. Comp. R. & Regs. R. 80-12-4-.07
Authority: Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Compliance with Other Requirements" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Subject 80-12-5. BOOKS AND RECORDS.

Rule 80-12-5-.01. General Requirements for Accounting Procedures.

An MALPB is required to maintain its books of account in accordance with generally accepted accounting principles, including, but not limited to, a complete and accurate account of: all of its assets, whether in its name or the name of another person or entity; all of its liabilities, its borrowings, and any security interests in its assets; and all of its income, expenses, capital gains, and losses.

Cite as Ga. Comp. R. & Regs. R. 80-12-5-.01
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "General Requirements for Accounting Procedures" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-5-.02. Independent Audits.

(1) Every MALPB shall have an audit of its books and records performed at least annually by independent public accountants in accordance with generally accepted auditing standards. The audit must be of sufficient scope to enable the auditor to render an opinion on the financial statements of the MALPB; provided, however, that, upon request by the MALPB, the Department may approve in writing the use of a consolidated holding company audit. The audit shall include a review of the MALPB's internal controls and such other tests and reviews of the MALPB records as deemed appropriate by the independent auditor, including, but not limited to, adequate testing and review of the MALPB's information technology activities as well as operations and risk management process reviews. The information technology audit shall include, but not be limited to, enhanced perimeter testing in the form of quarterly vulnerability scans of the entire enterprise and an annual penetration test of all external-facing systems, not just those utilized in the performance of merchant acquiring activities. The operations and risk management process reviews shall be in conformity with SSAE-16. The extent of audit work should be clearly defined in engagement letters. Such letters should discuss the scope of the audit, the objectives, resource requirements, audit timeframe and resulting reports. The engagement letter shall also provide that the accountants must make their audit work papers, policies, and procedures available to the Department upon its request.

(2) Reports of such audits shall be filed with the Department within thirty (30) days after receipt by the MALPB. The reports shall be accompanied by the engagement letter and, if applicable, the letter to management detailing any reportable conditions discovered during the audit engagement.

Cite as Ga. Comp. R. & Regs. R. 80-12-5-.02
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Independent Audits" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013

Rule 80-12-5-.03. Director Financial Statements.

The chief executive officer of each MALPB shall maintain on file a financial statement of each director of the MALPB on forms prescribed by the Department. Such financial statement shall be revised annually, but in no event shall the statement on file be more than eighteen (18) months old. At the discretion of the Board of Directors of the MALPB, such financial statements may be maintained in sealed envelopes available for inspection only by the Department.

Cite as Ga. Comp. R. & Regs. R. 80-12-5-.03
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Director Financial Statements" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-5-.04. Reports.

(1) Pursuant to O.C.G.A. § 7-1-68, the Department may require reports on the condition of or any particular facts concerning an MALPB at any time the Department deems it necessary or advisable. Each such report shall be on a form prescribed by the Department, for the timeframe required by the Department, attested to as provided on the form, and due on the date prescribed by the Department.

(2) Without limiting the foregoing, each MALPB shall submit standardized regulatory reports ("SRRs"), which may include both public and confidential supervisory information, on approved forms with instructions provided by the Department. These SRRs will include a monthly activity report ("MAR") due within seven (7) days of month-end, a quarterly financial report ("QFR") due within thirty (30) days of quarter-end, and an annual attestation report ("AAR") due within forty-five (45) days of year-end.

Cite as Ga. Comp. R. & Regs. R. 80-12-5-.04
Authority: O.C.G.A. §§ 7-1-68, 7-9-3, 7-9-13.
History. Original Rule entitled "Reports" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-5-.05. Minimum Requirements for Books and Records.

An MALPB must maintain the following books and records:

(a) All records required to be maintained by federal, state or, if applicable, international law, rules, or regulations, including, but not limited to, the rules enacted by the Department to carry out the provisions of the Act;

(b) All records required to be maintained by the applicable payment card networks;

(c) All contracts related to the MALPB's provision of merchant acquiring activities, including, but not limited to, contracts with payment card networks, merchants, eligible organizations, and support organizations;

(d) All records related to compliance with payment card network data security standards, such as Payment Card Industry Data Security Standard ("PCI DSS"), including, but not limited to, records indicating data security deficiencies by the MALPB, eligible organizations, support organizations, and merchants;

(e) All records related to the clearing and settlement of transactions through the payment card networks including, but not limited to, remittances to payment card networks;

(f) All reports or other compilation of data provided to payment card networks and/or merchants related to transactions;

(g) All records related to chargebacks, and business format change;

(h) Daily account of merchant funds broken down by merchant;

(i) Copies of all trust or custodial account agreements;

(j) Records of all complaints and records of disposition;

(k) Copies of examination reports prepared by any agency, division, or instrumentality of the United States, the State of Georgia or any other state, or any foreign country which report relates to the merchant acquiring activities of the MALPB;

(l) Copies of reports required to be prepared or submitted by the MALPB to any agency, division, or instrumentality of the United States, the State of Georgia or any other state, or any foreign country which report relates to the merchant acquiring activities of the MALPB;

(m) Copies of documents related to any adverse action taken by any agency, division, or instrumentality of the United States, the State of Georgia or any other state, or any foreign country, including, but not limited to, a revocation or suspension of a license or charter or the imposition of a fine or civil monetary penalties;

(n) Copies of all payroll records, including, but not limited to, federal and state withholding tax forms such as W-2s filed with the Internal Revenue Service by the MALPB on behalf of individuals employed by the MALPB;

(o) Employee files for all employees which shall include a Georgia Crime Information Center criminal background check and National Crime Information Center background check;

(p) Subject to the limitations in O.C.G.A. § 7-9-12, a deposit record which contains a continuing itemized record of all activity in the deposit account;

(q) An income and expense register and all of the supporting documentation related to income and expenses;

(r) A daily statement for each business day properly supported by a general ledger showing daily activity to each asset, liability, and capital account;

(s) Minutes from all meetings of the MALPB's Board of Directors and the committees of the Board of Directors;

(t) A stockholder or shareholder list;

(u) An investment register and investment safekeeping report; and

(v) Information on transactions with holding companies, affiliates, and subsidiaries with respect to the terms and circumstances of such transactions and the basis of fees or other charges in order to determine compliance with Rules 80-12-9-.01 and 80-12-9-.02.

Cite as Ga. Comp. R. & Regs. R. 80-12-5-.05
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

History. Original Rule entitled "Minimum Requirements for Books and Records" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-5-.06. Location and Access Requirements for Books and Records.

(1) An MALPB must maintain required books and records as set forth in Rule 80-12-5-.05 at its main office. In the event an MALPB wishes to maintain such records elsewhere in the State, it must notify the Department in writing prior to maintaining the books and records at any place other than its main office. Any books and records that are not maintained at the MALPB's main office shall be made available to the Department within five (5) business days after the date of request by the Department and at a reasonable and convenient location acceptable to the Department.

(2) An MALPB shall provide the Department with unlimited access to all of its books and records. In the event any books or records in the MALPB's possession were obtained from another supervisory or regulatory agency, law enforcement, or payment card network and such entity mandates that the books or records not be disclosed to the Department, the MALPB shall make every reasonable effort with the supervisory or regulatory agency, law enforcement, or payment card network to obtain authorization for the books or records to be shared with the Department. At the Department's request, an MALPB shall provide documentation of the efforts it has taken to obtain authorization from the appropriate entity to authorize sharing of the applicable books or records with the Department.

Cite as Ga. Comp. R. & Regs. R. 80-12-5-.06
Authority: Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Location and Access Requirements for Books and Records" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-5-.07. Minimum Records Retention Period.

Any records of the MALPB that fall within the scope of Rule 80-10-1-.01 shall be retained in accordance with the retention period set forth in the Rule. All other records required to be maintained by the MALPB pursuant to federal, state, or, if applicable, international law, rules, or regulations, including, but not limited to, Rules 80-12-5-.04 and 80-12-5-.05, shall be maintained for at least five (5) years.

Cite as Ga. Comp. R. & Regs. R. 80-12-5-.07
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Minimum Records Retention Period" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013

Rule 80-12-5-.08. Public Access to Records.

(1) The following records in the Department's possession shall be subject to inspection by members of the public: the portion of the SSRs, if any, that have been expressly designated as public on the Department's approved form; final orders; and the audited financial statement with the auditor's opinion from the annual audit prepared in conformity with Rule 80-12-5-.02.

(2) Upon receipt of a written request by an MALPB, the Department is authorized to disclose any records or information provided to it by the MALPB or by another entity on behalf of the MALPB with any entity related to the payment card network notwithstanding the fact that the records or information are otherwise confidential pursuant to Georgia law or the rules of the Department. These authorized disclosures of information, where appropriate, shall be made only if safeguards are in place that are designed to prevent further dissemination of confidential records or information. The Department retains complete discretion to grant or deny a request for the production of records and documents in whole or in part and nothing in this Rule shall be deemed to require that the Department produce any records or information.

(3) Any examination reports, reports of investigation or other information in the Department's possession that were obtained from another supervisory or regulatory agency, law enforcement, or the payment card networks shall be treated as the property of the provider. Requests for such information should be made to the provider directly.

Cite as Ga. Comp. R. & Regs. R. 80-12-5-.08
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Public Access to Records" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Subject 80-12-6. MALPB LOCATIONS AND EXAMINATIONS.

Rule 80-12-6-.01. Main Office.

The location of the MALPB's main office shall be authorized in writing by the Department. In the event the MALPB wishes to relocate its main office, the MALPB shall submit a written request to the Department seeking approval of the proposed relocation. The Department shall request additional information, approve, conditionally or otherwise, or reject the relocation request within thirty (30) days after receipt of the request. In the event the Department does not take any of the above actions within thirty (30) days after receipt, then the request will be deemed approved.

Cite as Ga. Comp. R. & Regs. R. 80-12-6-.01
Authority: O.C.G.A. §§ 7-9-2, 7-9-12, 7-9-13.
History. Original Rule entitled "Main Office" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-6-.02. Other Physical Locations.

If the MALPB wishes to establish any additional physical locations outside of its main office, the MALPB shall submit a written request to the Department seeking approval of the proposed location. The written request must detail the MALPB's rationale for seeking to have an additional location and establish that the proposed location is consistent with the Act, the rules promulgated thereunder, and any other applicable law. The Department shall request additional information, approve, conditionally or otherwise, or deny the request to open an additional location within thirty (30) days after the receipt of the request. In the event the Department does not take any of the above actions within thirty (30) days after receipt, then the request will be deemed approved.

Cite as Ga. Comp. R. & Regs. R. 80-12-6-.02
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Other Physical Locations" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 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. 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.

Cite as Ga. Comp. R. & Regs. R. 80-12-6-.03
Authority: O.C.G.A. §§ 7-1-64, 7-1-66, 7-9-3, 7-9-13.
History. Original Rule entitled "Examinations and Investigations" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.
Amended: F. June 15, 2015; eff. July 5, 2015.
Amended: F. Oct. 27, 2015; eff. Nov. 16, 2015.

Rule 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 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.

Cite as Ga. Comp. R. & Regs. R. 80-12-6-.04
Authority: O.C.G.A. §§ 7-1-66, 7-9-3, 7-9-13.
History. Original Rule entitled "Third-Party Expert Agreement" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.
Amended: F. June 15, 2015; eff. July 5, 2015.
Amended: F. Oct. 27, 2015; eff. Nov. 16, 2015.

Subject 80-12-7. SOLVENCY AND SAFEGUARDS.

Rule 80-12-7-.01. Minimum Capital Requirements.

(1) MALPBs must continuously maintain at least the minimum leverage capital ratio, PV capital, risk capital, and statutory capital requirements set forth in this rule. The capital standards in this part are the minimum acceptable for an MALPB whose overall financial condition is fundamentally sound, which is well-managed and which has no material or significant operational or financial weaknesses. Thus, the Department is not precluded from requiring an MALPB to maintain a higher leverage capital ratio, PV capital, risk capital, or statutory capital level based on the MALPB's particular risk profile. The Department will evaluate the factors set forth in Rule 80-12-2-.08 in analyzing the MALPB's capital adequacy and may determine that the minimum leverage capital ratio, PV capital, risk capital, or statutory capital for that MALPB is greater than the minimum standards stated in this Rule. These same criteria will apply to any MALPB seeking authorization from the Department to engage in any activity if the Department believes the adequacy of the MALPB's capital structure is relevant to the requested authorization.

(2) The minimum leverage capital ratio requirement for an MALPB shall not be less than ten (10) percent.

(3) The minimum PV capital requirement for an MALPB shall not be less than:

(a) 5.00 percent of the tier of PV up to $10 million, plus

(b) 3.00 percent of the tier of PV above $10 million up to $25 million, plus

(c) 1.50 percent of the tier of PV above $25 million up to $100 million, plus

(d) 0.75 percent of the tier of PV above $100 million up to $250 million, plus

(e) 0.25 percent of the tier of PV above $250 million up to $1 billion, plus

(f) 0.15 percent of the tier of PV above $1 billion up to $5 billion, plus

(g) 0.08 percent of the tier of PV above $5 billion up to $20 billion, plus

(h) 0.05 percent of the tier of PV above $20 billion.

(4) The minimum risk capital requirement for an MALPB shall not be less than the greater of the aggregate dollar volume of chargebacks for the previous six (6) months or the forecast dollar volume of chargebacks for the next six (6) months.

(5) The Department's MALPB charter approval will include a requirement to have and maintain minimum statutory capital, which in no event shall be less than $3 million.

(6) An MALPB with less than the minimum leverage capital ratio, PV capital, risk capital, or statutory capital requirement:

(a) Is operating with inadequate capital and, therefore, has inadequate financial resources. Thus, at the discretion of the Department, such MALPB may be deemed to be operating in an unsafe or unsound or unauthorized manner and subject to the Department's enforcement powers, including, but not limited to, those set forth in O.C.G.A. § 7-1-91.

(b) Must file a written capital restoration plan with the Department within thirty (30) days of the date that the MALPB knows or should have known that the MALPB is operating with an inadequate capital structure, unless the Department notifies the MALPB in writing that the plan is to be filed within a different period.

Cite as Ga. Comp. R. & Regs. R. 80-12-7-.01
Authority: O.C.G.A. §§ 7-9-3, 7-9-12, 7-9-13.
History. Original Rule entitled "Minimum Capital Requirements" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-7-.02. Safeguarding Requirements.

(1) All merchant funds shall be deposited immediately by the MALPB and shall remain in an account at a financial institution that is federally insured and authorized to do business in this State until paid over to the individual merchant; provided, however, that nothing herein shall preclude an MALPB from making appropriate deductions for chargebacks, fees, reserves, and other costs related to providing authorized merchant acquiring services owed by the individual merchant prior to remitting the net amount to the individual merchant. At the time of deposit into the account, the funds of the individual merchant in the account shall be deemed to be the property of the individual merchant. The MALPB shall maintain in good faith and in the ordinary course of business records with respect to the account that shall identify individual merchants in order that the total amount held in the account for each individual merchant can be readily ascertained.

(2) The agreement and related records for the account required to be maintained by Paragraph 1 of this Rule shall expressly provide that the account is maintained for the benefit of the MALPB's individual merchants.

(3) An MALPB and its officers shall have a fiduciary duty to preserve and account for proceeds ultimately payable to a merchant and shall be liable for all such proceeds.

(4) An MALPB shall not pledge or otherwise grant a security interest in funds in its possession that are ultimately payable to a merchant.

Cite as Ga. Comp. R. & Regs. R. 80-12-7-.02
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

History. Original Rule entitled "Safeguarding Requirements" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-7-.03. Fidelity Coverage.

(1) Every MALPB shall obtain fidelity insurance coverage, such as a fidelity bond, to provide protection and indemnity against theft, defalcation, or other similar actions by officers and employees of the MALPB as well as agents and independent contractors of the MALPB, which includes, but is not limited to, employees of eligible organizations, support organizations, holding companies, and affiliates, related to the merchant funds that are held by the MALPB pursuant to Rule 80-12-7-.02.

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

(3) The amount of the required fidelity coverage shall be the highest dollar amount of merchant transactions occurring in one day over the previous twelve (12) months for the MALPB or, if the MALPB does not have a twelve (12) month operating history, the highest projected merchant transaction dollar volume for one day. The amount of the initial fidelity coverage obtained by the MALPB, as well as subsequent amendments to the amount, shall be approved by the Department in writing prior to the MALPB obtaining the fidelity coverage or revising the amount of coverage.

(4) At the time of the submission of an MALPB charter application or at any time thereafter, an MALPB can make a written request to the Department for a reduction in the amount of fidelity coverage required under Paragraph 3. Such request shall set forth in detail the rationale for a reduction in the required coverage and the safeguards or protections which will be employed to ensure the continuing sound operation of the MALPB, which shall include, but not be limited to, an evaluation of potential exposures under various stress scenarios that include intentional and unintentional failures in the MALPB's control environment and the sufficiency of the proposed fidelity coverage to mitigate such exposures. It shall be in the Commissioner's sole discretion to approve, conditionally or otherwise, or deny the request for a reduction in the amount of required fidelity coverage.

Cite as Ga. Comp. R. & Regs. R. 80-12-7-.03
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Fidelity Coverage" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-7-.04. Data Breach Insurance Coverage.

(1) Every MALPB shall obtain data breach insurance coverage to provide protection and indemnity against the release of nonpublic confidential information in the legal care, custody or control of the MALPB to an untrusted or unauthorized environment or other similar action by the MALPB as well as agents and independent contractors of the MALPB, which includes, but is not limited to, employees of eligible organizations, support organizations, holding companies, and affiliates.

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

(3) The amount of the initial data breach insurance coverage obtained by the MALPB, as well as any subsequent amendments to the amount, shall be approved by the Department in writing prior to the MALPB obtaining the data breach insurance coverage or revising the amount of coverage. It shall be in the Commissioner's sole discretion to determine the amount of required data breach insurance coverage.

(4) In order for the Department to make the determination in Paragraph 3 of this Rule related to the appropriate amount of data breach insurance coverage, an MALPB, upon request by the Department, shall provide the Department with a written justification setting forth the MALPB's rationale for the appropriate and necessary amount of data breach insurance coverage. Such justification shall set forth in detail the safeguards or protections which will be employed to mitigate the risks of an intentional or unintentional release of the data in the MALPB's possession or in the possession of agents and independent contractors of the MALPB, which shall include, but not be limited to, an evaluation of potential exposures under various stress scenarios that include intentional and unintentional releases of data in the MALPB's control environment and the sufficiency of the proposed data breach insurance coverage to mitigate such exposures. In addition, the MALPB's justification for the proposed proper amount of data breach insurance coverage shall evaluate the potential costs to the MALPB as a result of a breach, which shall include, but not be limited to, forensic costs, legal fees, first party and third party liabilities, notification requirements, remediation costs, restoration costs, and business impact.

Cite as Ga. Comp. R. & Regs. R. 80-12-7-.04
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Data Breach Insurance Coverage" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-7-.05. Dissolution.

(1) Every MALPB shall continuously maintain a receivership letter of credit issued in favor of the Department to satisfy costs and expenses associated with a receivership of the MALPB. The letter of credit shall be in the principal sum of $100,000 or such greater amount as the Department may require based on its evaluation of the factors set forth in Rule 80-12-2-.08.

(2) In the event the Department takes possession of an MALPB pursuant to its enforcement powers, including, but not limited to O.C.G.A. §§ 7-1-92 or 7-1-150etseq., the Department is authorized to utilize the receivership letter of credit provided to it by the MALPB to satisfy costs and expenses related to the receivership including, but not limited to, the costs and expenses incurred by the receiver or deputy receiver in administering the receivership.

Cite as Ga. Comp. R. & Regs. R. 80-12-7-.05
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Dissolution" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Subject 80-12-8. ELIGIBLE AND SUPPORT ORGANIZATIONS.

Rule 80-12-8-.01. Eligible Organizations.

(1) Upon obtaining written approval from the Department, an MALPB may contract with an eligible organization to perform administrative support, information technology support, financial support, or tax and finance support. In the event the MALPB applicant has a contract with an eligible organization at the time of the submission of its application, then the information required by this Rule must be submitted as part of the application. However, if an MALPB seeks to enter into a contract with an eligible organization after obtaining its charter, then the MALPB must obtain written approval from the Department prior to entering into the contract. Additional detail regarding the Department's review of the MALPB's proposed contractual relationship with the eligible organization may be set forth in the Department's Applications Manual or Statement of Policies.

(2) In order for the Department to evaluate a request from an MALPB to approve a proposed contract with an eligible organization, the MALPB must provide, at a minimum, the following information:

(a) A copy of the contract under which the services are to be provided which contract shall expressly provide that:

1. The records of the MALPB in the eligible organization's possession are subject to examination and regulation by the Department as if the records were maintained by the MALPB on its own premises;

2. The records of the MALPB in the eligible organization's possession shall be made available to the Department immediately upon receipt of notice;

3. The Department has the authority to review the internal routine and controls of the eligible organization to ascertain that the operations are being conducted in a manner that will not adversely impact the character, reputation, financial stability, and technology and information security systems of the MALPB; and

4. The eligible organization shall comply with all requirements applicable to the MALPB as if the services were provided directly by the MALPB;

(b) A schedule of fees to be charged for each type of service to be performed;

(c) A listing of all reports and printouts the eligible organization will provide the MALPB and that these reports and printouts will be provided to the Department upon request;

(d) Evidence of the eligible organization's financial stability which shall include a copy of its most recent audit and financial statement prepared within the last eighteen (18) months;

(e) Biographical information on the key officers of the eligible organization, which shall include, but not be limited to, chief executive officer, chief information officer, and, if applicable, chief risk officer; and

(f) Completion of all applicable forms and directions related to an eligible organization set forth in the Department's Applications Manual or Statement of Policies.

(3) The Department shall request additional information, approve, conditionally or otherwise, or deny a request for authorization to contract with an eligible organization within sixty (60) days after receipt of the written request. In the event the Department does not take any of the above actions within sixty (60) days, then the application will be deemed approved. The timeframe for the Department to act on a request by an MALPB applicant to approve a pre-existing contract shall be when the Department is required to act on the MALPB charter application as set forth in Rule 80-12-2-.04.

(4) In the event an MALPB wishes to amend an approved contract with an eligible organization, it must make a written request to the Department which shall include a copy of the proposed amendment along with a detailed rationale for the proposed amendment. The Department shall approve, conditionally or otherwise, or deny a request to amend an approved contract with an eligible organization within sixty (60) days of receipt of the written request.

Cite as Ga. Comp. R. & Regs. R. 80-12-8-.01
Authority: O.C.G.A. §§ 7-9-2, 7-9-3, 7-9-13.
History. Original Rule entitled "Eligible Organizations" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-8-.02. Support Organizations.

(1) An MALPB that enters into a contract with a support organization shall provide the Department with written notice of the contract within thirty (30) days after execution of the contract.

(2) An MALPB shall not execute a contract with a support organization unless the following information has been obtained:

(a) A copy of the contract, as well as any amendments to the contract, under which the services are to be provided which contract shall expressly provide that:

1. The records of the MALPB in the support organization's possession are subject to examination and regulation by the Department as if the records were maintained by the MALPB on its own premises;

2. The records of the MALPB in the support organization's possession shall be made available to the Department immediately upon receipt of notice;

3. The Department has the authority to review the internal routine and controls of the support organization to ascertain that the operations are being conducted in a manner that will not adversely impact the character, reputation, financial stability, and technology and information security systems of the MALPB; and

4. The support organization shall comply with all requirements applicable to the MALPB as if the services were provided directly by the MALPB;

(b) A schedule of fees to be charged for each type of service to be performed;

(c) A listing of all reports and printouts the support organization will provide the MALPB and that these reports and printouts will be provided to the Department upon request;

(d) Evidence of the support organization's financial stability which shall include a copy of its most recent audit and financial statement prepared within the last eighteen (18) months; and

(e) Biographical information on the key officers of the support organization, which shall include, but not be limited to, chief executive officer, chief information officer, and, if applicable, chief risk officer.

(3) An MALPB contracting with a support organization must maintain the information set forth in Paragraph 2 at its main office.

(4) In the event an MALPB amends an approved contract with a support organization, the MALPB shall provide the Department with written notice of the amendment within thirty (30) days of execution of the amendment.

Cite as Ga. Comp. R. & Regs. R. 80-12-8-.02
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Support Organizations" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-8-.03. Oversight of Eligible and Support Organizations.

An MALPB contracting with an eligible organization or a support organization must have sufficient controls in place to monitor and ensure that the services provided by the eligible organization or support organization on behalf of the MALPB comply with the Act and the Rules. The MALPB must also employ good faith efforts to monitor the financial condition of the eligible organization or the support organization and must notify the Department immediately when it discovers or suspects that the eligible organization or support organization has experienced a net operating loss, is insolvent, or is engaged in illegal activity.

Cite as Ga. Comp. R. & Regs. R. 80-12-8-.03
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Oversight of Eligible Organizations and Support Organizations" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-8-.04. Responsibility for Outsourced Services.

An MALPB has the ability to enter into contracts with third parties, which includes, but is not limited to, eligible organizations, support organizations, independent contractors, and agents, to perform services related to the MALPB's authorized merchant acquiring activities. In the event an MALPB has a third party perform services related to its authorized merchant acquiring activities, the MALPB will remain responsible for these services being performed in compliance with the Act and the Rules.

Cite as Ga. Comp. R. & Regs. R. 80-12-8-.04
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Responsibility for Outsourced Services" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Subject 80-12-9. RELATIONSHIPS WITH AFFILIATES AND INVESTMENTS AND DISTRIBUTIONS.

Rule 80-12-9-.01. Intercompany Dealings.

(1) All transactions engaged in by an MALPB with its holding company or an affiliate must be on terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to the MALPB as those prevailing at the time for comparable transactions with or involving nonaffiliated companies, or in the absence of a comparable transaction, on terms and under circumstances that in good faith would be offered to or would apply to nonaffiliated companies. For purposes of this Paragraph, a "transaction" includes, but is not limited to, the payment of money or the furnishing of services to or receipt from a holding company or affiliate under contract, lease or otherwise, or loans from a holding company or affiliate of the MALPB. A transaction by an MALPB with any person shall be deemed to be a transaction with an affiliate or holding company of the MALPB if any of the proceeds of the transaction are used for the benefit of, or transferred to, such affiliate or holding company. Methods for determining the propriety of a transaction shall be subject to Department oversight and review.

(2) All contracts and agreements between an MALPB and a holding company or an affiliate must be in writing and formally approved by the Board of Directors of the MALPB prior to any performance under the contract or agreement. The MALPB must maintain at its main office copies of all contracts and agreements as well as documentation evidencing their formal approval.

(3) Tax payments by an MALPB to a holding company shall generally be consistent with the payment of tax liabilities which would have been made had it filed tax returns as a separate entity, eliminating any benefit arising from surtax exemptions. Timing of such payments should generally be in concert with tax payment dates prescribed by tax regulations for estimated tax payments and the rendering of final returns.

(4) Management fees and other charges:

(a) Management fees and other charges, other than specific charges for reimbursement of tax payments or for the purchase or lease of assets or services, payable to a holding company or an affiliate of a holding company may be paid by the MALPB provided such fees and charges do not exceed the MALPB's pro rata share of the administrative overhead of the holding company plus any direct expenses attributable to the MALPB and it is clearly demonstrated that the MALPB has received direct benefit from its relationship with the holding company. Such pro rata share shall be determined through an equitable proration of such administrative overhead among all holding company subsidiaries and activities. The proration may be based on any reasonable formula provided such formula is justified by appropriate memorandum in the files of the MALPB and approved by the Board of Directors of the MALPB. Such formula shall be subject to Department oversight and review.

(b) Administrative overhead shall include only those expenses incurred in general support of all holding company activities and not specifically allocable to a particular subsidiary or activity.

(c) Administrative overhead shall not include net losses incurred in any holding company activity, subsidiary, or investment; nor shall the term include any closing costs, interest, service charge or other expense incurred in connection with any debt owed by the holding company. Administrative overhead shall also not include any salary or other compensation of officers, directors or shareholders which is not commensurate with duties and responsibilities performed in some official capacity with the holding company. Time devoted to performance of duties and fulfilling responsibilities at the holding company level and compensation in connection with such activity shall be considered in establishing reasonable levels of compensation from the MALPB for persons who are employed by both entities. Each entity shall pay only that portion of the total compensation as is commensurate with the duties performed on behalf of that entity.

(5) Fees and charges contemplated under this Rule may be paid after the liability therefor is incurred. Administrative overhead may be accrued or paid monthly based upon a reasonable projection of actual charges, provided such accrual or payment is adjusted to actual expenses at least annually. No such fee or charge may be paid in advance. Appropriate documentation and justification must be maintained at the MALPB for any disbursement governed by this Rule.

Cite as Ga. Comp. R. & Regs. R. 80-12-9-.01
Authority: O.C.G.A. §§ 7-1-73, 7-9-3, 7-9-13.
History. Original Rule entitled "Intercompany Dealings" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-9-.02. Subsidiaries.

(1) An MALPB can create a separate subsidiary to only carry out such activities that fall within the authorized scope of merchant acquiring activities as set forth in Rule 80-12-4-.01. Prior to utilizing the subsidiary, the MALPB must submit an application for approval describing the activity that the subsidiary will perform, how the proposed activity relates to the MALPB, and what protections will be in place to deal with any associated risks. The Department shall request additional information, approve, conditionally or otherwise, or deny a request for authorization to utilize a subsidiary within sixty (60) days after receipt of the application. In the event the Department does not take any of the above actions within sixty (60) days of receipt of the application, then the application will be deemed approved.

(2) Subsidiaries of an MALPB are subject to the same limitations and requirements that apply to an MALPB including, but not limited to, Rule 80-12-9-.01.

Cite as Ga. Comp. R. & Regs. R. 80-12-9-.02
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Subsidiaries" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-9-.03. Investment of MALPB Funds.

(1) Except as expressly authorized by this Rule or with the prior written approval of the Department an MALPB shall be precluded from making any investments. An MALPB may invest in the following investments:

(a) General obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government, or to obligations issued and fully guaranteed by the Federal Land Bank, Federal Home Loan Bank, Federal Intermediate Credit Bank, Bank for Cooperatives, Federal Farm Credit Banks regulated by the Farm Credit Administration, Federal Home Loan Mortgage Corporation, or Federal National Mortgage Association;

(b) Tax exempt obligations issued by any state, county, municipal corporation, district, or political subdivision, or civil division or public instrumentality of any such government or unit of such government;

(c) Prime bankers' acceptances, or the units of any unit investment trusts the assets of which are exclusively invested in obligations of the type described in this rule provided that at the time of investment such obligations or the obligations held by any such unit investment trust are limited to obligations which are rated within one of the top two rating categories of any nationally recognized statistical rating organization;

(d) The shares of any mutual fund the investments of which are limited to securities of the type described in this Rule and distributions from which are treated for federal income tax purposes in the same manner as the interest on said obligations, provided that at the time of investment such obligations held or to be acquired by any such mutual fund are limited to obligations which are rated within one of the top two rating categories of any nationally recognized rating service;

(e) Securities lending transactions involving securities of the type described in this Rule; or

(f) Obligations of corporations organized under the laws of this state or any other state but only if the corporation has a market capitalization equivalent of $500 million and the obligation is rated in the highest ratings category by at least one nationally recognized statistical rating organization.

(2) The MALPB shall provide the Department with written notice within ten (10) days of each investment and, upon request by the Department, provide it with any supporting documentation related to the investment.

(3) Securities must be held in book entry form and maintained:

(a) In safekeeping at any: federally insured correspondent bank or trust company; Federal Home Loan Bank; or broker-dealer insured under the Securities Investor

Protection Act provided the market value of such securities does not exceed $500,000; or

(b) As otherwise approved by the Department in writing.

Cite as Ga. Comp. R. & Regs. R. 80-12-9-.03
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Investment of MALPB Funds" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-9-.04. Dividends.

The Board of Directors of any MALPB may declare and the MALPB may pay cash dividends as long as the Department has approved the proposed dividend in writing prior to the declaration and payment of the dividend. In evaluating any request for the payment of a dividend, the Department will consider, among other things, whether the MALPB will have an adequate capital structure after payment of the proposed dividend. Notwithstanding the above, the Department will not approve a proposed dividend under any circumstances if payment of the dividend would cause the MALPB to fall below the minimum leverage capital ratio requirement, PV capital, risk capital, or statutory capital requirement as set forth in Rule 80-12-7-.01.

Cite as Ga. Comp. R. & Regs. R. 80-12-9-.04
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Dividends" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Subject 80-12-10. CONTROL OVER MALPB.

Rule 80-12-10-.01. Change in Director, Executive Officer, Principal Shareholder, or Control Person of MALPB.

(1) The MALPB must provide the Department with written notice of any new director, control person, principal shareholder, or executive officer, which includes, but is not limited to a chief executive officer, a chief information officer, and a chief risk officer, prior to any such appointment or change taking effect, so that the Department can consider the character and fitness of such person. After receipt of the notice, the proposed executive officers, directors, principal shareholders, and control persons will provide the Department with any information or documents the Department may request 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 1681 a(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 (2) completed taxable years.

(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 such person within sixty (60) days after receipt of the required written notice or extend the period during which a disapproval may be issued for another thirty (30) days, the proposed appointment or change of such person shall take effect. The period for disapproval may be further extended if the Department determines that the MALPB 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 this Rule shall not apply to an entity that satisfies the definition of control person as a result of ownership of a holding company that is a public company.

Cite as Ga. Comp. R. & Regs. R. 80-12-10-.01
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Change in Director, Executive Officer, Principal Shareholder, or Control Person of MALPB" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Rule 80-12-10-.02. Acquisition of MALPB.

(1) It shall be unlawful for a person, as defined in O.C.G.A. § 7-1-230, acting directly or indirectly or in concert with one or more persons, to acquire control of any MALPB through a purchase, assignment, pledge, or other disposition of voting stock of such MALPB, except with the approval of the Department.

(2) The Department shall be given at least ninety (90) days prior written notice of any such proposed acquisition. If the Department does not issue a notice disapproving the proposed acquisition within ninety (90) days of receipt of the required written notice or extend the period during which a disapproval may be issued for another sixty (60) days, the proposed acquisition shall stand approved. The period for disapproval may be further extended if the Department determines that the MALPB or proposed acquiring party has not furnished all the information required by this rule or, in the Department's judgment, inaccurate information has been submitted. An acquisition may be made prior to the expiration of the disapproval period if the Department issues a written notice of its intent not to disapprove the acquisition.

(3) For every person the written notice of acquisition shall contain the following information:

(a) The identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including the persons material business activities and affiliations during the past five (5) years, a description of any material pending legal or administrative proceedings in which the person is or was a party, and any criminal indictment or conviction as defined in Rule 80-12-4-.05 of such person by a state, federal, or international court;

(b) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five (5) fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied or such other standard acceptable to the Department, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than ninety (90) days prior to the date of the filing of the notice;

(c) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

(d) The identity, source, and amount of the funds or other considerations used or to be used in making the acquisition and, if any part of these funds or other considerations has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons;

(e) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the MALPB, to sell its assets or merge it with any company, or to make any other major change in its business or corporate structure or management;

(f) The identification of any person employed, retained, or to be compensated by the acquiring party or by any person on his behalf to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition and a brief description of the terms of such employment, retainer, or arrangement for compensation;

(g) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition; and

(h) Any additional relevant information in such forms as the Department may require by specific request in connection with any particular notice.

Cite as Ga. Comp. R. & Regs. R. 80-12-10-.02
Authority: O.C.G.A. §§ 7-9-3, 7-9-6, 7-9-13.
History. Original Rule entitled "Acquisition of MALPB" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Subject 80-12-11. HOLDING COMPANY.

Rule 80-12-11-.01. Books and Records of Holding Company.

(1) A holding company shall provide the Department with the following books and records within ten (10) days after issuance of the underlying document: copies of examination reports prepared by any agency, division, or instrumentality of the United States, the State of Georgia or any other state, or any foreign country which report relates to the merchant acquiring activities of the MALPB; copies of reports required to be prepared or submitted by the MALPB to any agency, division, or instrumentality of the United States, the State of Georgia or any other state, or any foreign country which report relates to the merchant acquiring activities of the MALPB; and copies of all orders, memoranda of understanding, or similar documents, including, but not limited to, resolutions of the Board of Directors intended as informal enforcement actions, issued by or entered into with any agency, division, or instrumentality of the United States, the State of Georgia or any other state, or any foreign country which report relates to the merchant acquiring activities of the MALPB.

(2) Failure to provide the documentation set forth in Paragraph 1 of this Rule, may result in the Department taking enforcement action against the holding company as well as the MALPB controlled by the holding company.

Cite as Ga. Comp. R. & Regs. R. 80-12-11-.01
Authority: O.C.G.A. §§ 7-1-73, 7-9-3, 7-9-13.
History. Original Rule entitled "Books and Records of Holding Company" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013

Rule 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 1681 a(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.

Cite as Ga. Comp. R. & Regs. R. 80-12-11-.02
Authority: O.C.G.A. §§ 7-1-73, 7-9-3, 7-9-6, 7-9-13.
History. Original Rule entitled "Change in Director, Executive Officer, Principal Shareholder, or Control Person of Holding Company" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.
Amended: F. June 15, 2015; eff. July 5, 2015.

Rule 80-12-11-.03. Lawful and Unlawful Acquisitions by a Company.

(1) It shall be unlawful for:

(a) a holding company to acquire direct or indirect ownership or control of any voting shares of any MALPB, if, after such acquisition, such holding company will directly or indirectly own or control five (5) percent or more of the voting shares of such MALPB, or

(b) any company to become a holding company as a result of the acquisition or control of such MALPB,

unless the MALPB has been in existence and continuously operating as an MALPB for a period of three (3) years or more prior to the date of acquisition and the company has sought and obtained written approval from the Department prior to acquiring voting shares or the control of the MALPB.

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

(3) The Department has the discretion to waive the three (3) year minimum age requirement set forth in Paragraph 1, if it has issued a written determination, prior to acquisition, that the waiver will not adversely impact the MALPB or the merchant acquiring industry. In making such a determination the Department will take into consideration competitive, financial, managerial, safety and soundness, compliance and other concerns.

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

(5) Acquisitions of ownership or control of less than twenty-five (25) percent of any voting shares of a holding company that is a public company are not subject to the requirements of this Rule if:

(a) the company has acquired such voting shares solely for investment purposes and not with the purpose or the effect of changing or influencing the control of the holding company, nor in connection with or as a participant in any transaction having such purpose or effect, and provides written notice of the acquisition to the Department, in the form and manner prescribed by the Department, no later than thirty (30) days following the end of the quarter in which the acquisition occurred; or

(b) the company submits a written application to the Department seeking approval of the acquisition of the shares or control no later than thirty (30) days after (i) the acquisition has occurred, if the preceding paragraph (a) does not apply, (ii) the transaction was made under the preceding paragraph (a) but no longer qualifies under such paragraph as a result of the company's change of purpose such that the company's purpose is to change or influence control of the holding company either individually or in concert with others; or (iii) the Department determines that the company is seeking to change or influence control of the holding company either individually or in concert with others and informs the company of such determination; provided that, within thirty (30) days after receiving the company's application under this paragraph (b), the Department may disapprove in writing the acquisition of shares or control, in which case the Department may require the company to unwind the acquisition, take other appropriate action to limit or otherwise restrict the ability of the company to exercise control over the holding company or, if the acquisition involves a transaction to which the holding company was a party, for the holding company to sell or surrender the charter of its MALPBs, in each case subject to a reasonable transition period determined by the Department in its discretion.

(6) Subject to Paragraph 7, the provisions set forth in Paragraph 1 shall not apply to the direct or indirect acquisition of the voting shares or control of a holding company as a result of

any of the following transactions which are internal corporate reorganizations of a holding company:

(a) merger of holding companies that are subsidiaries of a holding company;

(b) the formation of a subsidiary holding company; or

(c) the transfer of control or ownership of a subsidiary MALPB or subsidiary holding company to another subsidiary company.

(7) An acquisition described in Paragraph 6 qualifies for this exception if:

(a) the transaction represents solely a corporate reorganization involving one or more non MALPB subsidiary companies that, both preceding and following the transaction, are controlled by the holding company;

(b) the transaction does not involve the acquisition of additional voting shares of a subsidiary MALPB that, prior to the transaction, was less than majority owned by the holding company;

(c) the holding company provides written notice to the Department no later than ten (10) days after the internal corporate reorganization has taken place; and

(d) the transaction is in compliance with all legal requirements, including, but not limited to, the Act and the related regulations, and all other required regulatory approvals and authorizations have been obtained prior to the transaction.

(8) Any fines or penalties arising under Rule 80-12-12-.01 that are applicable to prohibited acquisitions of shares or control of a public company under this Rule shall be assessed against the acquiring company rather than the MALPB whose shares, or as to which control, is acquired.

Cite as Ga. Comp. R. & Regs. R. 80-12-11-.03
Authority: O.C.G.A. §§ 7-1-73, 7-9-3, 7-9-6, 7-9-13.
History. Original Rule entitled "Lawful and Unlawful Acquisitions" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.
Amended: F. Jun. 10, 2014; eff. Jun. 30, 2014.
Amended: New title "Lawful and Unlawful Acquisitions by a Company." F. Dec. 5, 2014; eff. Dec. 25, 2014.

Rule 80-12-11-.04. Source of Strength.

A holding company shall serve as a source of strength to its MALPB subsidiary and shall, upon request by the Department, provide a capital maintenance guaranty.

Cite as Ga. Comp. R. & Regs. R. 80-12-11-.04
Authority: O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Source of Strength" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Subject 80-12-12. FINES AND FEES.

Rule 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 employee 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.

Cite as Ga. Comp. R. & Regs. R. 80-12-12-.01
Authority: Authority O.C.G.A. §§ 7-9-3, 7-9-13.
History. Original Rule entitled "Administrative Fines and Penalties" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.
Amended: F. June 15, 2015; eff. July 5, 2015.

Rule 80-12-12-.02. Application, Examination, and Other Fees.

(1) The Department establishes the following fees related to the regulation of MALPBs, their holding companies, their affiliates, and their subsidiaries:

(a) An application fee of $50,000 will be remitted to the Department at the time of delivery of the MALPB application.

(b) In addition to any fees imposed by third-party experts acting as special examiners, an MALPB, its holding company, affiliates, or subsidiaries shall pay an examination fee to the Department at the rate of $100 per examiner hour.

(c) A holding company of an MALPB shall pay on or before January 31 of each year an annual registration fee of $5,000.

(d) A holding company of an MALPB shall pay on or before January 31 of each year an additional $1,000 for each non-MALPB subsidiary of the holding company but, in no event, shall this annual fee exceed $20,000.

(e) An MALPB shall pay on or before January 31 of each year an annual supervision fee of $10,000.

(f) An MALPB seeking approval for additional physical locations pursuant to Rule 80-12-6-.02 shall pay an investigation fee of $1,250 for each additional proposed location it seeks to have approved.

(g) An MALPB seeking approval for the creation of a separate subsidiary pursuant to Rule 80-12-9-.02 shall pay an investigative fee of $1,000 to the Department.

(h) An application seeking approval of the acquisition of an MALPB pursuant to Rules 80-12-10-.02 or 80-12-11-.03 shall pay an investigative fee of $10,000 to the Department.

(2) All fees paid to the Department are nonrefundable.

Cite as Ga. Comp. R. & Regs. R. 80-12-12-.02
Authority: O.C.G.A. §§ 7-9-3, 7-9-4, 7-9-6, 7-9-13.
History. Original Rule entitled "Application, Examination, and Other Fees" adopted. F. Dec. 3, 2013; eff. Dec. 23, 2013.

Chapter 80-13. TRUST COMPANIES.

Subject 80-13-1. TRUST COMPANIES.

Rule 80-13-1-.01. Definitions.

(1) As used in Chapters 80-13-1, the terms that are defined in O.C.G.A. § 7-1-4 shall have the identical meaning.

(2) As used in Chapters 80-13-1, the below terms shall be defined as follows unless the term is otherwise defined in a specific rule:

(a) "External auditor" means an outside compensated, Certified Public Accountant (CPA) that is independent or works for an entity that is independent of the institution being audited.

(b) "Fiduciary account" means an account administered by a trust company when it is acting in a fiduciary capacity including, but not limited to, a trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, receiver, custodian under a uniform gifts to minor act, investment advisor if the trust company receives a fee for the investment advice, any capacity in which the trust company possess investment discretion on behalf of another, or any other similar capacity designated as such by the Department.

(c) "Independent" means an auditor must be personally and financially independent from the trust company's employees, members of the board of directors, and members of their immediate families.

(d) "Investment discretion" means, with respect to an account, the sole or shared authority (whether or not that authority is exercised) to determine what securities or other assets to purchase or sell on behalf of the account.

Cite as Ga. Comp. R. & Regs. R. 80-13-1-.01
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Definitions" adopted. F. June 29, 2017; eff. July 19, 2017.

Rule 80-13-1-.02. Minimum Capital Requirements for Trust Companies.

(1) Pursuant to O.C.G.A. § 7-1-317, a trust company must maintain, at a minimum, $3 million in capital. The Department will evaluate the factors set forth in O.C.G.A. § 7-1-317 in analyzing a trust company's capital adequacy and may determine that the capital required is greater than $3 million.

(2) The amount of the initial capital requirement maintained by a trust company shall be established by the Department in writing prior to the trust company beginning business. Further, any revision to the capital requirement maintained by a trust company shall be established in writing by the Department prior to the trust company implementing the revised capital ratio. It shall be in the Commissioner's sole discretion to determine the capital ratio required to be maintained by each trust company.

(1) A trust company with less than the minimum capital requirement:

(a) Is operating with inadequate capital and, therefore, has inadequate financial resources. Thus, at the discretion of the Department, such trust company may be deemed to be operating in an unsafe or unsound or unauthorized manner and subject to the Department's enforcement powers.

(b) Must file a written capital restoration plan with the Department within thirty (30) days of the date that the trust company knows or should have known that the trust company is operating with an inadequate capital structure, unless the Department notifies the trust company in writing that the plan is to be filed within a different period.

Cite as Ga. Comp. R. & Regs. R. 80-13-1-.02
Authority: O.C.G.A. §§ 7-1-61; 7-1-317.
History. Original Rule entitled "Minimum Capital Requirements for Trust Companies" adopted. F. June 29, 2017; eff. July 19, 2017.

Rule 80-13-1-.03. Trust Company Independent Audits.

(1) Every trust company shall have an opinion audit of its books and records performed at least annually by a licensed external auditor in accordance with generally accepted auditing standards and procedures. The audit must be of sufficient scope to enable the auditor to render an opinion on the financial statements of the trust company, consolidated holding company, or parent company. Such audit shall include a review of the trust company's internal controls, fiduciary activities (pursuant to agreed-upon procedures), fiduciary accounts, affirmative verifications of investments and deposits made by the trust company, adequate testing and review of the trust company's information technology activities, and such other tests and reviews of trust company records as deemed appropriate by the external auditor. The extent of the audit work should be clearly defined in engagement letters. Such letters should discuss the scope of the audit, the objectives, resource requirements, audit timeframe, and resulting reports. External auditors must make their audit work papers, policies, and procedures available to Department examiners for review upon request.

(2) The external auditor should be generally familiar with the statutes, rules, and regulations under which the trust company 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 trust company's financial position or operation.

(3) Audit reports in which the auditor expresses an unqualified opinion shall be provided to the Department upon request. Audit reports in which the auditor expresses anything other than an unqualified opinion, including, but not limited to, a qualified opinion, an adverse opinion, or a disclaimer of opinion, shall be provided to the Department within fifteen

(15) days following receipt by the financial institution. Audit reports submitted to the Department shall be accompanied by the Letter to Management, if applicable, detailing any reportable conditions discovered during the audit engagement. Failure to obtain the required opinion audit, or the auditor's report thereof, shall be reported to the Department within fifteen (15) days of discovery.

Cite as Ga. Comp. R. & Regs. R. 80-13-1-.03
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Trust Company Independent Audits" adopted. F. June 29, 2017; eff. July 19, 2017.

Rule 80-13-1-.04. The Internal Auditor of a Trust Company.

(1) Internal Audit System. An institution should have an internal audit system that is appropriate to the size of the institution and the nature and scope of its activities. The internal audit system should consist of qualified persons. The internal audit system shall provide for:

(a) Adequate monitoring of the system of internal controls through an internal audit function;

(b) Adequate testing and review of information systems;

(c) Adequate documentation of tests and findings and any corrective actions;

(d) Verification and review of management actions to address material weaknesses; and

(e) Review by the institution's audit committee or board of directors of the effectiveness of the internal audit systems.

(2) The Board of Directors of every trust company shall name an internal auditor. If the trust company names an employee as the internal auditor, then the internal auditor must not audit his/her department.

(3) The internal auditor shall:

(a) Report a summary of audit activities to the Board of Directors at least annually;

(b) Implement the trust company's internal audit program; and

(c) Monitor the implementation of corrective action with respect to audit exceptions, including but not limited to internal control exceptions, discovered by the internal audit program or reported by the independent auditor.

(4) A trust company can designate an external auditor as its internal auditor. In the event an external auditor is designated as the internal auditor, then the Board of Directors or the audit committee must appoint an internal liaison among the officers of the trust company that will be responsible for coordinating the internal audit function with the external auditor and overseeing compliance with the internal audit requirements.

Cite as Ga. Comp. R. & Regs. R. 80-13-1-.04
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "The Internal Auditor of a Trust Company" adopted. F. June 29, 2017; eff. July 19, 2017.

Rule 80-13-1-.05. Audit Committee.

A trust company shall have an audit committee. The audit committee must consist of a committee of the trust company's directors or directors of an affiliate of the trust company. However, in either case, the committee:

(a) Must not include any officers of the trust company or an affiliate who participate significantly in the administration of the trust company's fiduciary activities; and

(b) Must consist of a majority of members who are not also members of any committee to which the board of directors has delegated power to manage and control the fiduciary activities of the trust company.

Cite as Ga. Comp. R. & Regs. R. 80-13-1-.05
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Audit Committee" adopted. F. June 29, 2017; eff. July 19, 2017.

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

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

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

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

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

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

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

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

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

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

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

Cite as Ga. Comp. R. & Regs. R. 80-13-1-.06
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Insurance Coverage for Trust Companies" adopted. F. June 29, 2017; eff. July 19, 2017.
Amended: F. June 27, 2018; eff. July 17, 2018.

Rule 80-13-1-.07. Review of Fiduciary Accounts.

(1) Before accepting a fiduciary account, a trust company shall review the prospective account to determine whether it can properly administer the account.

(2) Upon the acceptance of a fiduciary account for which a trust company has investment discretion, the trust company shall conduct a prompt review of all assets of the account to evaluate whether they are appropriate for the account.

(3) At least once during every calendar year, a trust company shall conduct a review of all assets of each fiduciary account for which the bank has investment discretion to evaluate whether they are appropriate, individually and collectively, for the account.

Cite as Ga. Comp. R. & Regs. R. 80-13-1-.07
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Review of Fiduciary Accounts" adopted. F. June 29, 2017; eff. July 19, 2017.

Rule 80-13-1-.08. Custody of Fiduciary Assets.

(1) A trust company shall place assets of fiduciary accounts in the joint custody or control of not fewer than two of the fiduciary officers or employees designated for that purpose by the Board of Directors. A trust company may maintain the investments of a fiduciary account off-premise, if consistent with applicable law and if the trust company maintains adequate safeguards and controls.

(2) A trust company shall keep the assets of fiduciary accounts separate from the assets of the trust company. A trust company shall keep the assets of each fiduciary account separate from all other accounts or shall identify the investments as the property of a particular account, except as provided in 12 CFR § 9.18 for collective investment funds.

Cite as Ga. Comp. R. & Regs. R. 80-13-1-.08
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Custody of Fiduciary Assets" adopted. F. June 29, 2017; eff. July 19, 2017

Rule 80-13-1-.09. Receivership of Trust Company.

If the Department is appointed receiver of a trust company or appoints a receiver of a trust company, the receiver shall promptly close or transfer to a substitute fiduciary all fiduciary accounts in accordance with Department instructions or the orders of the court having jurisdiction.

Cite as Ga. Comp. R. & Regs. R. 80-13-1-.09
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Receivership of Trust Company" adopted. F. June 29, 2017; eff. July 19, 2017.

Rule 80-13-1-.10. Collective Investment Funds.

A trust company administering a collective investment fund authorized under O.C.G.A. § 7-1-313 shall comply with the following requirements:

(1) The trust company shall develop, and the Board of Directors must approve, a collective investment fund plan that must contain appropriate provisions, not inconsistent with this part, regarding the manner in which the trust company will operate the fund, including provisions relating to:

   (a) Investment powers and policies with respect to the fund;

(b) Allocation of income, profits, and losses;

(c) Fees and expenses that will be charged to the fund and to participating accounts;

(d) Terms and conditions governing the admission and withdrawal of participating accounts;

(e) Audits of participating accounts;

(f) Basis and method of valuing assets in the fund;

(g) Expected frequency for income distribution to participating accounts;

(h) Minimum frequency for valuation of fund assets;

(i) Amount of time following a valuation date during which the valuation must be made;

(j) Bases upon which the trust company may terminate the fund; and

(k) Any other matters necessary to define clearly the rights of participating accounts.

(2) A trust company administering a collective investment fund shall have exclusive management thereof, except as a prudent person might delegate responsibilities to others.

(2.1) Each participating account in a collective investment fund must have a proportionate interest in all the fund's assets.

(3)

(a) A trust company administering a collective investment fund shall determine the value of the fund's readily marketable assets at least once every three months. A trust company shall determine the value of the fund's assets that are not readily marketable at least once a year.

(b) Except for short-term investment funds ("STIFs"), a trust company shall value each fund asset at mark-to-market value as of the date set for valuation, unless the trust company cannot readily ascertain mark-to-market value, in which case the trust company shall use a fair value determined in good faith. STIFs shall be valued as set forth in 12 C.F.R. § 9.18.

(4)

(a) At least once during each 12-month period, a trust company administering a collective investment fund shall arrange for an audit of the collective investment fund by auditors responsible to both the audit committee and the Board of Directors of the trust company.

(b) At least once during each 12-month period, a trust company administering a collective investment fund shall prepare a financial report of the fund based on the audit required by paragraph (4)(a) of this section. The report must disclose the fund's fees and expenses in a manner consistent with applicable law in the state in which the trust company maintains the fund. This report must contain a list of investments in the fund showing the cost and current market value of each investment, and a statement covering the period after the previous report showing the following (organized by type of investment):

1. A summary of purchases (with costs);
2. A summary of sales (with profit or loss and any other investment changes);
3. Income and disbursements; and
4. An appropriate notation of any investments in default.

(c) A trust company may include in the financial report a description of the fund's value on previous dates, as well as its income and disbursements during previous accounting periods. A trust company may not publish in the financial report any predictions or representations as to future performance.

(d) A trust company administering a collective investment fund shall provide a copy of the financial report, or shall provide notice that a copy of the report is available upon request without charge, to each person who ordinarily would receive a regular periodic accounting with respect to each participating account. The trust company may provide a copy of the financial report to prospective customers. In addition, the trust company may provide a copy of the report upon request to any person for a reasonable charge.

(5) A trust company administering a collective investment fund may charge a reasonable fund management fee only if:

(a) The fee is permitted under applicable law (and complies with fee disclosure requirements, if any) in the state in which the trust company maintains the fund; and

(b) The amount of the fee does not exceed an amount commensurate with the value of legitimate services of tangible benefit to the participating fiduciary accounts that would not have been provided to the accounts were they not invested in the fund.

(6) A trust company administering a collective investment fund may charge reasonable expenses incurred in operating the collective investment fund, to the extent not prohibited by applicable law in the state in which the trust company maintains the fund. However, a trust company shall absorb the expenses of establishing or reorganizing a collective investment fund.

(7) The Department will not deem a trust company's mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund to be a violation of this rule if, promptly after the discovery of the mistake, the trust company takes whatever action is practicable under the circumstances to remedy the mistake.

Cite as Ga. Comp. R. & Regs. R. 80-13-1-.10
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Collective Investment Funds" adopted. F. June 29, 2017; eff. July 19, 2017.

Rule 80-13-1-.11. Permissible Investments and Limitations of Trust Companies.

Subject to such further restrictions and approvals as its board of directors may set forth in its investment policy, a trust company may purchase, sell, and hold securities, for its own behalf, the following:

(1) Debt Obligations.

(a) Obligations of the United States Government or Agencies of the United States Government.

The following may be held without limitation:

1. Securities issued by the United States government or an agency of the United States government;

2. Securities guaranteed as to principal and interest by the United States government or an agency of the United States government;

3. Securities issued under the U.S. Treasury's Separate Trading of Registered Interest and Principal (STRIP's) program, which are offered in book entry form and which are direct obligations of the U.S. Government, as authorized by Subtitle III, Chapter 31 of Title 31 U.S.C.; and

4. Securities which are pre-refunded, with the redemption proceeds invested in securities issued by the United States Government or an Agency of the United States Government.

(b) Obligations of a State or Territorial Government of the United States or Agencies of State or Territorial Governments.

The following may be held without limitation:

1. General obligations of any state or territorial government of the United States or any agency of such governments;

2. Securities guaranteed as to principal and interest by such state or territorial governments or any agency thereof; and

3. Securities which are pre-refunded, with the redemption proceeds invested in securities issued by state or territorial governments or agencies thereof.

(c) Obligations of other Political Subdivisions.

1. The general obligations of a single obligor domiciled within the United States which is authorized to levy taxes may be held in an amount up to twenty-five (25) percent of a trust company's equity capital, as defined by GAAP. This percentage limitation shall not apply where the equity capital is at least $10,000,000.

2. Securities which are secured by a pledge or assignment of tax receipts sufficient to pay the principal and interest of such securities as they become due may be held in an amount up to twenty-five (25) percent of the trust company's equity capital, as defined by GAAP. This percentage limitation shall not apply where the equity capital is at least $10,000,000.

3. Revenue obligations of a political subdivision authorized to establish utility fees, public transportation usage fees or public use fees where such levies or fees are pledged to and are sufficient to pay the principal and interest of the securities as they become due may be held in an amount up to twenty-five (25) percent of a trust company's equity capital, as defined by GAAP. This percentage limitation shall not apply where the equity capital is at least $10,000,000.

4. In those instances where the repayment of revenue obligations is dependent upon rentals or other fees payable to a political subdivision by a non-governmental unit, such as in the case of industrial revenue bonds, the obligor shall be deemed to be the non-governmental unit responsible for the payment of such rentals or other fees and any guarantor of such payments. Investment in such securities is limited to fifteen (15) percent of the trust company's equity capital, as defined by GAAP.

5. Securities issued by political subdivisions rated in the four highest rating categories by a nationally recognized rating service and not otherwise authorized under (c)(1)-(4) of this section may be held in an amount up to

fifteen (15) percent of a trust company's equity capital, as defined by GAAP.

(d) Corporate Debt Securities.

Corporate debt securities may be purchased which are:

1. Rated in the four highest rating categories by a nationally recognized rating service;

2. Readily salable in an established market with reasonable promptness at a price which corresponds to its fair value;

3. Denominated in U.S. dollars; and

4. With respect to trust companies having equity capital, as defined by GAAP, of less than $20,000,000, such securities must mature within 15 years.

   A bank's investment in corporate debt securities is limited to fifteen (15) percent of the trust company's equity capital, as defined by GAAP, per obligor. A trust company's aggregate investment in corporate debt securities shall not exceed one hundred (100) percent of the trust company's equity capital, as defined by GAAP.

(2) Equity Securities.

The total investment in equity and investment of any one issuer, obligor, or maker held by a trust company for its own account shall not exceed an amount equal to 15 percent of the trust company's equity capital, as defined by GAAP.

(3) Investment Funds.

A trust company for its own account may invest up to fifteen (15) percent of its equity capital, as defined by GAAP, in securities of, or other interests in, any open-end or closed-end management type investment fund or investment trust which is registered under the Investment Company Act of 1940, subject to the following additional conditions.

(a) The investment portfolio of such investment fund or investment trust shall be limited to those securities in which trust companies are permitted to invest directly under this rule and Title 7 of the Official Code of Georgia; and

(b) The investment fund or trust shall not:

1. Except to the extent authorized in subparagraph (1)(a)3. of this rule, acquire or hold investments in the form of stripped or detached interest obligations;

2. Engage in the purchase or sale of interest rate futures contracts;

3. Purchase securities on margin, make short sales of securities or maintain a short position; or

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

(c) On an aggregate basis, investments in such funds or trusts shall not exceed:

1. Thirty (30) percent of the trust company's equity capital, as defined by GAAP, per fund/trust family or sponsor; and

2. Sixty (60) percent of the trust company's equity capital, as defined by GAAP, for all funds combined.

(d) An aggregate limitation of one hundred twenty (120) percent of the trust company's equity capital, as defined by GAAP, shall be allowed for all funds combined if the funds or trusts:

1. Are managed so as to maintain the fund or trust shares at a constant net asset value;

2. Are no-load; and

3. Are rated in the highest rating category by a nationally recognized rating service.

(4) Asset-Backed Securities.

A trust company may purchase asset-backed securities repayable in both interest and principal which are issued under any of the following:

(a) Governmentally sponsored programs which are fully collateralized by obligations fully guaranteed as to principal and interest by a governmental entity to the same extent as direct obligations of the governmental entity which is the guarantor;

(b) Private programs which are fully collateralized by obligations fully guaranteed as to principal and interest by a governmental entity to the same extent as direct obligations of the governmental entity which is the guarantor; or

(c) Other private programs in amounts which do not exceed fifteen (15) percent of the trust company's equity capital, as defined by GAAP, for each issuer, provided the issue:

1. Is in registered form;

2. Is collateralized by assets which could be owned directly by the trust company; and

3. Is rated in the top three rating bands by a recognized national rating service.

(d) Aggregate investment in private program issues by all issuers shall not exceed fifty (50) percent of the trust company's equity capital, as defined by GAAP, unless approved by the department.

(5) Interest-Only ("IO") Securities.

(a) Nothing contained herein shall permit the purchase of investments in the form of stripped or detached IO obligations. An exception to this rule is that securities issued under the U.S. Treasury's Separate Trading of Registered Interest and Principal (STRIP's) program, which are offered in book entry form and which are direct obligations of the U.S. Government, as authorized by Subtitle III, Chapter 31 of Title 31 USC, may be purchased without limitation.

(b) Purchasing or trading any other type of IO securities may receive prior written approval from the department for institutions demonstrating technical expertise and policies sufficient to promote safe and sound use of such investments as part of prudent investment strategies.

(6) Futures, Forwards, Option Contracts and Interest Rate Swaps.

Futures, forwards, option contracts, interest rate swaps, and direct and indirect investments associated with any security which otherwise constitutes a permissible investment under provisions of this rule may be approved in writing by the department for trust companies demonstrating technical expertise and policies sufficient to promote safe and sound use of such investments as part of prudent investment strategies.

(7) All Other Securities.

A trust company may invest in such other securities or funds as the department may approve, upon a finding that the securities are marketable under ordinary circumstances, with reasonable promptness at a price which corresponds to their fair value, approval shall be in writing and subject to such limitations as the department may specify. This requirement for departmental approval shall not apply where the equity capital, as defined by GAAP, of the purchasing trust company exceeds $ 20,000,000. However, in such

instances, such securities may be purchased only in an amount which does not exceed fifteen (15) percent of the trust company's equity capital, as defined by GAAP.

(8) In the event a trust company's investment in securities no longer conforms to this rule but conformed when the investment was originally made, the trust company shall provide written notification to the Department regarding the nonconforming investment within 30 days of discovering the nonconforming investment or 120 days of the investment becoming nonconforming, whichever event occurs first. In the event a trust company wishes to hold the nonconforming investment, the trust company must submit a letter form application to the Department describing the efforts the trust company will undertake to bring the nonconforming investment into conformity and the anticipated time it will take to bring the investment into conformity. Upon review of the application, the Department may request additional information if it determines such additional information is necessary in order to fully and completely evaluate the application. After completion of its review, the Department shall either approve, conditionally or otherwise, or deny such application in writing.

(9) A trust company may sell a nonconforming investment without Department authorization but only if it provides the Department with written notice no later than five (5) business days after the sale.

Cite as Ga. Comp. R. & Regs. R. 80-13-1-.11
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Permissible Investments and Limitations of Trust Companies" adopted. F. June 29, 2017; eff. July 19, 2017.

Rule 80-13-1-.12. Self-dealing and Conflicts of Interest.

(1) Unless authorized by applicable law, a trust company may not invest funds of a fiduciary account for which a trust company has investment discretion in the stock or obligations of, or in assets acquired from: the trust company or any of its directors, officers, or employees; affiliates of the trust company or any of their directors, officers, or employees; or individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the trust company. Notwithstanding the above, a trust company may invest such stock or obligations as part of an index pursuant to an index or model portfolio strategy unless the index was formed or otherwise created or is managed by the trust company.

(2)

(a) A trust company may not lend, sell, or otherwise transfer assets of a fiduciary account for which a trust company has investment discretion to the trust company or any of its directors, officers, or employees, or to affiliates of the trust company or any of their directors, officers, or employees, or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the trust company, unless:

1. The transaction is authorized by applicable law;

2. Legal counsel advises the trust company in writing that the trust company has incurred, in its fiduciary capacity, a contingent or potential liability, in which case the trust company, upon the sale or transfer of assets, shall reimburse the fiduciary account in cash at the greater of book or market value of the assets;

3. As provided in 12 CFR § 9.18(b)(8)(iii) for defaulted investments; or

4. Required in writing by the Department.

(b) Notwithstanding the above provisions of this section, a trust company may not lend to any of its directors, officers, or employees any funds held in trust, except with respect to employee benefit plans in accordance with the exemptions found in section 408 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1108).

(3) A trust company may make a loan to a fiduciary account and may hold a security interest in assets of the account if the transaction is fair to the account and is not prohibited by applicable law.

(4) A trust company may sell assets between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

(5) A trust company may make a loan between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

Cite as Ga. Comp. R. & Regs. R. 80-13-1-.12
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Self-dealing and Conflicts of Interest" adopted. F. June 29, 2017; eff. July 19, 2017.

Rule 80-13-1-.13. Dividends.

(1) The Board of Directors of any trust company may declare and the trust company may pay dividends on its outstanding capital stock without any requirement to notify the Department or request the approval of the Department if the aggregate amount of dividends declared or anticipated to be declared in the calendar year does not:

(a) exceed fifty (50) percent of the net income, in accordance with Generally Accepted Accounting Principles, that is attributable solely to a trust company that is a Subchapter C-Corporation for the previous calendar year; or

(b) exceed seventy-five (75) percent of the net income, in accordance with Generally Accepted Accounting Principles, that is attributable solely to a trust company that is a Subchapter S-Corporation for the previous calendar year.

(2) Any proposed dividend to be declared by the Board of Directors of a trust company in excess of the amount authorized by section (1) of this Rules must be approved, in writing, by the Department prior to the payment thereof pursuant to the provisions of Section 7-1-460(a)(3) of the Official Code of Georgia. Requests for approval of dividends shall be on forms prescribed by the Department.

Cite as Ga. Comp. R. & Regs. R. 80-13-1-.13
Authority: O.C.G.A. § 7-1-61.
History. Original Rule entitled "Dividends" adopted. F. July 9, 2019; eff. July 29, 2019.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Chapter 80-14. INSTALLMENT LOANS.

Subject 80-14-1. PLACE OF BUSINESS, ADVERTISING, AND OTHER REQUIREMENTS.

Rule 80-14-1-.01. Place of Business Requirements; Convenience and Advantage of Community.

(1) A licensee shall not engage in the business of installment lending at a location in this state unless the licensee has first received written approval from the Department.

(2) The "main office" is the physical location indicated on the license application or amendments thereto as the principal place of business, where the books and records are kept.

(3) A "branch" shall be any physical location, other than the principal place of business, where a licensee engages in the business of installment lending.

(4) For the main office and each proposed branch office, an applicant or licensee shall provide information establishing that approval of the proposed location will serve the convenience and advantage of the community. Such information shall include but is not limited to the following:

(a) An explanation as to whether the community will benefit from the applicant or licensee operating in the location;

(b) An explanation as to whether the community is presently offered this service and an estimate of the number of people not presently served;

(c) Statistics related to the growth of the community in relation to each of the following: population, retail stores, industry, industry payroll, retail sales, and income per capita;

(d) A projection of the growth of the proposed location for the first three years of operation, including the number of accounts, outstanding amounts, and source of customers;

(e) A diagram of the immediate community indicating the location of any currently operating installment loan licensees, sales finance companies, banks, credit unions, savings and loan institutions, and the proposed office; and,

(f) Other information relevant to the Department's consideration of the proposed location.

(5) Factors to be considered by the Department in making a determination as to whether a proposed location will serve the convenience and advantage of the community include but are not limited to the following:

(a) Whether the service offered will be responsive to the needs and convenience of borrowers and conducive to economic progress;

(b) The current economic condition or growth potential of the market of the proposed location, such that there does or will exist a volume of business for which the installment lender can realistically compete, what portion of that business the installment lender could acquire, and whether that portion is sufficient to generate a profit;

(c) The lending opportunity for the proposed location as indicated by population, employment, residential and commercial construction, sales, company payrolls, businesses established, geographic and environmental restrictions to further development, and other relevant indicators; and

(d) Whether the proposed location will result in a better matching of source and needs of funds, thereby providing the basis for improved customer service.

(6) Notwithstanding Paragraph 4 of this rule, the Department may waive the requirement for information regarding the convenience and advantage of the community if a licensee proposes to relocate an existing approved main office or branch office within the same community; however, the proposed relocation remains subject to prior written approval by the Department.

(7) A location, including a personal residence, shall be considered a branch of a licensee requiring approval for purposes of the Georgia Installment Loan Act ("Act") if any of the following conditions are met:

(a) The location address is printed on or contained in letterheads, business cards, announcements, advertisements, solicitations for business, flyers, brochures, or the like;

(b) Georgia consumers are received at the location or are directed to deliver any information by any means to the location;

(c) Loan files or any other books and records required by the Act or Department rules are located at the location; or

(d) The licensee directly or indirectly reimburses for rent, utility bills or other expenses incurred for use of a location as a branch.

(8) Notwithstanding Paragraph (4) of this rule, a location, including a personal residence, will not be deemed a branch and will be required to have its own license if:

(a) It is a franchise arrangement;

(b) It is a separate entity that may be referred to as a "net branch," and it is an independent business or installment loan operation which is not under the direct control, management, supervision and responsibility of the licensee;

(c) The licensee is not the lessee or owner of the branch and the branch is not under the direct and daily ownership, control, management, and supervision of the licensee;

(d) All employees, including the branch manager, do not meet the requirements for exemption from licensure in O.C.G.A. § 7-3-4(b)(5) and the rules of the Department;

(e) All assets and liabilities of the branch are not assets and liabilities of the licensee and income and expenses of the branch are not income and expenses of the licensee and are not properly accounted for in the financial records and tax returns of the licensee; or

(f) All practices, policies, and procedures, including but not limited to those relating to employment and operations, are not originated and established by the licensee and are not applied consistently to the main office and all branches.

(9) An unstaffed storage facility shall not constitute a branch.

(10) The mailing address of a licensee may be different from the main office address but shall be the address where the Department is authorized to send all correspondence, official notices and orders. The licensee is responsible for keeping the Department informed of any changes in this mailing address.

(11) Each licensee must keep the Department informed of the name, telephone number, and email address of the current contact person for consumer complaints, who is available and has authority to investigate and resolve questions and complaints from consumers which have come to the Department for resolution.

Cite as Ga. Comp. R. & Regs. R. 80-14-1-.01
Authority: O.C.G.A. §§ 7-3-22, 7-3-32.
History. Original Rule entitled "Place of Business Requirements; Convenience and Advantage of Community" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.

Rule 80-14-1-.02. Location Managers.

(1) A "location manager" shall mean an individual who supervises daily activities in Georgia of a licensee, whether at a main office or branch as defined in Rule 80-14-1-1.01, and regardless of job title.

(2) No individual shall be permitted to manage a location in Georgia without being approved by the Department as a location manager. A location manager may be put in place subject to Departmental approval, but the Department must receive a complete application for approval within 15 calendar days of the placement. No individual may serve as the location manager of more than one location of a licensee.

(3) The Department shall conduct a background check, obtain a credit report, and require such other pertinent information to satisfy itself that the location manager will operate the location responsibly and in compliance with the laws and rules of this state.

Cite as Ga. Comp. R. & Regs. R. 80-14-1-.02
Authority: O.C.G.A. § 7-3-32.
History. Original Rule entitled "Location Managers" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.

Rule 80-14-1-.03. Employee Background Checks; Covered Employees.

(1) As required by O.C.G.A. § 7-3-42(d), applicants and licensees must complete background checks on all covered employees, as defined in O.C.G.A. § 7-3-3(2). Employees of an applicant or licensee who are not engaged in the installment loan business are not covered employees. Background checks on all covered employees must be completed and found satisfactory by the applicant or licensee prior to the initial date of hire.

(2) For purposes of O.C.G.A. § 7-3-42, an employee of a licensee is engaged in the installment loan business if he or she performs any of the following duties for a Georgia consumer:

(a) taking a loan application or offering or negotiating terms of an installment loan;

(b) entering, deleting, or verifying any information on an installment loan related document; or,

(c) communicating with a consumer regarding a specific installment loan, excluding communication by a third party for purposes of debt collection.

(3) Applicants' and licensees' requests for background checks are handled by the Georgia Crime Information Center (GCIC) following their rules and regulations as well as O.C.G.A. § 35-3-34. 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 licensee. The background checks may be arranged for through a local law enforcement office, so long as the background check is done by GCIC.

Cite as Ga. Comp. R. & Regs. R. 80-14-1-.03
Authority: O.C.G.A. §§ 7-3-3, 7-3-42.
History. Original Rule entitled "Employee Background Checks; Covered Employees" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.

Rule 80-14-1-.04. Advertising Requirements.

Any advertisement of an installment loan that is subject to regulation under the Georgia Installment Loan Act ("Act") and that is made, published, disseminated or circulated in this state shall comply with the requirements set forth below.

(a) Advertisements for installment loans shall not be false, misleading, or deceptive.

(b) All solicitations or advertisements, including business cards and websites, for installment loans disseminated in this state by persons required to be licensed under the Act shall contain the licensee's name, which shall conform to a name on record with the Department, and unique identifier, which shall clearly indicate that the number was issued by the Nationwide Multistate Licensing System and Registry.

(c) For purposes of this Rule, "advertisement" means material used or intended to be used to induce the public to apply for an installment loan. Such term shall include any printed or published material, audio or visual material, website, or descriptive literature concerning an installment loan subject to regulation under the Act, whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, electronic, billboard, or similar display. The term advertisement shall not include promotional materials containing fifteen words or fewer relating to the installment loan business of the entity which material does not contain references to a specific rate or product, such as balloons, hats, pencils or pens, and calendars.

(d) Every installment lender required to be licensed shall maintain a record of samples of all of its advertisements, including commercial scripts of all radio and television broadcasts, for examination by the Department.

(e) No licensee shall use any advertising in the form of a simulated check or other negotiable instrument unless such document provides in a clear and concise manner, in no smaller than twelve-point type, that it is an advertisement and not a check or a negotiable instrument. "Simulated check or other negotiable instrument" means any document that resembles but is not a check or other negotiable instrument and is used for the purpose of soliciting a customer for an installment loan.

Cite as Ga. Comp. R. & Regs. R. 80-14-1-.04
Authority: O.C.G.A. §§ 7-3-10, 7-3-30(a)(3).
History. Original Rule entitled "Advertising Requirements" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-14-1-.05. Notice of Unauthorized Access to Personal Information.

(1) In the event that a licensee provides notice under applicable federal or state law of an information security incident involving unauthorized access to personal information, then the licensee shall simultaneously provide a duplicate of such disclosure to the Department. For purposes of this rule, personal information is any record containing nonpublic personal information about a customer or potential customer whether in paper, electronic, or other form maintained by or on behalf of the licensee.

(2) Pursuant to O.C.G.A. § 10-1-912, a business that satisfies the definition of an information broker is required to provide notice to Georgia residents in the event of a data breach that results in access or likely access to unencrypted personal information. In the event a licensee or an affiliate of a licensee is required to make such notification to Georgia residents, then a duplicate of the notification will simultaneously be submitted to the Department.

Cite as Ga. Comp. R. & Regs. R. 80-14-1-.05
Authority: O.C.G.A. §§ 7-1-61, 7-3-51.
History. Original Rule entitled "Notice of Unauthorized Access to Personal Information" adopted. F. July 7, 2022; eff. July 27, 2022.

Rule 80-14-1-.06. Information Security Safeguards for Consumer Financial Information.

All licensees shall create and maintain an information security program to safeguard the nonpublic personal information of customers to the extent required by 16 C.F.R. Part 314 (the "Safeguards Rule"). As part of its regulatory oversight, the Department shall review, to the extent

applicable, licensee's information security programs, risk assessments, incident response plans, and other required elements of the Safeguards Rule.

Cite as Ga. Comp. R. & Regs. R. 80-14-1-.06
Authority: O.C.G.A. §§ 7-1-61, 7-3-51.
History. Original Rule entitled "Information Security Safeguards for Consumer Financial Information" adopted. F. July 7, 2022; eff. July 27, 2022.

Subject 80-14-2. BOOKS AND RECORDS.

Rule 80-14-2-.01. Location Requirement; Examinations.

Each installment lender required to be licensed under the Georgia Installment Loan Act shall maintain a principal place of business on record with the Department at which its books and records are maintained and which is accessible to the Department for examination during normal business hours. Records required to be maintained under this rule may be maintained in a photographic, electronic, or other similar format at a central location within or outside the State of Georgia provided specific records can be transmitted to a location designated by the Department within ten (10) days of the Department's request. The Department may examine any person that purports to satisfy the exemption from licensure set forth in O.C.G.A. § 7-3-4 to verify that the person qualifies for the exemption from licensure.

Cite as Ga. Comp. R. & Regs. R. 80-14-2-.01
Authority: O.C.G.A. §§ 7-3-30, 7-3-40.
History. Original Rule entitled "Location Requirement; Examinations" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.

Rule 80-14-2-.02. Minimum Requirements for Books and Records.

Each licensee shall maintain the following books, accounts, and records:

(a) Copies of all disclosure documents required by Rule Chapter 80-14-5;

(b) Samples of advertisements as required by Rule 80-14-1-.04;

(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 installment lending business of the licensee or registrant and are not prohibited from being disclosed to the Department by state or federal law;

(e) Copies of reports required to be prepared and/or submitted by the licensee to any agency, division, or corporate instrumentality of the United States, the State of Georgia or any

other state, which reports pertain to the installment lending business of the licensee and are not prohibited from being disclosed to the Department 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 its agent on behalf of individuals employed by the licensee in the installment lending business of the licensee;

(g) A cash book or daily report for each approved location in which all receipts and disbursements of any amount shall be entered. Separate spaces shall be provided for amounts received or charged as interest, fees, insurance premiums, recording fees and any other receipts or disbursements made by the licensee. All such entries shall be made on the exact date on which they occur. This cash book shall be balanced daily. This paragraph shall not prevent licensees from closing their books in the late afternoon, commonly known as providing for "late drawer" payments, so long as entries of loans and collections are made on their exact date;

(h) A general ledger which shall be posted at least monthly containing all assets, liabilities, capital, and income and expense accounts;

(i) All bank statements and bank reconciliations records which pertain to the installment lending business of the licensee;

(j) If the licensee defers installment loans, the deferred loan monthly journal required by O.C.G.A. § 7-3-11(6)(G);

(k) Copies of all credit report bills received from all credit reporting agencies;

(l) Employee file for each employee. The employee file must contain all documents related to hiring the employee, including criminal background check, date employment began, and a print out or screenshot confirming that the Department's public records were reviewed on NMLS Consumer Access to verify eligibility for employment with such review of the Department's public records taking place prior to the date of hire;

(m) Copies of all reports required to be filed with the Department or the Nationwide Multistate Licensing System and Registry, 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 such reports;

(n) Copies of any required notifications required to be made to the Department pursuant to O.C.G.A. § 7-3-31(a) and (b) and supporting documentation; and

(o) Information security program materials maintained by the licensee in accordance with 16 C.F.R. Part 314, ("the Safeguards Rule") and Rule 80-3-1-.05, including, but not limited to, any risk assessment and incident response plan.

Cite as Ga. Comp. R. & Regs. R. 80-14-2-.02
Authority: O.C.G.A. §§ 7-3-30, 7-3-51.
History. Original Rule entitled "Minimum Requirements for Books and Records" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.
Amended: F. July 7, 2021; eff. July 27, 2021.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-14-2-.03. Installment Loan Transaction Journal.

(1) Each licensee shall maintain a journal of installment loan transactions which shall include, at a minimum, the following information:

(a) Full name of the borrower and any co-borrowers;

(b) Loan Number;

(c) Date of the loan;

(d) Amount of the loan; and

(e) Due date of the loan.

(2) A complete installment loan transaction journal shall be maintained in the principal place of business. The journal shall be kept current. Entries shall be organized by chronological order by date of the loan. Records may be kept at an approved branch office but the principal place of business must have a current journal updated no less frequently than every seven (7) days. The failure to initiate an entry to the journal within seven (7) business days from the date of the occurrence of the event required to be recorded in the journal shall be deemed a failure to keep the journal current.

Cite as Ga. Comp. R. & Regs. R. 80-14-2-.03
Authority: O.C.G.A. §§ 7-3-30, 7-3-51.
History. Original Rule entitled "Installment Loan Transaction Journal" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.

Rule 80-14-2-.04. Installment Loan Files.

(1) Each installment lender shall maintain a loan file for each installment loan borrower. If there are multiple borrowers on one loan, the loan documents shall be maintained in the loan file for the primary borrower. The files shall be maintained in an alphabetical or numerical sequence in the principal place of business or in each approved branch office where installment loans are made.

(2) Each loan file shall contain the following:

(a) Copy of the loan application;

(b) Copy of credit report if the credit report is pulled or ordered by the licensee;

(c) Copy of the signed loan agreement;

(d) Copy of all notes, bills of sale, or other evidence of indebtedness or security;

(e) Copy of the signed acknowledgement of written disclosure statement as required by Rule 80-14-5-.01(6); and

(f) A separate account record for each installment loan transaction or renewal thereof, which shall include the following information:

(i) Name and address of the licensee;

(ii) Loan number;

(iii) Date of the loan;

(iv) Name and address of each borrower and co-maker or endorser, if any;

(v) Brief description of security, if any;

(vi) Actual amounts of individual charges shall be shown separately for interest and fees.;

(vii) Amount of loan;

(viii) If a renewal, the loan number of the previous loan;

(ix) Terms of repayment;

(x) Payments received showing:

A. Date of payment.

B. Amount paid on account.

C. Remaining balance.

D. Date to which account is paid.

E. Any late charge collected, and date of collection;

(xi) Date of final payment on loan or expiration; and

(xii) Record of the amount, date, and reason for any refunds.

Cite as Ga. Comp. R. & Regs. R. 80-14-2-.04
Authority: O.C.G.A. §§ 7-3-30, 7-3-51.
History. Original Rule entitled "Installment Loan Files" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Subject 80-14-3. ADMINISTRATIVE FINES AND PENALITIES.

Rule 80-14-3-.01. Administrative Fines.

(1) The Department establishes the following fines for violation of the Georgia Installment Loan Act ("Act") or its rules. Except as otherwise indicated, these fines apply to any person who is acting as an installment lender and any licensee under the Act. The Department, at its sole discretion, may waive or reduce a fine based upon the financial resources of the person, gravity of the violation, history of previous violations, and such other facts and circumstances deemed appropriate by the Department.

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

(3) In addition to any fines levied by the Department, the recipient of the fine may be subject to additional administrative actions for the same underlying activity.

(4) Operating Without Proper License. Any person who acts as an installment lender prior to receiving a current license required under the Act, or who acquires an unlicensed installment loan business, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars ($1,000) per day.

(5) Failure to Obtain Approval from the Department of Change in Ownership or Change in Control. Any licensee or other person who fails to obtain the Department's prior written approval of a change in ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control of the licensee in compliance with O.C.G.A. § 7-3-32 shall be subject to a fine of one thousand dollars ($1,000).

(6) Failure to Notify of Change in Executive Officers. Any licensee or other person who fails to timely notify the Department of a change in executive officer not resulting from a change in control or ownership in compliance with O.C.G.A. § 7-3-32 and shall be subject to a fine of one thousand dollars ($1,000).

(7) Unapproved Locations. In addition to the application, fee, and approval requirements of O.C.G.A. § 7-3-32(a), any licensee who operates an unapproved branch office shall be subject to a fine of five hundred dollars ($500) per unapproved branch office operated.

(8) Location Manager Approval. Any licensee shall be subject to a fine of five hundred dollars ($500) for operation of a location with an unapproved location manager. No such fine shall be levied while Department approval is pending if timely application for approval is made pursuant to Rule 80-14-1-.02.

(9) Felons. Any licensee that hires or retains a covered employee who is a felon as described in O.C.G.A. § 7-3-42(a), when such covered employee has not complied with the remedies provided for in O.C.G.A. § 7-3-42(a) for each conviction before such employment, shall be subject to a fine of five thousand dollars ($5,000) for each such covered employee.

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

(11) Disqualified Persons. Any licensee who employs any person subject to a final cease and desist order or license revocation within five (5) years of the date such person was hired pursuant to O.C.G.A. § 7-3-43(d) and (e) shall be subject to a fine of five thousand dollars ($5,000) per such employee.

(12) Failure to Review Public Records Prior to Hiring. Any licensee who fails to examine the Department's public records on NMLS Consumer Access to determine if a job applicant is subject to an order set forth in O.C.G.A. § 7-3-43(d) or (e) prior to hiring such individual shall be subject to a fine of one thousand dollars ($1,000) for each employee on whom the public records were not timely examined.

(13) Prohibited Acts. Any licensee who violates the provisions of O.C.G.A. § 7-3-43 shall be subject to a fine of one thousand dollars ($1,000) per violation or transaction that is in violation of O.C.G.A. § 7-3-43.

(14) Failure to Timely Report Certain Events. Any licensee who fails to report any of the events enumerated in O.C.G.A. § 7-3-31(a), shall be subject to a fine of one thousand dollars ($1,000) per act not reported in writing to the Department within 10 days of knowledge of such act.

(15) Failure to Report. Any licensee who fails to provide required reports as established by the Department and file the reports with the Department or the Nationwide Multistate Licensing System and Registry as specified by the Department within the designated time periods shall be subject to a fine of one hundred dollars ($100) for each such occurrence.

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

(17) Failure to Timely Update Information on the Nationwide Multistate Licensing System and Registry. Any licensee that fails to update its information on the Nationwide Multistate Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars ($1,000) per occurrence. In addition, the failure of a control person of a licensee to update the individual's information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions by the control person, within ten (10) business days of the date of the event necessitating the change, shall subject the licensee to a fine of one thousand dollars ($1,000) per occurrence.

(18) Failure to Submit to Examination or Investigation. Any licensee that refuses to permit an investigation or examination of books, accounts, and records after a reasonable request by the Department shall be subject to a fine of five thousand dollars ($5,000). Refusal shall require at least two attempts by the Department to schedule an examination or investigation.

(19) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain its books and records according to the requirements of O.C.G.A. § 7-3-30 and Rule Chapter 80-14-2, such licensee shall be subject to a fine of one thousand dollars ($1,000) for each violation of a books and records requirement listed in Rule Chapter 80-14-2.

(20) Maintenance of Loan Files. Any licensee who fails to maintain a loan file for each installment loan borrower as required by Rule 80-14-2-.04 or who fails to have all required documents in such file shall be subject to a fine of one thousand dollars ($1,000) per file not maintained or not accessible, or per file not containing required documentation.

(21) Failure to Provide Loan Contract or Loan Contract that Does Not Comply with Applicable Laws and Rules. In the event a licensee does not provide a consumer with a copy of the loan contract or written itemized statement as required by O.C.G.A. § 7-3-15 and Rule 80-14-5-.01 or a copy of a loan contract or written itemized statement that satisfies the requirements of O.C.G.A. § 7-3-15 and Rule 80-14-5-.01, the licensee shall be subject to a fine of one thousand dollars ($1,000) per transaction where either a loan

contract or itemized statement was not provided or a loan contract or itemized statement that satisfies the requirements of O.C.G.A. § 7-3-15 and Rule 80-14-5-.01 was not provided.

(22) Failure to Provide Receipt. In the event a licensee does not provide a consumer with a written receipt as required in Rule 80-14-5-.01(7), the licensee shall be subject to a fine of one hundred dollars ($100) per payment for which the receipt was not provided.

(23) Failure to Post Required License. Any licensee that fails to post a copy of its license in each location where an installment loan business is conducted shall be subject to a fine of five hundred dollars ($500) for each instance of non-compliance.

(24) Advertising. Any licensee who violates the advertising requirements in O.C.G.A. § 7-3-10 or Rule 80-14-1-.04 shall be subject to a fine of five hundred dollars ($500) for each violation of law or rule.

(25) Unsolicited Live Checks. Any licensee who offers an unsolicited live check in a manner that violates any of the conditions of Rule 80-14-5-.04 shall be subject to a fine of one thousand dollars ($1,000) for each occurrence, which in no event shall exceed fifty thousand dollars ($50,000).

(26) Debt Collection Practices. In the event any licensee, or employee or agent thereof, willfully uses any unreasonable collection tactics in violation of O.C.G.A. § 7-3-33 or Rule 80-14-5-.05(2), such licensee shall be subject to a fine of five hundred dollars ($500) per occurrence.

(27) Consumer Complaints. Any licensee who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department's correspondence to such licensee, shall be subject to a fine of one thousand dollars ($1,000) for each occurrence.

(28) Unauthorized Access to Customer Information. Any licensee that fails to provide the Department with notice of unauthorized access to customer information as required by Rule 80-14-1-.05 shall be subject to a fine of one thousand dollars ($1,000) a day until such notice is provided.

Cite as Ga. Comp. R. & Regs. R. 80-14-3-.01
Authority: O.C.G.A. §§ 7-3-45, 7-3-46.
History. Original Rule entitled "Administrative Fines" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.
Amended: F. July 7, 2022; eff. July 27, 2022.

Subject 80-14-4. LICENSING.

Rule 80-14-4-.01. Licensing Requirements and Exemptions.

(1) The exemption from licensing provided pursuant to O.C.G.A. § 7-3-4(5) to an employee of a licensee, affiliate of a licensee, or exemptee applies only to natural persons who meet all of the following criteria:

(a) (i) An employee must be employed by only one licensee or exemptee and work exclusively for that person; or

(ii) An employee of an affiliate of a licensee if prior written approval is obtained from the Department as provided in paragraph (2);

(b) An employee may not advertise, solicit, offer, or make installment loans for anyone else while claiming the exemption;

(c) An employee's procedures and activities must be supervised by the licensee or exemptee on a daily basis and the licensee or exemptee is responsible for the actions of such employees. This requirement is intended to make it clear that licensees, affiliates of licensees, and exemptees control and are accountable for the actions of their employees; and

(d) An employee may not be paid or compensated for the performance of installment lending activity as an independent contractor or on a 1099 basis.

(2) If a licensee wishes to utilize any employees of an affiliate to perform installment lending activities on behalf of the licensee, either presently or in the future, the licensee shall submit a written request for approval to the Department. The request shall identify the name of the affiliate that is supplying the employees and provide sufficient ownership information to establish that the entities are affiliated. In evaluating the request, the Department will take into consideration, the licensee's compliance with laws and rules, consumer complaints, and the interconnectedness of the entities. In the event the Department approves the licensee's request both the licensee and the affiliate will be responsible for the actions of the affiliate's employees while the employees are performing work on behalf of the licensee.

(3) For purposes of this rule, an "affiliate" is a person, other than an individual, where the person, or an individual owner of the person, owns, controls, or holds with the power to vote 20 percent or more of any class of voting securities or other ownership interest of the other person and is licensed by the Department as an installment lender.

(4) A natural person shall not be required to obtain a license under the Georgia Installment Loan Act if such natural person is not in the business of making installment loans or employed by a licensee or exemptee, makes five (5) or fewer installment loans in any one calendar year, and uses his or her own funds to make such loans for his or her own investment. Any unlicensed natural person who makes installment loans without meeting all of the foregoing requirements is in violation of O.C.G.A. § 7-3-4 and may be subject to an order to cease and desist.

Cite as Ga. Comp. R. & Regs. R. 80-14-4-.01
Authority: O.C.G.A. §§ 7-3-4, 7-3-45.
History. Original Rule entitled "Licensing Requirements and Exemptions" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.

Rule 80-14-4-.02. Restrictions on Employment and Licensing.

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

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

(a) Licensees are responsible for ensuring that no convicted felons are covered employees or direct the affairs of their business.

(b) O.C.G.A. § 7-3-42 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 covered employee with an unremedied felony conviction subjects a licensee to revocation of its license.

(c) For purposes of O.C.G.A. §§ 7-3-31 and 7-3-42, "agent" means any person who appears to the public or to a regulatory agency as acting for or on behalf of a licensee to the extent the licensee is engaged in the business of making installment loans.

(d) If a licensee discovers that a covered employee or director/officer is a felon at the time of hire or subsequently becomes a felon and has not satisfactorily cured the conviction, the violation of O.C.G.A. § 7-3-42 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. §§ 7-3-4 and 7-3-50. The licensee employer is also in violation of O.C.G.A. § 7-3-4 in such circumstance.

(e) 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. § 7-3-42 shall become final in 30 days without a hearing pursuant to O.C.G.A. § 7-3-45. 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. § 7-3-42 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 licensed or against employees of those parties. All of the provisions of O.C.G.A. §§ 7-3-45 and 7-3-46, including injunction, apply to actions against all such persons.

(4) For purposes of O.C.G.A. §§ 7-3-31 and 7-3-43(b)(1), "misrepresentation" means making a false statement of a substantive fact or intentionally engaging in any conduct which leads to a false belief which is material to the transaction.

Cite as Ga. Comp. R. & Regs. R. 80-14-4-.02
Authority: O.C.G.A. §§ 7-3-4, 7-3-42, 7-3-43, 7-3-45, 7-3-46, 7-3-47.
History. Original Rule entitled "Restrictions on Employment and Licensing" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.

Rule 80-14-4-.03. Verification of Lawful Presence Affidavit.

(1) Pursuant to O.C.G.A. § 50-36-1, the Department is required to obtain an affidavit verifying the lawful presence of every natural person that submits an application for a license as an installment lender on behalf of an individual, business, corporation, partnership, limited liability company, or any other business entity. For businesses, corporations, partnerships, limited liability companies, and other business entities (collectively "company applicant"), only an owner or executive officer that is authorized to act on behalf of the company applicant is authorized to submit the required signed and sworn affidavit.

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

Cite as Ga. Comp. R. & Regs. R. 80-14-4-.03
Authority: O.C.G.A. § 50-36-1.
History. Original Rule entitled "Verification of Lawful Presence Affidavit" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.

Rule 80-14-4-.04. Nationwide Multistate Licensing System and Registry.

(1) License issuance and renewals.

(a) All applications for new or renewal licenses must be made through the Nationwide Multistate Licensing System and Registry ("NMLSR"). Fees for new applications include an initial Department investigation fee and the appropriate application fee. Applications for new licenses which are approved between November 1 and

December 31 in any year will not be required to file a renewal application for the next calendar year. All fees are nonrefundable.

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

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

(a) It shall be the sole responsibility of each applicant for a license and each licensee to keep current at all times its information on the NMLSR. Amendments to any information on file with the NMLSR must be made by the applicant or licensee within ten (10) business days of the date of the event necessitating the change. The Department shall have no responsibility for any communication not received by an applicant or licensee due to its failure to maintain current contact information on the NMLSR as required.

(b) Amendments to any responses to disclosure questions by an applicant for a license or a licensee must be made within ten (10) business days following the date of the event necessitating the change. Failure by an applicant for a license to timely update the applicant's responses to disclosure questions may be considered a violation of O.C.G.A. § 7-3-43(6).

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

(ii) Amendments to any responses to disclosure questions by a control person must be made within ten (10) business days following the date of the event necessitating the change. Failure by a control person of an applicant for a

license to timely update the control person's responses to disclosure questions may result in the denial of the application. In the case of a licensee, failure by a control person to timely update any disclosure information may result in the revocation of its license.

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

(4) Each licensee shall submit to the Department on a quarterly basis, via the NMLSR or other means specified by the Department, an installment loan report in a form and manner prescribed by the Department which shall include, but not be limited to, information regarding installment loan activity. The loan report shall be submitted to the Department forty-five (45) days after the end of each calendar quarter. Licensees submitting quarterly loan reports to the Department are certifying to the material accuracy and validity of the information as submitted.

(5) All written notices required pursuant to O.C.G.A. § 7-3-31(a) and (b) and Rule 80-14-1-.05 shall be submitted to the Department via NMLSR. Such notices shall be uploaded as state specific documents under the document type "Additional Requirements." The file name for each document shall begin with "Georgia Required Written Notice" but may contain additional words at the option of the licensee.

Cite as Ga. Comp. R. & Regs. R. 80-14-4-.04
Authority: O.C.G.A. §§ 7-3-20, 7-3-22, 7-3-30.
History. Original Rule entitled "Nationwide Multistate Licensing System and Registry" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-14-4-.05. Transition to Department.

(1) Installment Lenders licensed as of July 1, 2020, shall be afforded a transition period through October 15, 2020, to demonstrate compliance with the following requirements:

(a) Restrictions on employment of individuals with unremedied felony convictions pursuant to O.C.G.A. § 7-3-42 and Rule 80-14-4-.02. The required cure for any disqualifying felony convictions must be completed prior to the date of initial hire for any director, trustee, agent, owner, executive officer, or covered employee hired or rehired after July 1, 2020.

(b) Department approval of location managers as required by O.C.G.A. § 7-3-32 and Rule 80-14-1.02.

(c) Corporate surety bond as required by O.C.G.A. § 7-3-21.

(d) Participation in and submission of required filings through the Nationwide Multistate Licensing System and Registry as required by the Act and the Rules of the Department.

(2) Installment Lenders licensed as of July 1, 2020, shall be afforded a transition period through December 31, 2020, to demonstrate compliance with the following requirements:

(a) Background checks as required by O.C.G.A. § 7-3-42(d) and Rule 80-14-1-.03 for covered employees already employed by the licensee as of July 1, 2020. The required background checks shall be completed prior to the date of initial hire for covered employees hired or rehired after July 1, 2020.

(b) The content of business cards as required by Rule 80-14-1-.04(b).

Cite as Ga. Comp. R. & Regs. R. 80-14-4-.05
Authority: O.C.G.A. §§ 7-3-2, 7-3-51.
History. Original Rule entitled "Transition to Department" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.

Subject 80-14-5. DISCLOSURE, CHARGES, AND MISCELLANEOUS.

Rule 80-14-5-.01. Loan Contract, Disclosures, and Limitations.

(1) Loan Contract; Contents.

(a) Every consumer loan transaction shall be pursuant to a written loan contract which may include a loan voucher, itemized statement of loan and charges, and disclosure statement. The loan contract shall be signed by the consumer and delivered to the consumer at the time it is executed by him or her. The loan contract shall be contained in a single document which may contain more than one page. Printed terms shall be printed in at least six-point standard type.

(b) In connection with every consumer loan transaction, the consumer shall be furnished a written itemized statement in clear terms and easily understood language which shall show the following: the transaction date, a description of the subject matter and amount of the transaction, a description of the collateral, if any, securing the consumer's obligations; the identity and address of the consumer and the identity and address of the creditor; a schedule of the payments; the amount of the actual cash advanced to or on behalf of the consumer; the amount of each class of insurance carried and the premium paid thereon, stated separately for each class

of insurance; and an itemization of the exact amount of the interest, fees, and other charges, if any, showing each element thereof.

(c) The loan contract shall include immediately above the place for the signature for the parties the following notice:

NOTICE TO CONSUMER

1. Do not sign this agreement if it contains any blank spaces.
2. You are entitled to an exact copy of all papers you signed.
3. You have the right at any time to pay in advance the full amount due under this agreement and under certain conditions to obtain a partial refund of the interest charges.
4. If credit life insurance is required, you have the right to purchase either level term life insurance or reducing term life insurance coverage.
5. You are not required to purchase noncredit insurance as a condition of obtaining this loan.

(d) The creditor shall furnish the consumer with an exact copy of the loan contract including any loan voucher, itemized statement of loan charges, and disclosure statement after the agreement has been signed.

(e) With respect to every installment loan transaction, the creditor shall, at the time of the transaction, furnish to the consumer a written statement of the maximum number of payments required, the amount of such payments, and the exact due dates upon which each payment is due. The maximum number of payments and the amount and date of such payments need not be separately listed if the payments are stated in terms of a series of scheduled amounts.

(2) The following practices are prohibited in the making of an installment loan pursuant to the Georgia Installment Loan Act:

(a) Blank Agreements. Every contract evidencing an installment loan transaction shall be completed as to all essential provisions prior to the signing thereof by the parties. No licensee shall induce, encourage, or otherwise permit the consumer to sign a contract containing blank spaces. Blank spaces inapplicable to a transaction must be completed in a manner which reveals their inapplicability.

(b) Negotiable Instruments. No licensee shall take or otherwise arrange for the consumer to sign an instrument payable "to order" or "to bearer", other than a

check, as evidence of the credit obligation of the consumer in an installment loan transaction.

(c) Balloon and Irregular Payments. Except for single payment loans, no licensee shall enter into a contract which contains or anticipates a schedule of payments under which the final payment exceeds the amount of any other payment by more than $1.00. A single payment loan shall be repayable on terms not to exceed ninety (90) days. All other installment payments shall be scheduled at regular intervals in equal amounts. Notwithstanding the requirement that payments be made at regular intervals for all loans except for single payment loans, the initial payment on an installment loan shall be due within a period not to exceed forty-five (45) days from the date on which the loan is made but no sooner than the regular interval for all other installment loan payments.

(d) Multiple Agreements to the following extent:

(i) No authorized location of a licensee shall engage in any activity in connection with an installment loan by use of multiple agreements or otherwise as a result of which the authorized location of a licensee charges, contracts for, or receives any other or further amount in connection with an installment loan than that authorized by law for a single loan of a comparable amount.

(ii) No authorized location of a licensee shall split a consumer loan into separate agreements by spouses if as a result thereof the authorized location of a licensee charges, contracts for, or receives any other or further amount in connection therewith than as authorized by law for a single loan of a comparable amount; provided, however, that the authorized location of a licensee may make an installment loan to spouses jointly and severally if such loans do not arise out of substantially the same transaction.

(e) Non-Judicial Enforcement. Notwithstanding any other provision of law, no term of an agreement shall constitute authorization for a licensee to take possession of collateral by other than legal process unless such authorization is clearly, prominently and conspicuously disclosed to the consumer immediately above the place for his signature on the loan agreement or as an addition to the "NOTICE TO CONSUMER" specified in subsection (1)(c) of this Rule.

(3) Insurance Permitted.

(a) With respect to any installment loan transaction, the licensee shall not require any insurance other than insurance covering the loss of or damage to any property in which the creditor is given a security interest. Credit life and credit accident and sickness insurance if required by the licensee, may be provided by the licensee through an insurer authorized to issue such insurance in this State.

(b) If a licensee requires any insurance permitted under subsection (1) above in any consumer loan transaction, the consumer shall be given written notice of the option of providing such insurance through an existing policy or a policy independently obtained and paid for by the consumer. If the licensee requires credit life insurance, the licensee shall give the consumer written notice of the consumer's right to choose either level term life insurance or reducing term life insurance coverage. The licensee may for reasonable cause before credit is extended decline the insurance provided by the consumer.

(c) Any insurance offered by an installment lender licensee shall comply with any and all applicable insurance laws and regulations.

(4) Discharge of Security Interests. When the consumer is indebted to a particular licensee for two or more consumer loans, any security interest held by such licensee for any particular loan shall be discharged when the loan for which the security interest is held is paid irrespective of indebtedness to the licensee by the consumer on other outstanding installment loans. As a general rule, security interests in terms of property shall terminate as the debt originally incurred with respect to each item is paid and in the case of the consolidation of two or more installment loans or any circumstances in which the general rule is not followed, the licensee may be required by the Department to show that his conduct with respect to such loan transactions was just, fair and reasonable. For the purposes of this Rule, the renewal of a consumer loan shall not be deemed to be payment thereof.

(5) Electronic Transactions Permitted. The provisions of the Uniform Electronic Transactions Act, O.C.G.A. § 10-12-1*et seq*., applies to loans made pursuant to the Georgia Installment Loan Act. Nothing in the Act or the Department's rules shall be construed as prohibiting installment loans from being originated or closed remotely by a licensee.

(6) Other Purchases. If any loan within the Act is made in conjunction with the provision of any item, service, or commodity incidental to the advancement of funds, or if any other element is introduced into the transaction at the expense of the consumer, then the licensee shall provide to the consumer a separate written disclosure statement. The disclosure statement shall disclose, in no smaller than twelve-point type, the following:

(a) That the consumer does not have to purchase any such item, service, or commodity, or pay for such element, in order to obtain the loan.

(b) The cost to the consumer of any such purchase or element.

(c) The disclosure statement shall contain the consumer's signed acknowledgement of the consumer's understanding that such purchase or element is not required and of the specific cost to the borrower for each such item, service, commodity, or element.

(d) A copy of the signed document shall be provided to the borrower, and the licensee shall retain the original in the loan file.

(7) Receipt. Each consumer shall be provided with a written receipt for each cash payment made showing the licensee's name on record with the Department, the applicable loan number, the date of the payment, and the dollar amount of the payment.

Cite as Ga. Comp. R. & Regs. R. 80-14-5-.01
Authority: O.C.G.A. §§ 7-3-11, 7-3-12, 7-3-15, 7-3-51.
History. Original Rule entitled "Loan Contract, Disclosures, and Limitations" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.
Amended: F. Jan. 8, 2021; eff. Jan. 28, 2021.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-14-5-.02. Maintenance Charges.

(1) The following terms shall have the following meaning as used in this Rule unless a different meaning or construction is clearly required by the context:

(a) "Earned maintenance charges" shall mean those maintenance charges which are applicable to those months in the term of the loan contract in which the loan has been maintained by the licensee for a period of time of one (1) or more complete months. Such earned maintenance charges shall be determined by multiplying the total number of months in the term of the loan contract in which the loan has been maintained by the licensee by the amount of the maintenance charge authorized under O.C.G.A. § 7-3-11.

(b) "Maintenance charges" shall mean charges by a licensee for maintaining a loan for a period of one or more months in accordance with the provisions of O.C.G.A. § 7-3-11 and this Rule.

(c) "Month" shall mean a complete calendar month for all loans whose contract begins as of the first day of the calendar month. For all other loans, the term month shall mean a period of thirty (30) consecutive calendar days and for the purpose of calculation of refunds under the provisions of Paragraph 4 of this Rule, the term "month" shall mean thirty (30) consecutive calendar days.

(d) "Unearned maintenance charges" shall mean those maintenance charges applicable to the partial month in the term of the loan contract in which the loan was maintained by the licensee for one (1) or more days but in which the loan contract was terminated prior to its scheduled maturity date on a day other than the ending day of a month as defined in this Rule.

(2) A licensee may collect from an installment loan borrower a monthly maintenance charge as specified in O.C.G.A. § 7-3-11 for each month that such loan is maintained by the licensee and such maintenance charges shall be calculated and collected as follows:

(a) The "total maintenance charges collectible" over the entire term of the consumer loan shall not exceed the amount obtained by multiplying the total number of months in the term of the loan contract by the monthly maintenance charge specified in the GILA except as provided in subsection (c) of this Rule.

(b) The "total maintenance charges collectible per installment" shall not exceed the amount obtained by dividing the "total maintenance charges collectible" as calculated in (a) above by the total number of installments contemplated in the loan contract except as provided in subsection (c) of this Rule.

(c) A borrower shall not be required by a licensee to pay an amount of maintenance charges at any one time which exceeds the "total amount of maintenance charges collectible per installment" as calculated in (b) above; provided that nothing contained herein shall be deemed to prohibit a licensee from collecting any earned but uncollected portion of such maintenance charges due and owed by the borrower to the licensee on previous installments of the same loan contract or from collecting any unearned maintenance charges which are otherwise due and owed by the borrower to the licensee by virtue of the application of the refund method prescribed in Paragraph 4 of this Rule.

(3) In no event shall a licensee charge a maintenance charge to a borrower for any month in the term of the loan contract in which the loan was not maintained by the licensee and in no event shall a licensee charge a maintenance charge for maintaining a loan contract past the scheduled maturity date of the loan, regardless of the number of days such loan is maintained past the scheduled maturity date.

(4) In the event that a discharge, refinancing, prepayment, acceleration, or any other event occurs which causes a consumer loan to terminate prior to its scheduled maturity date, the licensee shall make a refund of the amount of any unearned maintenance charges applicable to the loan contract.

(5) Maintenance charges shall be considered as an additional charge and:

(a) Shall not be considered in the calculation of any interest, fees, or other charges otherwise authorized by law or regulations including charges for any premiums for insurance written in connection with a consumer loan; provided, that such maintenance charges will be subject to the provisions of O.C.G.A. § 7-3-11.

(b) A borrower's failure to pay any maintenance charges applicable to the loan when due shall not be considered by a licensee as the occurrence of an event which causes the outstanding unpaid balance of the loan contract to become immediately due and payable by virtue of any acceleration clause or other similar clause or provision contained in the loan contract.

(6) If maintenance charges are to be charged and collected by a licensee on an installment loan contract the licensee shall be required to:

(a) Clearly, prominently, conspicuously and separately itemize in the loan contract:

i. The face amount of the contract.

ii. The total amount of maintenance charges collectible under the loan.

iii. The total amount of each payment including maintenance charges.

iv. The total of payments including maintenance charges.

(b) Provide space for and record the actual amounts of individual charges on the account record with respect to:

i. The face amount of the contract.

ii. The total amount of maintenance charges collectible under the loan.

iii. The total amount of each payment including maintenance charges.

iv. The total of payments including maintenance charges.

Cite as Ga. Comp. R. & Regs. R. 80-14-5-.02
Authority: O.C.G.A. §§ 7-3-11, 7-3-14, 7-3-51.
History. Original Rule entitled "Maintenance Charges" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.

Rule 80-14-5-.03. Closing, Convenience, and Other Fees.

(1) Closing Fees. In addition to any other charges authorized by the Georgia Installment Loan Act ("Act"), a licensee may collect a closing fee at the time of making a loan to the extent authorized by O.C.G.A. § 13-1-14.

(a) No licensee may collect a closing fee unless, prior to the advance of money or the extension of credit, such licensee conducted an investigation or verification of the borrower's credit history, residences, references, employment, or sources of income. Each licensee shall retain on file the procedures that the licensee uses to conduct such investigations and verifications.

(b) The amount of the closing fee shall be listed in the loan agreement after the loan fees authorized by O.C.G.A. § 7-3-11. but before the maintenance charge fee.

(2) Convenience Fees. In addition to any other charges authorized by the Act, a licensee may collect convenience fees to offset the cost of receiving payment by electronic means, to the extent authorized by O.C.G.A. § 13-1-15. If a licensee elects to calculate convenience

fees based on average cost for that specific type of payment over the preceding calendar year rather than the actual cost, the licensee shall maintain documentation supporting the calculation of the average cost.

(3) Unaffiliated Third-Party Fees. Fees charged to a consumer by a third party unaffiliated with a licensee to negotiate a payment instrument, including but not limited to check cashing fees or automated teller machine fees, are not prohibited by the Act.

(4) Late Charges. O.C.G.A. § 7-3-11(4) specifically provides that a licensee may charge and collect from the borrower a late or delinquent charge of $10.00 or an amount equal to 5¢ for each $1.00 of any installment which is not paid within five days from the date such payment is due, whichever is greater, provided that this late or delinquent charge shall not be collected more than once for the same default. Therefore, a licensee is not authorized to charge and collect a late or delinquent charge from a borrower until such time as that borrower has actually failed to pay an installment within five days after the date such payment was due. Under no circumstances is a licensee authorized to charge or collect and hold any unearned late or delinquent charge in advance, to be refunded if said installment is paid on or within five days from the date such payment is due.

(5) Charges for Refinancing. When any debt is renewed or refinanced by any creditor, the consumer shall be entitled to a refund or credit of that unearned portion of the interest charge computed as of the date of such refinancing or renewal and pursuant to the methodology set forth in O.C.G.A. § 7-3-14.

Cite as Ga. Comp. R. & Regs. R. 80-14-5-.03
Authority: O.C.G.A. §§ 7-3-14, 7-3-51, 13-1-14, 13-1-15.
History. Original Rule entitled "Closing, Convenience, and Other Fees" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.
Amended: F. July 7, 2022; eff. July 27, 2022.

Rule 80-14-5-.04. Unsolicited Live Checks.

(1) "Live check" means a negotiable check or other negotiable instrument that may be used by a consumer to activate a loan regulated by the Georgia Installment Loan Act ("Act").

(2) The licensee must maintain in its office a system for:

(a) preventing the offering of an unsolicited live check to an individual who is not credit-worthy; and

(b) protecting the intended recipient of an unsolicited live check and the licensee in the event of the fraudulent conversion of the unsolicited live check.

(3) Any use of an unsolicited live check must contain:

(a) the ZIP+4 code and the name of the county of the recipient in the address line of the live check;

(b) a check number or other tracking number for the loan offered on the live check;

(c) the following statement, printed in 14 point size font boldface type on the face of the live check: "**This is a loan.**";

(d) the following statements printed on the face of the live check: "Cashing this check requires repayment of the loan plus potential charges. Read all terms.";

(e) the following statement printed clearly and conspicuously in the solicitation or accompanying disclosure statement: "You have the right to file a written complaint with the licensee via [mailing address or email address] and with the Department of Banking and Finance via email at dbfgila@dbf.state.ga.us." and,

(f) the name on record with the Department, unique identifier, and telephone number of the licensee.

(4) The terms of the loan resulting from an unsolicited live check must comply with the Act and the rules and regulations of the Department.

(5) The licensee may not offer or provide insurance or other ancillary products in conjunction with a loan obtained through an unsolicited live check.

(6) The licensee may not send an unsolicited live check to an individual who resides beyond the boundaries of a county in which the licensee has an approved location or beyond the boundaries of any contiguous county in which the licensee has an approved location. In the event a live check is negotiated by a consumer that resides outside the county in which the licensee has an approved location or resides more than twenty-five (25) miles from an approved location, the licensee must provide a means for the consumer to submit payments electronically without imposing a convenience fee pursuant to O.C.G.A. § 13-1-15.

(7) The licensee must report to the Department within ten (10) business days of the licensee having any knowledge of any suspected or confirmed fraud related to an unsolicited live check.

Cite as Ga. Comp. R. & Regs. R. 80-14-5-.04
Authority: O.C.G.A. §§ 7-3-10, 7-3-51.
History. Original Rule entitled "Unsolicited Live Checks" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.

Rule 80-14-5-.05. Debt Collection.

(1) In addition to the requirements of O.C.G.A. § 7-3-33, each non-employee debt collector utilized by a licensee must comply with the requirements of the Fair Debt Collection Practices Act ("FDCPA"), 18 U.S.C. 1692*et seq.*

(2) Every licensee shall be presumed to know that any employee or agent of the licensee, which includes non-employee debt collectors utilized by the licensee, will be acting for and on behalf of the licensee in connection with the collection of any debt allegedly owed the licensee. Every licensee shall be responsible for compliance with O.C.G.A. § 7-3-33 by the employee or agent in collecting or attempting to collect any debt allegedly owed to the licensee.

Cite as Ga. Comp. R. & Regs. R. 80-14-5-.05
Authority: O.C.G.A. §§ 7-3-33, 7-3-51.
History. Original Rule entitled "Debt Collection" adopted. F. Aug. 19, 2020; eff. Sept. 8, 2020.