STATE OF GEORGIA
DEPARTMENT OF
BANKING AND FINANCE

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

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SPECIAL EDITION
IMPORTANT NOTICE
FINAL RULEMAKING

July 12, 2024

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF BANKING AND FINANCE
STATE OF GEORGIA

Adopted July 12, 2024

To all interested persons:

Notice is hereby given that pursuant to the provisions of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., and by the authority of O.C.G.A. §§ 7-1-61, 7-1-1012, 7-3-51, 7-9-13 and other cited statutes, the following attached Rules of the Department of Banking were adopted on July 12, 2024. The Rules were filed with the Secretary of State on July 12, 2024, and, pursuant to O.C.G.A. § 50-13-6, will be effective on August 1, 2024, 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 6, 2024. The Department received one written comment regarding the proposed Rules. The Department fully considered the comment letter it received and did not make any revisions to the 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

BANKS

SUBJECT 80-1-1

APPLICATIONS, REGISTRATIONS AND NOTIFICATIONS

80-1-1-.01 Applications, Registrations and Notifications, Generally
80-1-1-.02 Applications: Bank Charter
80-1-1-.03 Order of Investigation of Charter by Department
80-1-1-.04 Notification of Filing and Protest
80-1-1-.09 Standards for Consideration of Applications Generally; Applications Manual and Statement of Policy
80-1-1-.10 Qualifying Criteria for Expedited Processing for Applications by a Bank Other than Charter

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 Rule 80-1-1-.10 and Rule 80-6-1-.04, criteria for bank holding companies may be found at Rules 80-6-1-.03 and 80-6-1-.04, and criteria for credit unions may be found at Rule 80-2-13-.06. 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 80-7 covers foreign bank organizations; 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.

Authority: O.C.G.A. §§ 7-1-61, 7-1-602.

Rule 80-1-1-.02 Applications: Bank Charter

(1) An application for chartering a Georgia state chartered bank is necessary. An organizing group should schedule an initial meeting with the Department to discuss chartering issues. An applicant holding company that has established a lawful banking business in Georgia which meets certain criteria may qualify for expedited processing.

(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 charter application shall be filed with the Department. If the Department 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.

Authority: O.C.G.A. § 7-1-61.

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 the Notice of Filing is completed.

(2) Investigations of conflicting applications shall be conducted by the Department 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 or the date of receipt by the appropriate federal agency, whichever is later.

Authority: O.C.G.A. § 7-1-61.

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

(1) Applicants will be notified of receipt of applications for filing unless the department issues an approval of the application within seven days of receipt. For bank charter applications, applicants will be notified of official acceptance of the application upon satisfaction of the elements in Rule 80-1-1-.02(3)(b). For a charter application pursuant to O.C.G.A. § 7-1-392 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 by delivering such comment or protest to the Department, 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 pursuant to O.C.G.A. § 7-1-392 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.

Authority: O.C.G.A. §§ 7-1-7, 7-1-61.

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

(1) Standards for consideration of applications submitted by banks, 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 Policy ("Policy"), Applications Manual ("Manual"), and in instructions accompanying applications. The Manual and Policy can be obtained from the Department.

(2) If the Department 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.

(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.

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

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

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

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

(c) The bank must have a satisfactory or better Community Reinvestment Act rating from its primary federal regulator at its most recent examination; and

(d) The bank 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 bank'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.

Authority: O.C.G.A. §§ 7-1-61, 7-1-79.

SUBJECT 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 counties, district, and municipalities of any state or territorial government of the United States.

1. The general obligations of counties, districts, and municipalities of any state or territorial government of the United States which is authorized to levy taxes may be held without limit.

2. Securities issued by counties, districts, and municipalities of any state or territorial government of the United States 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 without limit.

3. Revenue obligations of counties, districts, and municipalities of any state or territorial government of the United States 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 without limit.

4. In those instances where the repayment of revenue obligations is dependent upon rentals or other fees payable to a political subdivision located within the

United States 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 located within the United States 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 asset backed securities under subsection (c) 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.

(a) 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.

(b) Notwithstanding the limitation in subparagraph (6)(a), a bank may invest in derivative instruments, including forwards and interest rate swaps, without the approval of the Department so long as the investment is solely for the purpose of managing interest rate risk. Such investment must be denominated in U.S. dollars, have a contract maturity of fifteen (15) years or less, and be based on domestic interest rates or the Secured Overnight Financing Rate (SOFR), or similar replacement rate for the U.S. dollar-denominated London Interbank Offered Rate (LIBOR). A bank must adhere to safe and sound banking practices in making such investments.

(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 including the institution's current assessment of the condition of the nonconforming security and supporting documentation that details the cause of the deterioration, severity of the deterioration, and resulting accounting treatment by the institution. 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, 7-1-288.

SUBJECT 80-1-11

PUBLIC DISCLOSURE OF INFORMATION

80-1-11-.05 Repealed

Rule 80-1-11-.05 Repealed

Repealed.

Authority: O.C.G.A. § 7-1-61.

SUBJECT 80-1-15

EXTENSIONS OF EXISTING OFFICES AND FACILITIES

80-1-15-.06 Representative Offices

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 to the borrower, 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.

Authority: O.C.G.A. §§ 7-1-61, 7-1-591.

CHAPTER 80-2

CREDIT UNIONS

SUBJECT 80-2-1

BOOKS AND RECORDS

80-2-1-.06 Notification of Reportable Cyber Incident

Rule 80-2-1-.06 Notification of Reportable Cyber Incident

Pursuant to 12 C.F.R. Part 748 credit unions are required to notify the appropriate federal regulator no later than 72 hours after the credit union determines that a cyber incident, which rises to the level of a reportable cyber incident, has occurred. A reportable cyber incident is an occurrence identified in 12 CFR § 748.1. If a cyber incident is required to be reported under federal law, then a duplicate of such report, whether provided via email, telephone, or otherwise, will be submitted simultaneously to the Department.

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

SUBJECT 80-2-4

INVESTMENT OF CREDIT UNION FUNDS

80-2-4-.06 Charitable Donation Accounts

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) and 501(c)(19) non-profit organizations that serve a charitable, social, welfare, or educational purpose and serves the credit union's field of membership;

(2) Prior to investing in a charitable donation account, the Board of Directors must adopt a Conflict of Interest and Ethics Policy that specifically addresses charitable contributions. Such Conflict of Interest and Ethics Policy must include all designated charitable purposes authorized to receive contributions and each designated charitable purpose must be consistent with the best interests of the membership of the credit union. The credit union shall develop written procedures regarding the funding of charitable donation accounts and the distribution of funds from such accounts;

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

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

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

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

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

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

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

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

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

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

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

SUBJECT 80-2-5

SURETY BOND COVERAGE

80-2-5-.01 Minimum Requirements for Fidelity 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, director, 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.

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

SUBJECT 80-2-12

CREDIT UNION LOANS

80-1-12-.02 Real Estate Loans

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, in which case the real estate collateral will not contribute to the "ample security" of the line.

(4) Nonamortized commercial real estate loans shall not exceed seventy-five percent (75%) of the fair market value of the property pledged. Exemptions from this loan to value ratio for first liens 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) 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.

(d) 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.

(e) 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.

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(5) All construction and development loans made or held by a credit union shall be exempt from the state loan to value and maturity limitations of this rule 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(4)(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.

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

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

SUBJECT 80-2-13

APPLICATIONS

80-2-13-.01 Applications: Credit Union Charter
80-2-13-.02 Order of Investigation of Charter by Department
80-2-13-.03 Notification of Filing and Protest of Charter Application
80-2-13-.04 Public Hearings Related to Protested Charter Applications
80-2-13-.05 Procedures for Other Transactions, Applications
80-2-13-.06 Qualifying Criteria for Expedited Processing for Applications by a Credit Union Other than Charter
80-2-13-.07 Standards for Consideration of Applications Generally; Applications Manual and Statement of Policy

Rule 80-2-13-.01 Applications: Credit Union Charter

(1) An application for chartering a Georgia state chartered credit union is necessary. An organizing group should schedule an initial meeting with the Department to discuss chartering issues.

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

(3) Submission and completion of application.

(a) A charter application shall be filed with the Department. If the Department 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.

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

Rule 80-2-13-.02 Order of Investigation of Charter by Department

(1) Applications will not be considered for investigation until accorded official acceptance in compliance with Rule 80-2-13-.01(3)(b), until any appropriate application to the NCUA has been accepted for filing by the NCUA, and until any required publication of the Notice of Filing is completed.

(2) Investigations of conflicting applications shall be conducted by the Department 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 or the date of receipt by the NCUA, whichever is later.

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

Rule 80-2-13-.03 Notification of Filing and Protest of Charter Application

(1) An applicant will be notified of receipt of a credit union charter application within seven days of receipt. An applicant will also be notified of official acceptance of the credit union charter application upon satisfaction of the elements in Rule 80-2-13-.01(3)(b). 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 by delivering such comment or protest to the Department.

(2) Publication of notice for public comment on a credit union charter application 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 credit union 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 credit union charter application is delayed.

(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 rule, 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.

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

Rule 80-2-13-.04 Public Hearings Related to Protested Charter Applications

(1) Hearings described in this Rule are held for the purpose of giving the public an opportunity to voice protest of charter applications 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 a copy 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. A copy 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, 7-1-663.

Rule 80-2-13-.05 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 80-2-13-.06 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.

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

Rule 80-2-13-.06 Qualifying Criteria for Expedited Processing for Applications by a Credit Union Other than Charter

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

(a) The credit union must be well capitalized as defined in the appropriate capital regulation and guidance of the NCUA;

(b) 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; and

(c) The credit union must not be subject to any agreements, orders, prompt corrective action directives or other enforcement or administrative agreements with the Department or NCUA.

(2) The Department may deny or 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) If applicable, any acquisition of fixed assets would cause the institution to exceed the state fixed asset limitation; 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.

Authority: O.C.G.A. §§ 7-1-61, 7-1-79, 7-1-663.

Rule 80-2-13-.07 Standards for Consideration of Applications Generally; Applications Manual and Statement of Policy

(1) Standards for consideration of applications submitted by a credit union 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 Policy ("Policy"), Applications Manual ("Manual"), and in instructions accompanying applications. The Manual and Policy can be obtained from the Department.

(2) If the Department 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.

(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, 7-1-663.

CHAPTER 80-6

HOLDING COMPANIES

SUBJECT 80-6-1

APPLICATIONS AND ACQUISITIONS

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

80-6-1-.11 Standards for Consideration of Applications Generally; Applications Manual and Statement of Policy

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) Be well capitalized as defined by 12 CFR 225.2.

(3) The existing bank controlled by the holding company, 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.

Authority: O.C.G.A. § 7-1-61.

Rule 80-6-1-.11 Standards for Consideration of Applications Generally; Applications Manual and Statement of Policy

(1) Standards for consideration of applications submitted by a banking holding company, 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 Policy ("Policy"), Applications Manual ("Manual"), and in instructions accompanying applications. The Manual and Policy can be obtained from the Department.

(2) If the Department 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.

(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 80-11

RESIDENTIAL MORTGAGE BROKERS, LENDERS, AND ORIGINATORS

SUBJECT 80-11-1

DISCLOSURE, ADVERTISING, AND OTHER REQUIREMENTS

80-11-1-.01 Disclosure Requirements
80-11-1-.02 Advertising Requirements
80-11-1-.03 Place of Business Requirements; Definitions
80-11-1-.09 Electonric Service of Notice of Intent to Deny, Revoke, or Suspend License

Rule 80-11-1-.01 Disclosure Requirements

(1) The disclosures and all other provisions of this Rule only apply to persons licensed or required to be licensed 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.

Authority: O.C.G.A. §§ 7-1-61, 7-1-1001.1, 7-1-1012.

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 under O.C.G.A. Title 7, Chapter 1, Article 13 shall contain the name and unique identifier of the licensee 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 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.

Authority: O.C.G.A. §§ 7-1-61, 7-1-1001.1, 7-1-1004.3, 7-1-1012, 7-1-1016.

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 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.

(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.

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

Rule 80-11-1-.09 Electronic Service of Notice of Intent to Deny, Revoke, or Suspend License

Any notice served by the Department pursuant to O.C.G.A. § 7-1-1017 shall first be sent by email to the email address of record that the applicant or licensee has designated as their email address for regulatory contact on file with the Nationwide Multistate Licensing System and Registry. Any notice sent by email shall be deemed delivered once the Department receives a non-automated affirmative response from the intended recipient of such notice and no further service will be thereafter attempted by the Department in relation to that notice. If the Department does not receive an affirmative response from the intended recipient within five business days of emailing the notice to the email address of record, the Department shall then attempt to deliver the notice via registered or certified mail or statutory overnight delivery to the principal place of business of such applicant or licensee. In the event the above methods of service are unsuccessful, the Department may attempt to deliver the notice under any other method of lawful service.

Authority: O.C.G.A. §§ 7-1-61, 7-1-1012, 7-1-1017.

SUBJECT 80-11-2

BOOKS AND RECORDS

80-11-2-.01 Mortgage Broker and Lender Location Requirement and Minimum Retention Period
80-11-2-.02 Minimum Requirements for Books and Records
80-11-2-.03 Mortgage Loan Transaction Journal
80-11-2-.04 Mortgage Loan Files

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 under Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated ("licensee") must maintain required books, accounts and records at the principal place of business. Should a licensee 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 in the initial written application for licensure 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), and (m) 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). All books, records, and accounts required by Rule 80-11-2-.02(1)(n) must be maintained for a period of five (5) years from the date of the employee no longer working for the licensee.

(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:

(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, 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.

Authority: O.C.G.A. §§ 7-1-61, 7-1-1009, 7-1-1012.

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

(1) Any mortgage broker or lender required to be licensed under Article 13 of Chapter 1 of Title 7 ("licensee") 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 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 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 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 its agent on behalf of individuals employed by the licensee or on behalf of individuals acting as independent contractors in the mortgage brokerage and/or lending business of the licensee;

(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;

(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 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;

(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 to and purchase or other transfer of closed mortgage loans by 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 fourteen (14) days or less and that the loans are serviced by a person licensed as a mortgage lender or exempt from the licensing requirements of Article 13 of Chapter 1 of Title 7 as required by O.C.G.A. § 7-1-1001(a)(19). Examples of such documentation showing the sale or transfer to and purchase or transfer of mortgage loans was for the sole purpose of securitization of the loans in the secondary market 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 fourteen (14) days or service the loan; 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.

(r) Documentation showing that a sale or other transfer to and purchase or other transfer of closed mortgage loans by an unlicensed entity who is not otherwise exempt from licensure is for the sole purpose of securitization of the loans or otherwise transferring

the loans into a secondary market, that the unlicensed entity is a trust, that the trustee is a bank that satisfies the exemption from licensure set forth at O.C.G.A. § 7-1-1001(a)(1), and that the loans held in the trust are serviced by a person licensed as a mortgage lender or exempt from the licensing requirements of Article 13 of Chapter 1 of Title 7 as required by O.C.G.A. § 7-1-1001(a)(20). Examples of such documentation showing the sale or transfer to and purchase or transfer of mortgage loans was for the sole purpose of securitization or transferring the loans into a secondary market 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 or transfer of the loan into the secondary market.

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

Authority: O.C.G.A. §§ 7-1-61, 7-1-1009, 7-1-1012.

Rule 80-11-2-.03 Mortgage Loan Transaction Journal

(1) Any person 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;

(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); and

(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) business 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 administrative action and will subject the licensee to fines in accordance with regulations prescribed by the department.

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(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.

Authority: O.C.G.A. §§ 7-1-61, 7-1-1009, 7-1-1012.

Rule 80-11-2-.04 Mortgage Loan Files

(1) Any person 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, closing disclosure or HUD-1 as required by federal law, 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 administrative action and will subject the licensee to fines in accordance with regulations prescribed by the Department.

Authority: O.C.G.A. §§ 7-1-61, 7-1-1009, 7-1-1012.

SUBJECT 80-11-3

ADMINISTRATIVE FINES AND PENALTIES

80-11-3-.01 Administrative Fines

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 under Article 13 of Chapter 1 of Title 7 ("licensee"). 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, reinstatement of a license, or reapplication for a license, or any other activity requiring Departmental approval.

(3) Dealing with Unlicensed Persons. Any licensee or any employee of a licensee 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 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 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 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 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 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 will be subject to revocation or suspension.

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

(10) Hiring Persons Otherwise Disqualified from Conducting a Mortgage Business. Any mortgage broker or mortgage lender licensee 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(p) shall be subject to a fine of five thousand dollars ($5,000) per such employee and its license 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 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 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 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 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 in O.C.G.A. § 7-1-1001(a)(19). Any licensee who sells or otherwise transfers closed mortgage loans to an unlicensed person who is exempt from licensure pursuant to O.C.G.A. § 7-1-1001(a)(19) and fails to maintain documentation 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 person.

(15) Failure to Timely Report Certain Events. Any person required to be licensed 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 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 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 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 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(p) 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 that does not obtain a criminal background check on each covered employee prior to the initial date of hire, retention, or transition of an existing employee to a covered employee as set forth in Rule 80-11-1-.05(1) shall be subject to a fine of one thousand dollars ($1,000) per occurrence.

(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 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 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 Maintain Documentation for Transfer Exemption in O.C.G.A. § 7-1-1001(a)(20). Any licensee who sells or otherwise transfers closed mortgage loans to an unlicensed trust that is exempt from licensure pursuant to O.C.G.A. § 7-1-1001(a)(20) and fails to maintain documentation as required by Rule 80-11-2-.02(1)(r), shall be subject to a fine of one thousand dollars ($1,000) per loan transferred to the unlicensed trust.

(28) Failure to File Timely or Accurate Call Reports. Any licensee 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 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 or mortgage broker 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 mortgage broker or mortgage lender 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.

(30) Failure to Timely Update Information on the Nationwide Multistate Licensing System and Registry. Any licensed mortgage broker or mortgage lender 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 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 or mortgage lender to a fine of one thousand dollars ($1,000) per occurrence.

(31) Bank Secrecy Act. If the Department in the course of an examination or investigation, finds that a licensee that satisfies the definition of loan or finance company has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or the requirements referred to in Rule 80-11-1-.06, such licensee shall be subject to a fine of one thousand dollars ($1,000) for each instance of non-compliance.

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

SUBJECT 80-11-4

LICENSING

80-11-4-.03 Licensing Requirements; Exemptions
80-11-4-.05 Knowing Purchase, Sale or Transfer of Loan or Loan Application from Unlicensed Entity, Mortgage Loan Originator Sponsorship Excluded
80-11-4-.08 Restrictions on Employment and Licensing

80-11-4-.09 Challenges to Information Entered into the Nationwide Multistate Licensing System and Registry
80-11-4-.10 Verification of Lawful Presence Citizenship Affidavit
80-11-4-.11 Information on the Nationwide Multistate Licensing System and Registry
80-11-4-.12 License Renewal Periods and Requirements for Mortgage Brokers, Mortgage Lenders, and Mortgage Loan Originators

Rule 80-11-4-.03 Licensing Requirements; 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).

Authority: O.C.G.A. §§ 7-1-61, 7-1-1003.2, 7-1-1012.

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 112 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 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.

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

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 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 against employees of licensees. All of the provisions of O.C.G.A. § 7-1-1018, including injunction, apply to actions against all such persons.

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

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

Rule 80-11-4-.09 Challenges to Information Entered into the Nationwide Multistate Licensing System and Registry

A mortgage broker or lender licensee 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 with a written reply that shall be the agency's final decision in response thereto.

Authority: O.C.G.A. § 7-1-1004.2.

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 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, or other administrative action.

Authority: O.C.G.A. §§ 7-1-1003, 7-1-1004, 7-1-1012.

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, and each licensed mortgage broker and mortgage lender 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 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.

(2) Amendments to any responses to disclosure questions on an NMLSR MU-1 by an applicant for a mortgage lender or mortgage broker license or a licensed mortgage lender or mortgage broker 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 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, failure to timely update any disclosure information on the NMLSR MU-1 may result in the revocation of its license.

(3) It shall be the responsibility of each applicant for a mortgage lender or mortgage broker licensee and each licensed mortgage broker and mortgage lender 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.

(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 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, 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.

(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.

Authority: O.C.G.A. §§ 7-1-61, 7-1-1003, 7-1-1003.5, 7-1-1012.

Rule 80-11-4-.12 License Renewal Periods and Requirements for Mortgage Brokers, Mortgage Lenders, and Mortgage Loan 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 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 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 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 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 will expire. Unless a proper application has been received any license 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.

Authority: O.C.G.A. § 7-1-1003.5.

SUBJECT 80-11-5

MORTGAGE LOAN ORIGINATOR LICENSURE REQUIREMENTS

80-11-5-.01 Mortgage Loan Originator Licensure Requirements
80-11-5-.02 Books and Records Requirements; Examination
80-11-5-.03 Licensed Location
80-11-5-.05 Administrative Fines

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. Sponsorship must be initiated and maintained by the licensed 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 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. 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 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.

Authority: O.C.G.A. §§ 7-1-1001.1, 7-1-1002, 7-1-1003.2, 7-1-1004.

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 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.

Authority: O.C.G.A. §§ 7-1-1001.1, 7-1-1009, 7-1-1012.

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 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.

Authority: O.C.G.A. § 7-1-1003.

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, reinstatement of a license, or reapplication for a license, 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 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 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 has failed to maintain his or her books and records according to the requirements of Rule 80-11-5-.02, such licensee 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 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.

Authority: O.C.G.A. §§ 7-1-1001.1, 7-1-1012, 7-1-1018.

SUBJECT 80-11-6

MORTGAGE SERVICING

80-11-6-.02 Mortgage Servicing Standards
80-11-6-.03 Mortgage Servicer Location Requirements and Minimum Retention Periods
80-11-6-.04 Minimum Requirements for Books and Records

Rule 80-11-6-.02 Mortgage Servicing Standards

(1) The standards set forth in this Rule apply only to persons licensed or required to be licensed 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 and will subject the licensee to fines in accordance with regulations prescribed by the department, including Rule Chapter 80-11-3.

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

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 in the initial written application for licensure 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, 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.

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

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 80-11-2;

(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 other appropriate administrative action and will subject the licensee to fines in accordance with regulations prescribed by the department.

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

CHAPTER 80-12

MERCHANT ACQUIRER LIMITED PURPOSE BANKS

SUBJECT 80-12-1

DEFINITIONS

80-12-1-.01 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. § 7-9-1 et seq.

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

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

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

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

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

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

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

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

(f) "Capital Maintenance Guaranty" means an unlimited, unconditional, continuous guaranty by the holding company to maintain in the MALPB 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 of an MALPB which have been issued and remain outstanding.

(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) Reserved

(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 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) “Subsidiary” means a corporation where an MALPB owns at least a majority of the voting shares.

(ee) "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.

(ff) "Tier 1 Capital" means the sum of statutory capital, retained earnings, noncumulative perpetual preferred stock, the secured portion of a capital maintenance guaranty, and a capital letter of credit, less any loans or accounts payable by an affiliate or holding company to the MALPB, goodwill, and intangible assets. To be considered for inclusion in tier 1 capital, the collateral securing the capital maintenance guaranty must be of a type approved by the Department, subject to discounting as approved by the Department, and properly assigned.

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

SUBJECT 80-12-2

APPLICATION PROCESS

80-12-2-.08 General Standards for Consideration of Applicants

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 subsidiaries and 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.

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

SUBJECT 80-12-3

IN ORGANIZATION PERIOD

80-12-3-.01 Requirement to Begin Business

Rule 80-12-3-.01 Requirement to Begin Business

(1) If an application is approved and a charter is issued, then, within one (1) year of beginning operations, 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.

(2) 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.

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

SUBJECT 80-12-4

OPERATIONS OF MALPB

80-12-4-.04 Minimum Number of MALPB Employees that Reside in Georgia

Rule 80-12-4-.04 Minimum Number of MALPB Employees that Reside in Georgia

(1) Within one year of the MALPB beginning operations, 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 beginning operations 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.

Authority: O.C.G.A. §§ 7-9-2, 7-9-3, 7-9-4, 7-9-13.

SUBJECT 80-12-5

BOOKS AND RECORDS

80-12-5-.04 Reports
80-12-5-.05 Minimum Requirements for Books and Records

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 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.

Authority: O.C.G.A. §§ 7-1-68, 7-9-3, 7-9-13.

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, affiliates, subsidiaries, 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, affiliates, subsidiaries, 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.

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

SUBJECT 80-12-6

MALPB LOCATIONS AND EXAMINATIONS

80-12-6-.03 Examinations and Investigations

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, subsidiaries, 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, subsidiaries, 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.

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

SUBJECT 80-12-7

SOLVENCY AND SAFEGUARDS

80-12-7-.01 Minimum Capital Requirements
80-12-7-.02 Safeguarding Requirements
80-12-7-.03 Fidelity Coverage
80-12-7-.04 Data Breach Insurance Coverage
80-12-7-.05 Dissolution

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: a) the prior incurred aggregate dollar volume of chargebacks as calculated by two times the average monthly chargebacks over a six (6) month period; or b) two times the average monthly forecast dollar volume of chargebacks for a six (6) month period.

(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.

Authority: O.C.G.A. §§ 7-9-3, 7-9-12, 7-9-13.

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 that are ultimately payable to a merchant.

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

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, subsidiaries, 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.

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

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, subsidiaries, 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.

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

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, 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.

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

SUBJECT 80-12-8

ELIGIBLE AND SUPPORT ORGANIZATIONS

80-12-8-.01 Repealed
80-12-8-.02 Eligible Organizations and Support Organizations
80-12-8-.04 Responsibility for Outsourced Services

Rule 80-12-8-.01 Repealed

Repealed.

Authority: O.C.G.A. §§ 7-9-2, 7-9-3, 7-9-13.

Rule 80-12-8-.02 Eligible Organizations and Support Organizations

(1) An MALPB that enters into a contract with an eligible organization or 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 an eligible organization or 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 eligible organization or 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 eligible organization or 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 eligible organization or 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 eligible organization or 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 eligible organization or support 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 or 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 eligible organization or 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 an eligible organization or support organization must maintain the information set forth in Paragraph 2 at its main office.

(4) In the event an MALPB amends a contract with an eligible organization or support organization, the MALPB shall provide the Department with written notice of the amendment within thirty (30) days of execution of the amendment.

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

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, holding companies, subsidiaries, affiliates, 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.

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

SUBJECT 80-12-9

RELATIONSHIPS WITH AFFILIATES AND INVESTMENT AND DISTRIBUTIONS

80-12-9-.02 Subsidiaries

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.

(3) An MALPB contracting with a subsidiary must have sufficient controls in place to monitor and ensure that the services provided by the subsidiary 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 subsidiary and must notify the Department immediately when it discovers or suspects that the subsidiary has experienced a net operating loss, is insolvent, or is engaged in illegal activity.

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

SUBJECT 80-12-12

FINES AND FEES

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

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 within the first year of beginning operations 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 Rules 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 designated by the Department pursuant to Rule 80-12-2-.09 or Rule 80-12-6-.03 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) Reserved.

(r) Eligible organization or support organization. An MALPB that enters into a contract or amends a contract with an eligible organization or 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 that has a new control person or principal shareholder without complying with the notice provisions set forth in Rules 80-12-10-.01 or 80-12-11-.02, shall be subject to a fine of $25,000.

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

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

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

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

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

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

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

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

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

CHAPTER 80-14

INSTALLMENT LOANS

SUBJECT 80-14-2

BOOKS AND RECORDS

80-14-2-.02 Minimum Requirements for Books and Records
80-14-2-.04 Installment Loan Files

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; and

(p) 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.

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

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 may be maintained in the loan file for the primary borrower or, alternatively, a loan file may be maintained for each 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; and

(e) Copy of the signed acknowledgement of written disclosure statement as required by Rule 80-14-5-.01(6).

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

SUBJECT 80-14-3

ADMINISTRATIVE FINES AND PENALTIES

80-14-3-.01 Administrative Fines

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) Background Checks on Employees. Any licensee that does not obtain a criminal background check on each covered employee prior to the initial date of hire, retention, or transition of an existing employee to a covered employee as set forth in Rule 80-14-1-.03(1) shall be subject to a fine of one thousand dollars ($1,000) per occurrence. Proof of the required 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 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, shall be subject to a fine of one thousand dollars ($1,000) per act not reported in writing to the Department within the statutorily required timeframe.

(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 or fails to report any suspected or confirmed fraud related to an unsolicited live check as required by such rule 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.

(29) Maintenance of Service Files. Any licensee who acts as an installment loan servicer as defined at Rule 80-14-6-.01(2) who fails to maintain a servicer file for each installment loans it services, as required by Rule 80-14-6-.03(1)(a), 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.

(30) Failure to Adhere to Loan Servicing Standards. Any licensee who acts an installment loan servicer as defined at Rule 80-14-6-.01(2) who fails to adhere to the installment loan servicing standards, as required by Rule 80-14-6-.02, shall be subject to a fine of one thousand dollars ($1,000) per occurrence.

Authority: O.C.G.A. §§ 7-3-44, 7-3-46, 7-3-51.

SUBJECT 80-14-5

DISCLOSURE, CHARGES, AND MISCELLANEOUS

80-14-5-.03 Closing, Convenience, and Other Fees

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 and 7-3-17.

(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.

Authority: O.C.G.A. §§ 7-3-40, 7-3-51.