

STATE OF GEORGIA DEPARTMENT OF BANKING AND FINANCE



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*SPECIAL EDITION
IMPORTANT NOTICE
FINAL RULEMAKING*

July 7, 2021

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF BANKING AND FINANCE STATE OF GEORGIA

Adopted July 7, 2021

To all interested persons:

Notice is hereby given that pursuant to the provisions of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., and by the authority of O.C.G.A. §§ 7-1-61, 7-1-690, 7-3-51, and other cited statutes, the following attached Rules of the Department of Banking were adopted on July 7, 2021. The Rules were filed with the Secretary of State on July 7, 2021 and, pursuant to O.C.G.A. § 50-13-6, will be effective on July 27, 2021, which is twenty days following the filing of the Rules with the Secretary of State.

Prior to adopting the Rules, the proposed Rules along with a synopsis were distributed on June 1, 2021. The Department received one written comment regarding the proposed Rules. The Department fully considered the comment it received but did not make any substantive revisions to the proposed Rules. The Department believes that the Rules as adopted encourage safety and soundness, encourage safe and fair lending, and conform to the law.

CHAPTER 80-1-1

APPLICATIONS, REGISTRATIONS AND NOTIFICATIONS

- 80-1-1-.01 Applications, Registrations and Notifications, Generally.
- 80-1-1-.04 Notification of Filing and Protest.
- 80-1-1-.05 Public Hearing.
- 80-1-1-.08 Procedures for Other Transactions, Expedited, Letter Form and Notice Only Applications.
- 80-1-1-.09 Standards for Consideration of Applications Generally; Applications Manual and Statement of Policies.

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-.13. Criteria for bank holding companies may be found at Rule 80-6-1-.16. Requirements for all banking institutions to conduct certain other activities have been streamlined to coordinate with federal requirements.
- (2) Where forms are required, they may be obtained from the Department.
- (3) Other Applications. Within these Rules: Chapter 80-2-1 covers Credit Union activities; Chapter 80-3-1 covers Money Transmitters, Payment Instrument Sellers, and Check Cashers; Chapter 80-6-1 covers Holding Companies; and Chapter 80-11-1 covers Mortgage Lenders and Brokers.
- (4) The Department has made available an Applications Manual and a Statement of 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 DBF Rule Chapter 80-5-1.
- (6) References in these Rules to "Code Section", "O.C.G.A.", "Title", "Code of Georgia", and "Section" are to the Official Code of Georgia Annotated.

Authority: O.C.G.A. § 7-1-61.

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-.03 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.

Authority: O.C.G.A. §§ 7-1-7; 7-1-61.

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-.03 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.

Authority: O.C.G.A. § 7-1-61.

Rule 80-1-1-.08. Procedures for Other Transactions, Expedited, Letter Form, and Notice Only Applications

- (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. Code Sections 7-1-261 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. 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.

- (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 sections (1) through (4) 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. Code Sections 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. Related Code Sections are referenced.
 - (a) Name reservation and permission is treated in Code Sections 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) A bank service corporation created to provide support services for one or more financial institutions; or
 - (b) A corporation engaged in functions or activities that the bank is authorized to carry on 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.

Authority: O.C.G.A. § 7-1-61.

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.

Authority: O.C.G.A. § 7-1-61.

CHAPTER 80-1-4

INVESTMENT SECURITIES

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

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 Code Section 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 Code Section 7-1-285.

(2) Equity Securities.

Except as allowed by Code Section 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 fifteen (15) 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
 - 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 bank's statutory capital base 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 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 Code Section 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 Code Section 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.

Authority: O.C.G.A. § 7-1-61.

CHAPTER 80-1-12

DIVIDENDS, MANAGEMENT FEES, ETC.

80-1-12-.01 Dividends.

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 Allowance for Loan 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.

Authority: O.C.G.A. §§ 7-1-61; 7-1-460.

CHAPTER 80-3-1

MONEY TRANSMISSION AND RELATED FINANCIAL SERVICES

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

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

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

- (1) For purposes of Rules 80-3-1-.01, 80-3-1-.03, 80-3-1-.04, 80-3-1-.06, 80-3-1-.07(4), 80-3-1-.08, 80-3-1-.09, and 80-5-1-.02(1), the terms that are defined in O.C.G.A. § 7-1-680 shall have the identical meaning.
- (2) Dual Purpose. A license for the sale of payment instruments shall also permit the licensee to conduct money transmission, but the licensee must clearly inform the Department in writing that it intends to transmit money. A separate license will be issued for persons who intend to conduct only money transmission.
- (3) Every applicant for a license shall demonstrate to the Department that such applicant has sufficient financial resources in the form of working capital and tangible net worth to successfully engage in the business of selling payment instruments or money transmission. Sufficiency of financial resources shall be determined through financial analysis by the

Department of pro-forma and historical financial information of the applicant. Each licensee shall be required to complete and attest to official questionnaires and statements of assets and liabilities when requested for examination purposes. Licensees shall be prohibited from withholding, deleting, destroying, or altering information requested by an examiner of the Department or making false statements or material misrepresentations to the Department during the course of an examination or on any application or renewal form sent to the Department.

(4) Authorized Agents.

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

(b) Licensees are required to submit authorized agent information, including notices of additional locations or changes in locations operated by an authorized agent, to the Department in such form, timeframe, and manner and with such supporting documentation as required. The initial authorized agent list should include all authorized agents of the licensee as of the date the licensee begins business. Future reports related to authorized agents will be submitted on a quarterly basis. The initial authorized agent list as well as the subsequent quarterly reports shall be deemed to be the licensee's notice of new locations operated by authorized agents as well as the licensee's application for approval of the designated authorized agents. The notice required by this section shall also include the name and business locations of any authorized agent whose agency has been revoked, suspended, cancelled, terminated, or voluntarily closed by the licensee since the previous report. The reason for such revocation or suspension, and the amount of any outstanding claim by the licensee against the authorized agent relating to the sale of payment instrument or money transmission shall be provided to the Department upon request. Failure to report changes to authorized agents and/or locations in the reporting period in which the authorized agent began or ceased offering the licensee's services can result in fines, revocation, suspension, or other administrative action by the Department.

(5) Every licensee or authorized agent of a licensee, unless such authorized agent is a financial institution whose deposits are federally insured, shall display prominently in the premises where money is transmitted or where payment instruments are issued or sold a copy of its license.

- (6) Every licensee giving notices of additional locations or changes in locations operated by the licensee shall do so in a form and manner as provided by the Department.
- (7) Licensees are required to prepare and submit various reports of condition.
 - (a) 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.
 - (b) 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.
 - (c) 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.
- (8) Proceeds received from the sale of payment instruments or money transmission net of fees charged and retained by the authorized agent shall be remitted to the licensee in accordance with the terms of the contract between the licensee and the authorized agent.
- (9) Receipt. Each customer that is a payment instrument holder shall be provided with a written receipt or other evidence of acceptance of the issuance of payment instruments or the transmission of money showing the name of the licensee or trade name of the licensee that is registered with the Department, authorized agent identifier information, the date of issuance of the payment instrument or of the transmission of money, the dollar amount of the issued payment instrument or of the transmitted money, and the fee charged to the customer.
- (10) Minimum Books and Records.
 - (a) Each licensee shall make, keep, and preserve the following books, accounts, and other records:
 - 1. A record of each payment instrument sold;
 - 2. A general ledger which shall be posted at least monthly containing all assets, liabilities, capital, and income and expense accounts;
 - 3. Settlement sheets received from authorized agents;
 - 4. Bank statements and bank reconciliation records;

5. Records of outstanding payment instruments;
 6. Records of each payment instrument paid;
 7. A list of the names and addresses of all of the licensee's authorized agents;
 8. A copy of all currency transaction reports and suspicious activity reports that are required by law to be filed by the licensee and the related work papers;
 9. For money transmitters, records of all money transmissions sent or received as well as all outstanding money transmissions; and
 10. Supporting documentation for all reports required to be prepared or filed with the Department or the Nationwide Multistate Licensing System and Registry.
- (b) Each licensee shall maintain a principal location at which its books and records are maintained and which is accessible to the Department for examination during normal business hours. Records required to be maintained under this rule may be maintained in a photographic, electronic, or other similar format at a central location within or outside the State of Georgia provided specific records can be transmitted to a location designated by the Department within ten (10) days of the Department's request. The Department may examine any person that purports to satisfy the exemption from licensure set forth in O.C.G.A. § 7-1-682 to verify that the person qualifies for the exemption from licensure. A licensee that refuses to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department), that withholds material information, or makes a misrepresentation shall have its license revoked.
- (11) A licensee shall make a written request to the Department seeking approval for any proposed change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such proposed change in ownership or change in control of the licensee as required by O.C.G.A. § 7-1-688 at least thirty (30) days prior to the proposed change.
- (12) 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.

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

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

- (1) Except as otherwise indicated, these fines and penalties apply to any person, partnership, association, corporation, or any other group of individuals, however organized, that is required to be licensed under Article 4 or Article 4A of Chapter 1 of Title 7. The Department, at its sole discretion, may waive or modify a fine based upon the financial resources of the person, gravity of the violation, history of previous violations, and such other facts and circumstances deemed appropriate by the department.
- (2) All fines levied by the Department are due within thirty (30) days from the date of assessment and must be paid prior to renewal of the annual license, reapplication for a license, or any other activity requiring Departmental approval.
- (3) Check Cashers. The Department establishes the following fines and penalties for violation of the law and rules governing check cashers.
 - (a) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain its books and records according to the requirements of O.C.G.A. § 7-1-706(a) and Rules 80-3-1-.02(2) or 80-3-1-.02(5), such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each books and records violation listed in Rules 80-3-1-.02(2) or 80-3-1-.02(5).
 - (b) Excessive Fees. If the Department, in the course of an examination or investigation, finds that a licensee has charged fees for cashing payment instruments in excess of the amount set forth in O.C.G.A. § 7-1-707(f), such licensee shall be subject to a fine of five thousand dollars (\$5,000) per occurrence and its license will be subject to revocation or suspension.
 - (c) Posting of Charges. Any licensee who does not display, at all locations, a notice stating the charges/fees for cashing payment instruments in accordance with O.C.G.A. § 7-1-707.1 shall be subject to a fine of five hundred dollars (\$500).
 - (d) Operating Without Proper License. Any person who acts as a check casher prior to receiving a current license required under Article 4A of Chapter 1 of Title 7, or who acquires a business that cashes payment instruments and operates without its own license, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars (\$1,000) per day and its license application will be subject to denial or its license will be subject to revocation or suspension.
 - (e) Felons. Any licensee that hires or retains a covered employee who is a felon as described in O.C.G.A. § 7-1-703(b), when such covered employee has not complied with the remedies provided for in O.C.G.A. § 7-1-703(b) for each conviction before such employment, shall be subject to a fine of five thousand dollars (\$5,000) for each such covered employee and its license will be subject to revocation or suspension.

- (f) GCIC Background Checks on Employees. Any licensee that does not obtain a Georgia Crime Information Center ("GCIC") criminal background check on each covered employee prior to the initial date of hire or retention shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. Proof of the required GCIC criminal background check must be retained by the licensee until five years after termination of employment by the licensee. Notwithstanding compliance with this requirement to perform a GCIC criminal background check prior to employment, failure to maintain criminal background checks as required will result in a fine of one thousand dollars (\$1,000) for each covered employee for which the licensee is missing this documentation.
- (g) Deferred Payment. Any licensee that defers payment on a payment instrument pending collection and has not obtained the surety bond as required by O.C.G.A. § 7-1-707(c) shall be subject to a fine of five thousand dollars (\$5,000) per occurrence and its license will be subject to revocation or suspension.
- (h) Other Business Activities. Any licensee found to have violated any law of this state by conducting any other business that is not lawful in conjunction with cashing payment instruments, shall be subject to a fine of five thousand dollars (\$5,000) and its license will be subject to revocation or suspension.
- (i) Corporate Checks. Any licensee that cashes a payment instrument made payable to a corporation or other business association or cashes a payment instrument drawn by the corporation or other business association and made payable to cash without the proper written authorization as required by O.C.G.A. § 7-1-707(d) and Rule 80-3-1-.02(3) shall be subject to a fine of one thousand dollars (\$1,000) per occurrence.
- (j) Advertising - "No Identification Required." A licensee that advertises that it will cash payment instruments with no identification required will be subject to a fine of one thousand dollars (\$1,000).
- (k) Identification Requirements for Cashing Payment Instruments. No licensee shall cash payment instruments without identification of the bearer of such check. Failure to comply with the requirements of O.C.G.A. § 7-1-707(e) shall subject the licensee to a fine of one thousand dollars (\$1,000) per occurrence.
- (l) Failure to Submit to Exam. The penalty for the refusal of a licensee to permit the Department to conduct an investigation or examination of its books, accounts, and records, shall be the revocation of its license and a five thousand dollar (\$5,000) fine.
- (m) Consumer Complaints. Any licensee who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department's correspondence to such licensee, shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence. Repeated failure to properly respond, as reasonably determined by the Department, may result in the revocation or suspension of its license.

- (n) Failure to Notify or Obtain Approval from the Department of Change in Ownership, Change in Control, or Designation of Executive Officer. Any licensee or other person who fails to obtain the Department's prior approval of a change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control of the licensee in compliance with O.C.G.A. § 7-1-705.1 and Rule 80-3-1-.02 shall be subject to a fine of one thousand dollars (\$1,000) and its license will be subject to revocation or suspension. Any licensee or other person who fails to timely notify the Department of a change in executive officer not resulting from a change in control or ownership in compliance with O.C.G.A. § 7-1-705 and Rule 80-3-1-02 shall be subject to a fine of one thousand dollars (\$1,000) and its license will be subject to revocation of suspension.
- (o) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or the requirements referred to in Rules 80-3-1-.03, 80-3-1-.04, and 80-3-1-.06, such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each instance of non-compliance.
- (p) Failure to Post Required License or Failure to Include Required Legend on Advertising. Any licensee that fails to post a copy of its license in prominent view of each teller window or other customer service station, or distributes advertising in this state related to the cashing of payment instruments that fails to comply with the requirements of Rule 80-3-1-.02(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 and its license will be subject to suspension or revocation.
 - (t) Failure to Submit to Examination or Investigation. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department) shall be revocation of the license and a five thousand dollar (\$5,000) fine. Refusal shall require at least two attempts by the Department to schedule an examination or investigation.
- (4) Payment Instrument Sellers and Money Transmitters. The Department establishes the following fines and penalties for violation of the laws and rules governing payment instrument sellers and money transmitters.
- (a) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain its books and records according to the requirements of O.C.G.A. § 7-1-689 and Rules 80-3-1-.01(4), 80-3-1-.01(6), 80-3-1-.01(7), 80-3-1-.01(9), or 80-3-1-.01(10), such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each books and records violation listed in Rule 80-3-1-.01(4), 80-3-1-.01(6), 80-3-1-.01(7), 80-3-1-.01(9), or 80-3-1-.01(10).
 - (b) Operating Without Proper License. Any person who acts as a payment instrument seller or money transmitter prior to receiving a current license required under O.C.G.A. Article 4 of Chapter 1 of Title 7, or who acquires a payment instrument seller or money transmission business without its own license, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars (\$1,000) per day and its application will be subject to denial or its license will be subject to revocation or suspension.
 - (c) Felons. Any licensee that hires or retains a covered employee who is a felon as described in O.C.G.A. § 7-1-684(b), when such covered employee has not complied with the remedies provided for in O.C.G.A. § 7-1-684(b) for each conviction before such employment, shall be subject to a fine of five thousand dollars (\$5,000) for each such covered employee and its license will be subject to revocation or suspension.
 - (d) Locations and Authorized Agents. Any licensee that does not give timely notice to the Department of new locations or agents beyond those previously reported as required in O.C.G.A. § 7-1-686(d) and Rules 80-3-1-.01(4) and 80-3-1-.01(6), shall be subject to a fine of five hundred dollars (\$500) for each location or agent not reported.
 - (e) GCIC Background Checks on Employees. Any licensee that does not obtain a Georgia Crime Information Center ("GCIC") criminal background check on each covered employee prior to the initial date of hire or retention shall be subject to a fine of one

- thousand dollars (\$1,000) per occurrence. Proof of the required GCIC criminal background check must be retained by the licensee until five years after termination of employment by the licensee. Notwithstanding compliance with this requirement to perform a GCIC criminal background check prior to employment, failure to maintain criminal background checks as required will result in a fine of one thousand dollars (\$1,000) for each covered employee for which the licensee is missing this documentation.
- (f) Authorized Agents. Any licensee that does not give notice of an authorized agent whose agency certificate has been revoked, suspended, cancelled, terminated, or voluntarily closed by the licensee as required by Rule 80-3-1.01(4), shall be subject to a fine of five thousand dollars (\$5,000) for each authorized agent revocation, suspension, cancellation, termination, or voluntary closure not reported in writing to the Department.
 - (g) Failure to Provide Receipt. In the event a licensee or its authorized agent does not provide the customer with a written receipt or other evidence of acceptance as required in Rule 80-3-1-.01(9), it shall be subject to a fine of one thousand dollars (\$1,000) per transaction where the receipt was not provided.
 - (h) Failure to Notify or Obtain Approval from the Department of Change in Ownership, Change in Control, or Designation of Executive Officer. Any licensee or other person who fails to obtain the Department's prior approval of a change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control of the licensee in compliance with O.C.G.A. § 7-1-688 and Rule 80-3-1-.01 shall be subject to a fine of one thousand dollars (\$1,000) and its license will be subject to revocation or suspension. Any licensee or other person who fails to timely notify the Department of a change in executive officer not resulting from a change in control or ownership in compliance with O.C.G.A. § 7-1-687 and Rule 80-3-1-01 shall be subject to a fine of one thousand dollars (\$1,000) and its license will be subject to revocation of suspension.
 - (i) Other Business Activities. Any licensee found to have violated any law of this state by conducting any other business that is not lawful in conjunction with the selling of payment instruments or money transmission, shall be subject to a fine of five thousand dollars (\$5,000) and its license will be subject to revocation or suspension.
 - (j) Failure to Report. Any licensee who fails to provide required reports as established by the Department and file the reports with the Department or the Nationwide Multistate Licensing System and Registry within the designated time periods shall be subject to a fine of one thousand dollars (\$1,000) for each such occurrence. Repeated failure to provide timely reports as required may result in additional administrative action by the Department, including, but not limited to, license revocation.

- (k) Failure to Submit to Exam. The penalty for the refusal of a licensee to permit the Department to conduct an investigation or examination of its books, accounts, and records, shall be the revocation of its license and a five thousand dollars (\$5,000) fine.
- (l) Consumer Complaints. Any licensee who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department's correspondence to such licensee, shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence. Repeated failure to properly respond, as reasonably determined by the Department, may result in the revocation or suspension of its license.
- (m) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or the requirements referred to in Rules 80-3-1-.03, 80-3-1-.04, and 80-3-1-.06, such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each instance of non-compliance.
- (n) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensed payment instrument seller or money transmitter that fails to disclose that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee within ten (10) business days of the date of the event necessitating the disclosure, shall be subject to a fine of one thousand dollars (\$1,000). Any licensed payment instrument seller or money transmitter that fails to submit a new lawful presence affidavit from a current owner or executive officer within ten (10) business days of the owner or executive officer that executed the previous lawful presence affidavit no longer being in that position with the licensee, shall be subject to a fine of one thousand dollars (\$1,000) per day until the new affidavit is provided.
- (o) Failure to Timely Update Information on the Nationwide Multistate Licensing System and Registry. Any licensee that fails to update its information on the Nationwide Multistate Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. In addition, the failure of a control person of a licensee to update the individual's information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions by the control person, within ten (10) business days of the date of the event necessitating the change, shall subject the licensee to a fine of one thousand dollars (\$1,000) per occurrence.
- (p) Failure to Post Required License. Any licensee that fails to post a copy of its license in the premises where money is transmitted or where payment instruments are issued or sold shall be subject to a fine of five hundred dollars (\$500) for each instance of non-compliance.

- (q) Prohibited Acts. Any licensee or other person who violates the provisions of O.C.G.A. § 7-1-692 shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation and its license will be subject to suspension or revocation.
- (r) Failure to Submit to Examination or Investigation. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department) shall be revocation of the license and a five thousand dollar (\$5,000) fine. Refusal shall require at least two attempts by the Department to schedule an examination or investigation.
- (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 80-3-1-.01(12), 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 and its license will be subject to suspension or revocation.

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

CHAPTER 80-5-1
SUPERVISION, EXAMINATION, REGISTRATION
AND INVESTIGATION FEES. ADMINISTRATIVE LATE FEES

80-5-1-.01 General

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

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-.13.

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

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 8-5-1-.02(4), as of June 30 preceding the supervision fee due date.
 - (b) Applications covering more than one transaction (branch, acquisition, merger, etc.), which require the Department to separately analyze each application shall pay the applicable fee for each transaction.
 - (c) The annual assessment rates included in subparagraph (1)(a) above will normally be used in connection with any annual assessment of depository financial institutions having banking offices in more than one state including Georgia. The Commissioner, however, will have the discretion to deviate from the rates included in the assessment schedule and other rates and charges including application fees in order to facilitate or implement interstate efforts to regulate and supervise multi-state banks or for parity reasons.

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

CHAPTER 80-5-4
REGULATIONS REGARDING THE
SALE OF INSURANCE BY FINANCIAL INSTITUTIONS

80-5-4-.02 Notification of Intent to Sell Insurance.

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, with a copy of the notice and any subsequent amendments to the Department of Banking and Finance.

Authority: O.C.G.A. §§ 7-1-61, 7-1-261(11).

CHAPTER 80-14-2
BOOKS AND RECORDS

80-14-2-.02 Minimum Requirements for Books and Records.

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. If the licensee has a general ledger reserve account for bad debts, all recoveries or collections on accounts previously charged off shall be credited to this account;

- (i) All bank statements and bank reconciliations records which pertain to the installment lending business of the licensee;
- (j) Reserved;
- (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; and
- (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.

Authority: O.C.G.A. §§ 7-3-30, 7-3-51.