

# STATE OF GEORGIA DEPARTMENT OF BANKING AND FINANCE



*BULLETIN... BULLETIN... BULLETIN... BULLETIN... BULLETIN...*

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GOVERNOR*

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COMMISSIONER*

*SPECIAL EDITION  
IMPORTANT NOTICE  
FINAL RULEMAKING*

**December 16, 2021**

# **NOTICE OF FINAL RULEMAKING**

## **DEPARTMENT OF BANKING AND FINANCE STATE OF GEORGIA**

**Adopted December 16, 2021**

To all interested persons:

Notice is hereby given that pursuant to the provisions of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., and by the authority of O.C.G.A. §§ 7-1-61, 7-1-607, 7-1-690, 7-1-706.1, and other cited statutes, the following attached Rules of the Department of Banking were adopted on December 16, 2021. The Rules were filed with the Secretary of State on December 16, 2021 and, pursuant to O.C.G.A. § 50-13-6, will be effective on January 5, 2022, 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 November 9, 2021. The Department did not receive any comments regarding the proposed Rules. The Department believes that the Rules as adopted encourage safety and soundness, encourage safe and fair lending, and conform to the law.

## CHAPTER 80-1

### BANKS

#### SUBJECT 80-1-1

#### APPLICATIONS, REGISTRATIONS AND NOTIFICATIONS

80-1-1-.01	Applications, Registrations and Notifications, Generally.
80-1-1-.02	Financial Institution Applications: Financial Institution Charter
80-1-1-.04	Notification of Filing and Protest.
80-1-1-.05	Public Hearing.

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

- (1) Proposed activities in Georgia by financial institutions may require a form application, a letter application, a form registration, or merely a letter notification to the Department. Certain qualifying institutions may be eligible to shorten the form of application, and may benefit from an expedited processing time including shortened or consolidated notice periods. Such criteria for banks are provided at Department of Banking and Finance Rule 80-1-1-.10, and Rule 80-6-1-.03. Criteria for bank holding companies may be found at Rule 80-6-1-.04. Requirements for all banking institutions to conduct certain other activities have been streamlined to coordinate with federal requirements.
- (2) Where forms are required, they may be obtained from the Department.
- (3) Other Applications. Within these Rules: Chapter 80-2-1 covers Credit Union activities; Chapter 80-3-1 covers Money Transmitters, Payment Instrument Sellers, and Check Cashers; Chapter 80-6-1 covers Holding Companies; and Chapter 80-11-1 covers Mortgage Lenders and Brokers.
- (4) The Department has made available an Applications Manual and a Statement of Policy with details of the procedures required for most activities of regulated institutions in Georgia. Interested persons should consult the Applications Manual, Department's Statement of Policy, Rules, and applicable law which form the basis for Department decisions. These materials are available electronically. The regulations provide an overview; the Applications Manual and Statement of Policy provide detailed instructions.
- (5) Fees are provided in DBF Rule Chapter 80-5-1.
- (6) References in these Rules to "Code Section", "O.C.G.A.", "Title", "Code of Georgia", and "Section" are to the Official Code of Georgia Annotated.

Authority: O.C.G.A. § 7-1-61.

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

- (1) An application form and package for chartering a Georgia state chartered financial institution is necessary. An organizing group should schedule an initial meeting with the Department to discuss chartering issues, at which time an application package will be distributed. An applicant holding company that has established a lawful banking business in Georgia which meets certain criteria may qualify for expedited processing. Rule 80-6-1-.04 and the Applications Manual should be consulted to determine if the applicant meets the necessary criteria.
- (2) Specific requirements for documents, meetings with the Department and publication of notices are contained in the Applications Manual and the Statement of Policies of the Department.
- (3) Submission and completion of application.
  - (a) A statement in support of an Application for Approval of a Charter shall be filed with the Department of Banking and Finance. If the Department of Banking and Finance notifies the applicant of deficiencies in the application, the applicant must complete the application within thirty (30) days after receipt of such notification.
  - (b) An application will not be deemed to have been officially accepted until such time as the required fee has been paid and all portions of the application have been completed to the satisfaction of the Department of Banking and Finance.

Authority: O.C.G.A. § 7-1-61.

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

- (1) Applicants will be notified of official acceptance of a bank charter application or receipt of certain other applications for filing unless the department issues an approval of the application within seven days of receipt. For a charter application or merger application pursuant to O.C.G.A. § 7-1-532, the applicant shall cause a notice, in such form as the Department may prescribe, to be published in a newspaper of general circulation in the community in which the applicant's main office is located and in a newspaper of general circulation in any other community in which the applicant proposes to engage in business as notification to any interested parties of their right to comment or protest the application, unless otherwise provided in a rule or law pertaining to a specific transaction. The Applications Manual should be referenced for details regarding the publication requirements, if any, for other types of applications.
- (2) Publication of notice for public comment on a bank charter application or merger application pursuant to O.C.G.A. § 7-1-532 may commence no sooner than five (5) days prior to the date

the application is mailed or delivered to the Department. Any person desiring to comment upon or formally protest a bank charter application must notify the Department in writing within 30 days of the date of the publication of the notice in paragraph (1). The comment period may be extended if official acceptance of a bank charter application is delayed. Any person desiring to comment upon or formally protest a merger or acquisition pursuant to O.C.G.A. § 7-1-532 as set forth in Rule 80-6-1-.05 must notify the Department within 30 days of the date of the publication of the notice in paragraph (1).

- (3) All comments and any notices of intent to protest pursuant to paragraph (2) and filed on a timely basis shall be reviewed and considered by the Department. The Commissioner may grant or deny a request for hearing in connection with a protest of an application. The Commissioner shall hold a hearing if he/she determines that written comments are insufficient to make an adequate presentation of the issues raised or if he/she determines that a hearing would otherwise be in the public interest. If a hearing is to be held, the protester and the applicant will be notified of a date as established by the department. Intention to appear at such hearing must be filed by the protester in writing with the Department within 15 days from date of notification of hearing date. Failure to file such intentions shall constitute grounds for canceling any scheduled hearing.
- (4) Notwithstanding other provisions of this regulation, final determination to grant, conditionally or otherwise, or deny any application shall be in the sole discretion of the Commissioner of Banking and Finance or his/her legally authorized representative, and such action shall be final; provided, however, unless specified in other law or regulation, no action shall be required before the expiration of 90 days after the date of filing of the application.

Authority: O.C.G.A. §§ 7-1-7; 7-1-61.

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

- (1) Hearings described in this Rule are held for the purpose of giving the public an opportunity to voice protest of charter applications as well as merger and acquisition applications pursuant to Rule 80-6-1-.05 and are not intended to conform to hearings under the Georgia Administrative Procedure Act. Such hearing shall be a forum for the presentation of information which the Commissioner shall consider in ruling on an application.
- (2) Hearings under this Rule shall be conducted in accordance with the following procedure:
  - (a) The presiding officer, who shall be appointed by the department in its sole discretion, will open the hearing with an explanation of the hearing procedure, identification of the parties, and statement of the application at issue.
  - (b) The applicant shall present a brief opening summary of the contents and purpose of the application.

- (c) Following the applicant's statement, each person contesting the application shall present his or her data and material, oral or documentary. The contestants may agree, with the approval of the presiding officer, to have one of their number make their presentation.
  - (d) Following each contestant's presentation, the applicant shall have an opportunity to rebut, clarify or expand upon any information presented by the contestant with oral or documentary material.
  - (e) The applicant and contestants shall present their information in concise fashion and the presiding officer shall have the authority to limit such presentations if they are repetitive, inappropriate, or irrelevant.
- (3) The Department shall have all of the testimony recorded, retain two copies of the transcript and each contestant and the applicant shall receive a copy. The contestants shall be jointly responsible for all the costs of the transcription of the testimony and for the hearing, unless an applicant requests the hearing, in which case the applicant shall bear the cost. No charge shall be assessed for the presiding officer unless the officer is not an employee of the Department, in which case the cost shall be borne as above.
  - (4) The obtaining and use of witnesses is the responsibility of the parties. All witnesses will appear voluntarily, but any person appearing as a witness may be subject to questioning by the presiding officer. The refusal of a witness to answer questions may be considered by the Department in determining the weight to be accorded the testimony of that witness. Witnesses shall not be sworn.
  - (5) Formal rules of evidence shall not be applicable to these hearings. Documentary material shall be of a size consistent with ease of handling, transportation, and filing. While large exhibits may be used during the hearing, copies of such exhibits must be provided by the party in reduced size for submission as evidence. Two copies of all such documentary evidence shall be furnished to the Department, and one copy shall be furnished to each contestant and the applicant during the hearing.
  - (6) The presiding officer or any person designated by the Department shall be the final judge of all procedural questions not governed by this rule. The presiding officer shall have the authority to limit the amount of time available to each party and to impose such other limitations as he or she shall deem reasonable.
  - (7) In preparation for a final determination on the application, the Department shall review the exhibits and the testimony as recorded, and the presiding officer shall make a recommendation of findings to the Commissioner.

Authority: O.C.G.A. § 7-1-61.

# MONEY TRANSMISSION

## SUBJECT 80-3-1

### DISCLOSURES, LOCATIONS, AND AUTHORIZED AGENTS

80-3-1-.01	Definitions, Activities, and Locations.	80-3-1-.06	Reserved.
80-3-1-.02	Disclosures and Receipts.	80-3-1-.07	Reserved.
80-3-1-.03	Authorized Agents.	80-3-1-.08	Reserved.
80-3-1-.04	Reserved.	80-3-1-.09	Reserved.
		80-3-1-.10	Reserved.

#### 80-3-1-.01 Definitions, Activities, and Locations

- (1) For purposes of this Rule Chapter and Rule 80-5-1-.02(1), the terms that are defined in O.C.G.A. § 7-1-680 shall have the identical meaning.
- (2) Dual Purpose. A license for the sale of payment instruments shall also permit the licensee to conduct money transmission, but the licensee must clearly inform the Department in writing that it intends to transmit money. A separate license will be issued for persons who intend to conduct only money transmission.
- (3) Every licensee giving notices of additional locations or changes in locations operated by the licensee shall do so in a form and manner as provided by the Department.

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

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#### 80-3-1-.02 Disclosures and Receipts

- (1) Every licensee or authorized agent of a licensee, unless such authorized agent is a financial institution whose deposits are federally insured, shall display prominently in the premises where money is transmitted or where payment instruments are issued or sold a copy of its license.
- (2) Each customer that is a payment instrument holder shall be provided with a written receipt or other evidence of acceptance of the issuance of payment instruments or the transmission of money showing the name of the licensee or trade name of the licensee that is registered with the Department, authorized agent identifier information, the date of issuance of the payment instrument or of the transmission of money, the dollar amount of the issued payment instrument or of the transmitted money, and the fee charged to the customer.

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

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### 80-3-1-.03 Authorized Agents

- (1) Licensees may designate authorized agents to engage in the sale of payment instruments or money transmission at non-banking outlets and the place of business of such authorized agents will not be construed as a branch office. The authorized agent must be bonded and the licensee made solely liable for the payment of the issued payment instruments or transmitted money upon proper presentation and demand. The responsibility of both the licensee and its authorized agent shall be carefully defined in a written agreement setting forth the duties of both parties and providing for remuneration of the authorized agent. The licensee's blanket bond coverage shall extend to cover transactions by the authorized agent and the conveyance of the funds to the licensee or the licensee's depository financial institution.
- (2) Licensees are required to submit authorized agent information, including notices of additional locations or changes in locations operated by an authorized agent, to the Department in such form, timeframe, and manner and with such supporting documentation as required. The initial authorized agent list should include all authorized agents of the licensee as of the date the licensee begins business. Future reports related to authorized agents will be submitted on a quarterly basis. The initial authorized agent list as well as the subsequent quarterly reports shall be deemed to be the licensee's notice of new locations operated by authorized agents as well as the licensee's application for approval of the designated authorized agents. The notice required by this section shall also include the name and business locations of any authorized agent whose agency has been revoked, suspended, cancelled, terminated, or voluntarily closed by the licensee since the previous report. The reason for such revocation or suspension, and the amount of any outstanding claim by the licensee against the authorized agent relating to the sale of payment instrument or money transmission shall be provided to the Department upon request. Failure to report changes to authorized agents and/or locations in the reporting period in which the authorized agent began or ceased offering the licensee's services can result in fines, revocation, suspension, or other administrative action by the Department.
- (3) Proceeds received from the sale of payment instruments or money transmission net of fees charged and retained by the authorized agent shall be remitted to the licensee in accordance with the terms of the contract between the licensee and the authorized agent.

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

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80-3-1-.04 REPEALED AND RESERVED

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80-3-1-.06 REPEALED AND RESERVED

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80-3-1-.07 REPEALED AND RESERVED

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80-3-1-.08 REPEALED AND RESERVED

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80-3-1-.09 REPEALED AND RESERVED

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80-3-1-.10 REPEALED AND RESERVED

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**SUBJECT 80-3-2**

**FINANCIAL CONDITION, REPORTING, AND CONTROL**

80-3-2-.01 Reports of Condition.  
80-3-2-.02 Net Worth.  
80-3-2-.03 Surety Bond.  
80-3-2-.04 Change in Control.

80-3-2-.01 Reports of Condition

Licensees are required to prepare and submit various reports of condition.

- (1) Each licensee shall have an audit of its books and records performed at least annually by independent public accountants in accordance with generally accepted auditing standards. Audits will be provided to the Department within ten (10) days of the Department's request for such information.
- (2) Each licensee shall submit to the Department, through NMLS, a Money Services Businesses ("MSB") Call Report on a quarterly basis in a form and manner prescribed by the Department, no later than forty-five (45) days after the end of each calendar quarter.
- (3) Each licensee shall file, no later than August 14th of each year, an activity statement in a form and manner prescribed by the Department, which shall include, but not be limited to, the average daily outstanding balances for payment instruments or outstanding orders to transmit not yet paid for transactions originating in Georgia during the second calendar quarter. Licensees submitting an activity statement to the Department are certifying to the material accuracy and validity of the information as submitted.

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

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#### 80-3-2-.02 Net Worth

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

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

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#### 80-3-2-.03 Surety Bond

If a licensee's average daily outstanding balances for payment instruments or outstanding orders to transmit not yet paid for transactions originating in Georgia, as calculated by the licensee for each calendar quarter, exceeds the amount of the licensee's surety bond by more than ten percent (10%), the licensee must promptly, which in no event shall be later than twenty (20) days after such calculation, provide additional coverage to fully account for the increase in outstandings pursuant to O.C.G.A. § 7-1-683.2(b). However, notwithstanding the above, the amount of the surety bond required by O.C.G.A. § 7-1-683.2(b) shall not exceed \$2,000,000.00.

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

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#### 80-3-2-.04 Change in Control

A licensee shall make a written request to the Department seeking approval for any proposed change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such proposed change in ownership or change in control of the licensee as required by O.C.G.A. § 7-1-688 at least thirty (30) days prior to the proposed change.

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

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### **SUBJECT 80-3-3**

### **BOOKS AND RECORDS**

80-3-3-.01 Minimum Books and Records.

### 80-3-3-.01 Minimum Books and Records

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

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

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

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### 80-3-3-.02 Examinations

Each licensee shall maintain a principal location at which its books and records are maintained and which is accessible to the Department for examination during normal business hours. Records required to be maintained under this rule may be maintained in a photographic, electronic, or other similar format at a central location within or outside the State of Georgia provided specific records can be transmitted to a location designated by the Department within ten (10) days of the Department's request. The Department may examine any person that purports to satisfy the exemption from licensure set forth in O.C.G.A. § 7-1-682 to verify that the person qualifies for the exemption from licensure. A licensee that refuses to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department), that withholds material information, or makes a misrepresentation shall have its license revoked.

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

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## SUBJECT 80-3-4

### ADMINISTRATIVE FINES AND PENALTIES

80-3-4-.01 Administrative Fines.

#### 80-3-4-.01 Administrative Fines

- (1) Except as otherwise indicated, these fines and penalties apply to any person, partnership, association, corporation, or any other group of individuals, however organized, that is required to be licensed under Article 4 of Chapter 1 of Title 7. The Department, at its sole discretion, may waive or modify a fine based upon the financial resources of the person, gravity of the violation, history of previous violations, and such other facts and circumstances deemed appropriate by the department.
- (2) All fines levied by the Department are due within thirty (30) days from the date of assessment and must be paid prior to renewal of the annual license, reapplication for a license, or any other activity requiring Departmental approval.
- (3) In addition to any fines levied by the Department, the recipient of the fine may be subject to additional administrative actions for the same underlying activity.
- (4) The Department establishes the following fines and penalties for violation of the laws and rules governing payment instrument sellers and money transmitters.
  - (a) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain its books and records according to the requirements of O.C.G.A. § 7-1-689 and Rules 80-3-1-.01(3), 80-3-1-.02(2), 80-3-1-.03, 80-3-2-.01, 80-3-3-.01, or 80-3-3-.02, such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each books and records violation listed in Rule 80-3-1-.01(3), 80-3-1-.02(2), 80-3-1-.03, 80-3-2-.01, 80-3-3-.01 or 80-3-3-.02.
  - (b) Operating Without Proper License. Any person who acts as a payment instrument seller or money transmitter prior to receiving a current license required under O.C.G.A. Article 4 of Chapter 1 of Title 7, or who acquires a payment instrument seller or money transmission business without its own license, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars (\$1,000) per day.
  - (c) Felons. Any licensee that hires or retains a covered employee who is a felon as described in O.C.G.A. § 7-1-684(b), when such covered employee has not complied with the remedies provided for in O.C.G.A. § 7-1-684(b) for each conviction before such employment, shall be subject to a fine of five thousand dollars (\$5,000) for each such covered employee.

- (d) Locations and Authorized Agents. Any licensee that does not give timely notice to the Department of new locations or agents beyond those previously reported as required in O.C.G.A. § 7-1-686(d) and Rules 80-3-1-.01(3) and 80-3-1-.03(2), shall be subject to a fine of five hundred dollars (\$500) for each location or agent not reported.
- (e) GCIC Background Checks on Employees. Any licensee that does not obtain a Georgia Crime Information Center ("GCIC") criminal background check on each covered employee prior to the initial date of hire or retention shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. Proof of the required GCIC criminal background check must be retained by the licensee until five years after termination of employment by the licensee. Notwithstanding compliance with this requirement to perform a GCIC criminal background check prior to employment, failure to maintain criminal background checks as required will result in a fine of one thousand dollars (\$1,000) for each covered employee for which the licensee is missing this documentation.
- (f) Authorized Agents. Any licensee that does not give notice of an authorized agent whose agency certificate has been revoked, suspended, cancelled, terminated, or voluntarily closed by the licensee as required by Rule 80-3-1-.03(2), shall be subject to a fine of five thousand dollars (\$5,000) for each authorized agent revocation, suspension, cancellation, termination, or voluntary closure not reported in writing to the Department.
- (g) Failure to Provide Receipt. In the event a licensee or its authorized agent does not provide the customer with a written receipt or other evidence of acceptance as required in Rule 80-3-1-.02(2), it shall be subject to a fine of one thousand dollars (\$1,000) per transaction where the receipt was not provided.
- (h) Failure to Notify or Obtain Approval from the Department of Change in Ownership, Change in Control, or Designation of Executive Officer. Any licensee or other person who fails to obtain the Department's prior approval of a change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control of the licensee in compliance with O.C.G.A. § 7-1-688 and Rule 80-3-2-.04 shall be subject to a fine of one thousand dollars (\$1,000). Any licensee or other person who fails to timely notify the Department of a change in executive officer not resulting from a change in control or ownership in compliance with O.C.G.A. § 7-1-687 shall be subject to a fine of one thousand dollars (\$1,000).
- (i) Other Business Activities. Any licensee found to have violated any law of this state by conducting any other business that is not lawful in conjunction with the selling of payment instruments or money transmission, shall be subject to a fine of five thousand dollars (\$5,000).
- (j) Failure to Report. Any licensee who fails to provide required reports as established by the Department and file the reports with the Department or the Nationwide Multistate

Licensing System and Registry within the designated time periods shall be subject to a fine of one thousand dollars (\$1,000) for each such occurrence.

- (k) Failure to Submit to Exam. The penalty for the refusal of a licensee to permit the Department to conduct an investigation or examination of its books, accounts, and records, shall be the revocation of its license and a five thousand dollars (\$5,000) fine.
- (l) Consumer Complaints. Any licensee who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department's correspondence to such licensee, shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence.
- (m) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or the requirements referred to in Rules 80-3-6-.01, 80-3-6-.02, and 80-3-6-.03, such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each instance of non-compliance.
- (n) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensed payment instrument seller or money transmitter that fails to disclose that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee within ten (10) business days of the date of the event necessitating the disclosure, shall be subject to a fine of one thousand dollars (\$1,000). Any licensed payment instrument seller or money transmitter that fails to submit a new lawful presence affidavit from a current owner or executive officer within ten (10) business days of the owner or executive officer that executed the previous lawful presence affidavit no longer being in that position with the licensee, shall be subject to a fine of one thousand dollars (\$1,000) per day until the new affidavit is provided.
- (o) Failure to Timely Update Information on the Nationwide Multistate Licensing System and Registry. Any licensee that fails to update its information on the Nationwide Multistate Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. In addition, the failure of a control person of a licensee to update the individual's information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions by the control person, within ten (10) business days of the date of the event necessitating the change, shall subject the licensee to a fine of one thousand dollars (\$1,000) per occurrence.
- (p) Failure to Post Required License. Any licensee that fails to post a copy of its license in the premises where money is transmitted or where payment instruments are issued or sold shall be subject to a fine of five hundred dollars (\$500) for each instance of non-compliance.

- (q) Prohibited Acts. Any licensee or other person who violates the provisions of O.C.G.A. § 7-1-692 shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation.
- (r) 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 a five thousand dollar (\$5,000) fine. Refusal shall require at least two attempts by the Department to schedule an examination or investigation.
- (s) Failure to Timely Increase the Amount of the Surety Bond. Any licensee that fails to increase the amount of the applicable surety bond when its average daily outstanding balances for payment instruments or outstanding orders to transmit not yet paid, as required by Rule 80-3-2-.03, exceed the face amount of the surety bond by ten percent (10%) or more shall be subject to a fine of one thousand dollars (\$1,000) per occurrence.

Authority: O.C.G.A. §§ 7-1-61, 7-1-690, 7-1-694.

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## **SUBJECT 80-3-5**

### **LICENSING**

80-3-5-.01 Verification of Lawful Presence Citizenship Affidavit.

80-3-5-.02 Nationwide Multistate Licensing System and Registry.

#### 80-3-5-.01 Verification of Lawful Presence Citizenship Affidavit

- (1) Pursuant to O.C.G.A. § 50-36-1, the Department is required to obtain an affidavit verifying the lawful presence of every natural person that submits an application for a license as a payment instrument seller or money transmitter on behalf of an individual, business, corporation, partnership, limited liability company, or any other business entity. For businesses, corporations, partnerships, limited liability companies, and other business entities (collectively "company applicant"), only an owner or executive officer that is authorized to act on behalf of the company applicant is authorized to submit the required signed and sworn affidavit.
- (2) In the event the individual that executed the lawful presence affidavit on behalf of the company applicant is no longer an owner or executive officer of the licensee, the licensee must notify the Department within ten (10) business days following the date of the occurrence and provide the Department with an affidavit from a current owner or executive officer verifying his or her lawful presence on behalf of the licensee. The failure to disclose within ten (10) business days that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee or to timely submit a new affidavit from a current owner or executive officer may subject the license to revocation, suspension, and other administrative action.

Authority: O.C.G.A. §§ 7-1-61, 7-1-690, 7-1-682, 7-1-683.

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#### 80-3-5-.02 Nationwide Multistate Licensing System and Registry

(1) License issuance and renewals.

- (a) All applications for new or renewal licenses must be made through the Nationwide Multistate Licensing System and Registry ("NMLSR") unless otherwise expressly exempted from this requirement by the Department in writing. Fees for new applications include an initial Department investigation fee and the appropriate application fee. Applications for new licenses which are approved between November 1 and December 31 in any year will not be required to file a renewal application for the next calendar year. All fees are non-refundable.
- (b) All licenses issued shall expire on December 31 of each year, and an application for renewal shall be made annually between November 1 and December 31 each year. Subsequent renewal applications and/or license fees must be received on or before December 1 of each year or the renewal applicant will be assessed a late fee as set forth in Rule 80-5-1-.02. A renewal application is not deemed received until all required information and corresponding fees have been provided by the licensee. A proper renewal application not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license will expire. Unless a proper renewal application has been received any license which is not renewed on or before December 31 will require the renewal applicant to file a reinstatement application in order to conduct business as a check casher, money transmitter, or payment instrument seller in the State after that date.

(2) The responsibility of applicants and licensees to update information in NMLSR.

- (a) It shall be the sole responsibility of each applicant for a license and each licensee to keep current at all times its information on the NMLSR. Amendments to any information on file with the NMLSR must be made by the applicant or licensee within ten (10) business days of the date of the event necessitating the change. The Department shall have no responsibility for any communication not received by an applicant or licensee due to its failure to maintain current contact information on the NMLSR as required.
- (b) Amendments to any responses to disclosure questions by an applicant for a license or a licensee must be made within ten (10) business days following the date of the event necessitating the change. Failure by an applicant for a license to timely update the applicant's responses to disclosure questions may result in the denial of the application. In the case of a licensee, failure to timely update any disclosure information may result in the revocation of its license.



- (c) It shall be the responsibility of each applicant for a license and each licensee to ensure that its control persons keep current at all times their information on the NMLSR. Amendments to any information on file with the NMLSR must be made by the control person within ten (10) business days of the date of the event necessitating the change. For purposes of this Rule, control person means any individual that has the power, either directly or indirectly, to direct or cause the direction of management and policies of an applicant or licensee, whether through the ownership of voting or nonvoting securities, by contract, or otherwise.
  - (d) Amendments to any responses to disclosure questions by a control person must be made within ten (10) business days following the date of the event necessitating the change. Failure by a control person of an applicant for a license to timely update the control person's responses to disclosure questions may result in the denial of the application. In the case of a licensee, failure by a control person to timely update any disclosure information may result in the revocation of its license.
- (3) A licensee may challenge information entered by the Department into the NMLSR. All challenges must be sent to the Department in writing addressed to the attention of the Deputy Commissioner of Non-Depository Financial Institutions. Once received, the Department shall consider the merits of the challenge raised and provide the licensee with a written reply that shall be the Department's final decision regarding the challenge.

Authority: O.C.G.A. §§ 7-1-61, 7-1-690, 7-1-683.3.

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## **SUBJECT 80-3-6**

### **COMPLIANCE WITH FEDERAL REQUIREMENTS**

- 80-3-6-.01 Money Service Businesses: Compliance with Federal Requirements.
- 80-3-6-.02 Reports of Large Currency Transactions, Recordkeeping, and Suspicious Activity Reporting Requirements.
- 80-3-6-.03 Reports of Apparent Criminal Irregularity by Licensees and Authorized Agents.
- 80-3-6-.04 State Requirements for Financial Institutions.

#### **80-3-6-.01 Money Service Businesses: Compliance with Federal Requirements**

- (1) For the purposes of this Rule, Money Service Businesses ("MSBs") refer to a class of non-bank financial institutions defined in the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act"), which Act requires such non-bank financial institutions to register with the Financial Crimes Enforcement Network, United States Department of the Treasury and to comply with other recordkeeping and compliance laws.
- (2) A licensee under Article 4 of Chapter 1 of Title 7 that satisfies the definition of an MSB under the Bank Secrecy Act, shall comply with the federal registration requirements for such businesses and shall provide the Department with evidence of such registration.

- (3) All licensees under Article 4 of Chapter 1 of Title 7 must have a compliance program and must comply with the recordkeeping requirements, currency transaction reporting, and suspicious activity reporting set forth in the Bank Secrecy Act provided the licensees are required to do so under the Bank Secrecy Act. Other recordkeeping requirements required by state law are provided for in Rules 80-3-3-.01 and 80-3-3-.02. Licensees may consult <https://www.fincen.gov/resources/financial-institutions/money-services-businesses> for questions about the federal requirements.

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

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#### 80-3-6-.02 Reports of Large Currency Transactions, Recordkeeping, and Suspicious Activity Reporting Requirements

- (1) Persons engaged in the business of selling payment instruments or transmitting money and authorized agents of money transmitters or payment instrument sellers shall be subject to the filing requirements for large currency transactions as prescribed in Article 11 of Chapter 1 of Title 7, and as further directed herein.
- (2) The reporting requirements contained in Article 11 of Chapter 1 of Title 7 shall be met by filing with the appropriate federal agency a copy of the form(s) filed in compliance with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") within the time limits set forth therein. Such forms shall include the filing of currency transaction reports and suspicious activity reports as described in the Bank Secrecy Act and accompanying regulations.
- (3) Recordkeeping. Georgia law regarding such recordkeeping for payment instrument sellers and money transmitters shall be satisfied by compliance with all applicable federal law. Such federal law includes, but is not limited to, the Bank Secrecy Act.
- (4) Records required to be maintained under Paragraph (3) of this rule may be maintained in a photographic, electronic, or other similar form at a central location within or outside the State of Georgia provided specific records can be transmitted to a location designated by the Department within ten (10) days of the date of the Department's request.
- (5) Currency transaction reporting requirements for financial institutions are contained in Chapter 80-9-1 of the Department's regulations.

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

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#### 80-3-6-.03 Reports of Apparent Criminal Irregularity by Licensees and Authorized Agents

- (1) Sale of payment instruments and money transmitter licensees shall file with the Department the name, location, and federal tax identification number of any authorized agent within this state who has failed to remit to the licensee the proceeds received from the sale of the

licensee's payment instruments or from licensee's money transmission activities in accordance with the terms of the contract between the licensee and the authorized agent or whose authorized agency status has been revoked, suspended, terminated, cancelled, or voluntarily closed due to an outstanding liability due to the licensee. The report shall state the aggregate amount of unremitted payment instrument sales or money transmission proceeds due to the licensee and any provisions which have been made to recover same.

- (2) Structuring to avoid reporting.
  - (a) Unless otherwise reporting to the appropriate federal agency under Rule 80-3-6-.02(2), every payment instrument seller, authorized agent of a payment instrument seller, money transmitters, and authorized agents of money transmitters shall report to the Department any instance involving such sale of payment instruments or money transmission where there is reasonable cause to believe that its customer has, for the purpose of evading the reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or Article 11 of Chapter 1 of Title 7:
    1. Caused or attempted to cause a currency transaction report required under Article 11 of Chapter 1 of Title 7 or the Bank Secrecy Act not to be filed;
    2. Caused or attempted to cause a currency transaction report required under Article 11 of Title 7 or the Bank Secrecy Act to be filed containing a material omission or misstatement as defined in O.C.G.A. § 7-1-912;
    3. Completed a structuring (as defined in O.C.G.A. § 7-1-912), assisted in structuring, attempted a structuring, or attempted to assist in structuring any currency transaction.
  - (b) Authorized agents of payment instrument sellers and money transmitters shall not be required to report as provided in subsection (a) where the licensee has advised the authorized agent in writing that the licensee operates a system of internal procedures designed to gather the pertinent data and file the reports required in subsection (a).
- (3) Any licensed payment instrument seller or money transmitter shall notify the Department within ten (10) business days of any knowledge or discovery of any criminal act or apparent criminal act by any officer, director, or employee of such licensee or by any officer, director, or employee of an authorized agent occurring in this state and relating to the business of the licensee. Such notification shall include a full description of the acts or apparent acts believed to be in violation of the criminal laws of this state or the United States, the names of all persons believed to be involved, a statement as to action taken by the licensee in response to the discovery or suspicions, and a copy of the written notification to the licensee's fidelity insurance carrier.
- (4) Licensees governed by these Rules shall be subject to amendments of the Bank Secrecy Act which may impose other reporting obligations for suspicious transactions.

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

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#### 80-3-6-.04 State Requirements for Financial Institutions

- (1) A financial institution required to report any currency transaction in excess of ten thousand dollars (\$10,000), including a transaction in excess of one hundred thousand dollars (\$100,000), may satisfy state currency transaction filing and reporting requirements by filing a timely report (FinCEN Form 104) with the federal authority designated in the Currency and Foreign Transaction Reporting Act of 1970 ("Bank Secrecy Act").
- (2) Banks and credit unions are required to follow federal guidelines and requirements for detecting abuses or the structuring of transactions designed to avoid Bank Secrecy Act reporting.

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

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### **CHAPTER 80-4**

### **CHECK CASHERS**

### **SUBJECT 80-4-1**

### **CHECK CASHERS**

80-4-1-.01	Books and Records; Other Requirements.	80-4-1-.04	Reports of Apparent Criminal Irregularity by Check Cashers
80-4-1-.02	Money Service Businesses: Compliance with Federal Requirements.	80-4-1-.05	Administrative Fines and Penalties.
80-4-1-.03	Reports of Large Currency Transactions, Record-Keeping, and Suspicious Activity Reporting Requirements for Check Cashers.	80-4-1-.06	Verification of Lawful Presence Citizenship Affidavit.
		80-4-1-.07	Nationwide Multistate Licensing System and Registry.

#### 80-4-1-.01 Books and Records; Other Requirements

- (1) For purposes of this Rules Chapter and Rule 80-5-1-.02(2), the terms that are defined in O.C.G.A. § 7-1-700 shall have the identical meaning.
- (2) Every applicant for a license shall demonstrate to the Department that such applicant has sufficient financial resources in the form of working capital and tangible net worth to successfully engage in the business of cashing payment instruments. Sufficiency of financial resources shall be determined through financial analysis by the Department of pro-forma and historical financial information of the applicant. Each licensee shall be required to complete and attest to official questionnaires and statements of assets and liabilities when requested for examination purposes. Licensees shall be prohibited from withholding, deleting, destroying, or altering information requested by an examiner of the Department or making

false statements or material misrepresentations to the Department during the course of an examination or on any application or renewal form sent to the Department.

- (3) Every licensee shall maintain an original written authorization or other evidence of verification attesting to the fact that each specific corporation or other business association has authorized its officers and employees or specific officers or employees to present payment instruments, drawn by the corporation or other business association payable to cash or drawn by any party payable to the corporation or other business association, to a licensee for cashing. A check casher shall not cash a payment instrument payable to persons other than natural persons unless the check casher has on file such written authorization or verification indicating that the payee has authorized the presentation of such payment instruments on behalf of the payee.
- (4) Every licensee shall post in prominent view of each teller window or other customer service station a copy of its license. Advertising material related to the cashing of payment instruments and distributed within this state shall contain the licensee's name, which shall conform to the name on record with the Department, and unique identifier, which shall clearly indicate that the number was issued by the Nationwide Multistate Licensing System and Registry.
- (5) Minimum Books and Records.
  - (a) Books and records required herein shall be maintained by every licensee.
  - (b) A record of cashed payment instruments shall be maintained by each licensee as a log of all transactions occurring each day. The log must be maintained in chronological order based on the date of negotiation of the payment instrument.
    1. For all cashed payment instruments, such record shall include:
      - (i) The date of negotiation of the payment instrument;
      - (ii) Name, address, and identifying number (social security, driver's license, passport, etc.) of the person negotiating the payment instrument;
      - (iii) Amount of the payment instrument; and
      - (iv) Amount of fee charged for cashing the payment instrument.
    2. For all cashed payment instruments in an amount of one thousand dollars (\$1,000) or more, such record shall also include:
      - (i) Date of the payment instrument;
      - (ii) Payment instrument number;
      - (iii) Name and location or routing number of the payor bank or, if a pre-paid card, the branded card name; and
      - (iv) Name of the drawer of the payment instrument.

- (c) A daily cash reconciliation statement shall be maintained summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business. Such reconciliation statement shall separately reflect cash received from the sale of payment instruments (if also licensed as a seller of payment instruments or an authorized agent of such licensee), redemption of returned items, bank cash withdrawals, cash disbursed in cashing of payment instruments, and bank cash deposits.
  - (d) A general ledger containing records of all assets, liabilities, capital, income and expenses shall be maintained. The general ledger shall be posted from the daily record of cashed payment instruments or other record of original entry, at least quarterly, and shall be maintained in such manner as to facilitate the preparation of an accurate trial balance of accounts in accordance with generally accepted accounting practices. A consolidated general ledger reflecting activity at two or more locations under the same license may be maintained provided books of original entry are separately maintained for each location.
  - (e) For all entities cashing payment instruments, each customer cashing a payment instrument shall be offered the option of receiving a receipt showing the name of the licensee or trade name of the licensee, the transaction date, the amount of the payment instrument, and the fee charged.
  - (f) All licensees shall maintain supporting documentation for all reports and logs required to be prepared or filed with the Department or the Nationwide Multistate Licensing System and Registry.
- (6) All payment instruments drawn on a financial institution domiciled in the United States and cashed by a licensee shall be sent for deposit to the licensee's account at a financial institution authorized to do business in the State of Georgia whose deposits are federally insured or sent for collection not later than the close of business on the next business day after the date on which the payment instrument was cashed.
- (7) Each licensee shall maintain a principal location at which its books and records are maintained and which is accessible to the Department for examination during normal business hours. Records required to be maintained under this rule may be maintained in a photographic, electronic, or other similar format at a central location within or outside the State of Georgia provided specific records can be transmitted to a location designated by the Department within ten (10) days of the Department's request. The Department may examine any person that purports to satisfy the exemption from licensure set forth in O.C.G.A. § 7-1-701.1 to verify that the person qualifies for the exemption from licensure. A licensee that refuses to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department), that withholds material information or makes a misrepresentation shall have its license revoked.
- (8) The business of the licensee may be conducted through additional outlets, including those operated as mobile facilities, provided that mobile facilities maintain a regular schedule of

times and locations at which they cash payment instruments, file the schedule with the Department, and comply with local licensure requirements at each location at which business is conducted. A licensee must provide the Department with written notice at least thirty (30) days prior to it conducting business at any additional outlets.

- (9) A licensee shall notify the Department in writing within fifteen (15) days of the closing of the portion of its business that cashes payments instruments and shall surrender its original license to the Department at that time.
- (10) A licensee shall make a written request to the Department seeking approval for any proposed change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control of the licensee as required by O.C.G.A. § 7-1-705.1 at least thirty (30) days prior to the proposed change.
- (11) Every licensee giving notices of changes in locations operated by the licensee over those previously reported shall do so at least thirty (30) days prior to conducting business at the new location and on forms provided by the Department.

Authority: O.C.G.A. §§ 7-1-61, 7-1-701.1, 7-1-702.1, 7-1-706.1.

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#### 80-4-1-.02 Money Service Businesses: Compliance with Federal Requirements

- (1) For the purposes of this Rule, Money Service Businesses ("MSBs") refer to a class of non-bank financial institutions defined in the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act"), which Act requires such non-bank financial institutions to register with the Financial Crimes Enforcement Network, United States Department of the Treasury and to comply with other recordkeeping and compliance laws.
- (2) A licensee under Article 4A of Chapter 1 of Title 7 that satisfies the definition of an MSB under the Bank Secrecy Act, shall comply with the federal registration requirements for such businesses and shall provide the Department with evidence of such registration.
- (3) All licensees under Article 4A of Chapter 1 of Title 7 must have a compliance program and must comply with the recordkeeping requirements, currency transaction reporting, and suspicious activity reporting set forth in the Bank Secrecy Act provided the licensees are required to do so under the Bank Secrecy Act. Other recordkeeping requirements required by state law are provided for in Rule 80-4-1-.01(5). Licensees may consult <https://www.fincen.gov/resources/financial-institutions/money-services-businesses> for questions about the federal requirements.

Authority: O.C.G.A. §§ 7-1-61, 7-1-706.1.

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#### 80-4-1-.03 Reports of Large Currency Transactions, Record-Keeping, and Suspicious Activity Reporting Requirements for Check Cashers

- (1) Persons engaged in the business of cashing payment instruments shall be subject to the filing requirements for large currency transactions as prescribed in Article 11 of Chapter 1 of Title 7, and as further directed herein.
- (2) The reporting requirements contained in Article 11 of Chapter 1 of Title 7 shall be met by filing with the appropriate federal agency a copy of the form(s) filed in compliance with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") within the time limits set forth therein. Such forms shall include the filing of currency transaction reports and suspicious activity reports as described in the Bank Secrecy Act and accompanying regulations.
- (3) Recordkeeping. Georgia law regarding such recordkeeping for check cashers shall be satisfied by compliance with all applicable federal law. Such federal law includes, but is not limited to, the Bank Secrecy Act. A licensed check casher that does not satisfy the definition of a check casher under the Bank Secrecy Act shall comply with the state recordkeeping requirements at Rule 80-4-1-.01(5).
- (4) Records required to be maintained under Paragraph (3) of this rule may be maintained in a photographic, electronic, or other similar form at a central location within or outside the State of Georgia provided specific records can be transmitted to a location designated by the Department within ten (10) days of the date of the Department's request.
- (5) Currency transaction reporting requirements for financial institutions are contained in Chapter 80-9-1 of the Department's regulations.

Authority: O.C.G.A. §§ 7-1-61, 7-1-706.1.

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#### 80-4-1-.04 Reports of Apparent Criminal Irregularity by Check Cashers

- (1) Structuring to avoid reporting. Unless otherwise reporting to the appropriate federal agency under Paragraph (2) of Rule 80-4-1-.03, every check casher and other persons who cash payment instruments for a fee shall report to the Department any instance involving such cashing of payment instruments where there is reasonable cause to believe that its customer has, for the purpose of evading the reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or Article 11 of Chapter 1 of Title 7:
  - (a) Caused or attempted to cause a currency transaction report required under Article 11 of Chapter 1 of Title 7 or the Bank Secrecy Act not to be filed;



- (b) Caused or attempted to cause a currency transaction report required under Article 11 of Title 7 or the Bank Secrecy Act to be filed containing a material omission or misstatement as defined in O.C.G.A. § 7-1-912;
  - (c) Completed a structuring (as defined in O.C.G.A. § 7-1-912), assisted in structuring, attempted a structuring, or attempted to assist in structuring any currency transaction.
- (2) Any licensed check casher shall notify the Department within ten (10) business days of any knowledge or discovery of any criminal act or apparent criminal act by any officer, director, or employee of such licensee occurring in this state and relating to the business of the licensee. Such notification shall include a full description of the acts or apparent acts believed to be in violation of the criminal laws of this state or the United States, the names of all persons believed to be involved, a statement as to action taken by the licensee in response to the discovery or suspicions, and a copy of the written notification to the licensee's fidelity insurance carrier.
- (3) Licensees governed by these Rules shall be subject to amendments of the Bank Secrecy Act which may impose other reporting obligations for suspicious transactions.

Authority: O.C.G.A. §§ 7-1-61, 7-1-706.1.

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#### 80-4-1-.05 Administrative Fines and Penalties

- (1) Except as otherwise indicated, these fines and penalties apply to any person, partnership, association, corporation, or any other group of individuals, however organized, that is required to be licensed under Article 4A of Chapter 1 of Title 7. The Department, at its sole discretion, may waive or modify a fine based upon the financial resources of the person, gravity of the violation, history of previous violations, and such other facts and circumstances deemed appropriate by the department.
- (2) All fines levied by the Department are due within thirty (30) days from the date of assessment and must be paid prior to renewal of the annual license, reapplication for a license, or any other activity requiring Departmental approval.
- (3) In addition to any fines levied by the Department, the recipient of the fine may be subject to additional administrative actions for the same underlying activity.
- (4) The Department establishes the following fines and penalties for violation of the law and rules governing check cashers.
- (a) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain its books and records according to the requirements of O.C.G.A. § 7-1-706(a) and Rules 80-4-1-.01(2) or 80-4-1-.01(5), such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each books and records violation listed in Rules 80-4-1-.01(2) or 80-4-1-.01(5).

- (b) Excessive Fees. If the Department, in the course of an examination or investigation, finds that a licensee has charged fees for cashing payment instruments in excess of the amount set forth in O.C.G.A. § 7-1-707(f), such licensee shall be subject to a fine of five thousand dollars (\$5,000) per occurrence.
- (c) Posting of Charges. Any licensee who does not display, at all locations, a notice stating the charges/fees for cashing payment instruments in accordance with O.C.G.A. § 7-1-707.1 shall be subject to a fine of five hundred dollars (\$500).
- (d) Operating Without Proper License. Any person who acts as a check casher prior to receiving a current license required under Article 4A of Chapter 1 of Title 7, or who acquires a business that cashes payment instruments and operates without its own license, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars (\$1,000) per day.
- (e) Felons. Any licensee that hires or retains a covered employee who is a felon as described in O.C.G.A. § 7-1-703(b), when such covered employee has not complied with the remedies provided for in O.C.G.A. § 7-1-703(b) for each conviction before such employment, shall be subject to a fine of five thousand dollars (\$5,000) for each such covered employee.
- (f) GCIC Background Checks on Employees. Any licensee that does not obtain a Georgia Crime Information Center ("GCIC") criminal background check on each covered employee prior to the initial date of hire or retention shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. Proof of the required GCIC criminal background check must be retained by the licensee until five years after termination of employment by the licensee. Notwithstanding compliance with this requirement to perform a GCIC criminal background check prior to employment, failure to maintain criminal background checks as required will result in a fine of one thousand dollars (\$1,000) for each covered employee for which the licensee is missing this documentation.
- (g) Deferred Payment. Any licensee that defers payment on a payment instrument pending collection and has not obtained the surety bond as required by O.C.G.A. § 7-1-707(c) shall be subject to a fine of five thousand dollars (\$5,000) per occurrence.
- (h) Other Business Activities. Any licensee found to have violated any law of this state by conducting any other business that is not lawful in conjunction with cashing payment instruments, shall be subject to a fine of five thousand dollars (\$5,000).
- (i) Corporate Checks. Any licensee that cashes a payment instrument made payable to a corporation or other business association or cashes a payment instrument drawn by the corporation or other business association and made payable to cash without the proper written authorization as required by O.C.G.A. § 7-1-707(d) and Rule 80-4-1-.01(3) shall be subject to a fine of one thousand dollars (\$1,000) per occurrence.

- (j) Advertising - "No Identification Required." A licensee that advertises that it will cash payment instruments with no identification required will be subject to a fine of one thousand dollars (\$1,000).
- (k) Identification Requirements for Cashing Payment Instruments. No licensee shall cash payment instruments without identification of the bearer of such check. Failure to comply with the requirements of O.C.G.A. § 7-1-707(e) shall subject the licensee to a fine of one thousand dollars (\$1,000) per occurrence.
- (l) Failure to Submit to Exam. The penalty for the refusal of a licensee to permit the Department to conduct an investigation or examination of its books, accounts, and records, shall be a five thousand dollar (\$5,000) fine.
- (m) Consumer Complaints. Any licensee who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department's correspondence to such licensee, shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence.
- (n) Failure to Notify or Obtain Approval from the Department of Change in Ownership, Change in Control, or Designation of Executive Officer. Any licensee or other person who fails to obtain the Department's prior approval of a change in ultimate equitable ownership through acquisition or other change in control or change in executive officer resulting from such change in ownership or change in control of the licensee in compliance with O.C.G.A. § 7-1-705.1 and Rule 80-4-1-.01 shall be subject to a fine of one thousand dollars (\$1,000). Any licensee or other person who fails to timely notify the Department of a change in executive officer not resulting from a change in control or ownership in compliance with O.C.G.A. § 7-1-705 shall be subject to a fine of one thousand dollars (\$1,000).
- (o) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or the requirements referred to in Rules 80-4-1-.02, 80-4-1-.03, and 80-4-1-.04, such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each instance of non-compliance.
- (p) Failure to Post Required License or Failure to Include Required Legend on Advertising. Any licensee that fails to post a copy of its license in prominent view of each teller window or other customer service station, or distributes advertising in this state related to the cashing of payment instruments that fails to comply with the requirements of Rule 80-4-1-.01(4) shall be subject to a fine of five hundred dollars (\$500) for each instance of non-compliance.
- (q) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensed check casher that fails to disclose that the owner or executive officer that executed the lawful

- presence affidavit is no longer in that position with the licensee within ten (10) business days of the date of the event necessitating the disclosure, shall be subject to a fine of one thousand dollars (\$1,000). Any licensed check casher that fails to submit a new lawful presence affidavit from a current owner or executive officer within ten (10) business days of the owner or executive officer that executed the previous lawful presence affidavit no longer being in that position with the licensee, shall be subject to a fine of one thousand dollars (\$1,000) per day until the new affidavit is provided.
- (r) Failure to Timely Update Information on the Nationwide Multistate Licensing System and Registry. Any licensee that fails to update its information on the Nationwide Multistate Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. In addition, the failure of a control person of a licensee to update the individual's information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions by the control person, within ten (10) business days of the date of the event necessitating the change, shall subject the licensee to a fine of one thousand dollars (\$1,000) per occurrence.
  - (s) Prohibited Acts. Any licensee or other person who violates the provisions of O.C.G.A. § 7-1-708 shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation.
  - (t) 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 a five thousand dollar (\$5,000) fine. Refusal shall require at least two attempts by the Department to schedule an examination or investigation.

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

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80-4-1-.06 Verification of Lawful Presence Citizenship Affidavit

- (1) Pursuant to O.C.G.A. § 50-36-1, the Department is required to obtain an affidavit verifying the lawful presence of every natural person that submits an application for a license as a check casher on behalf of an individual, business, corporation, partnership, limited liability company, or any other business entity. For businesses, corporations, partnerships, limited liability companies, and other business entities (collectively "company applicant"), only an owner or executive officer that is authorized to act on behalf of the company applicant is authorized to submit the required signed and sworn affidavit.
- (2) In the event the individual that executed the lawful presence affidavit on behalf of the company applicant is no longer an owner or executive officer of the licensee, the licensee must notify the Department within ten (10) business days following the date of the occurrence and provide the Department with an affidavit from a current owner or executive officer verifying his or her lawful presence on behalf of the licensee. The failure to disclose

within ten (10) business days that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee or to timely submit a new affidavit from a current owner or executive officer may subject the license to revocation, suspension, and other administrative action.

Authority: O.C.G.A. §§ 7-1-61, 7-1-702.

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#### 80-4-1-.07 Nationwide Multistate Licensing System and Registry

(1) License issuance and renewals.

- (a) All applications for new or renewal licenses must be made through the Nationwide Multistate Licensing System and Registry ("NMLSR") unless otherwise expressly exempted from this requirement by the Department in writing. Fees for new applications include an initial Department investigation fee and the appropriate application fee. Applications for new licenses which are approved between November 1 and December 31 in any year will not be required to file a renewal application for the next calendar year. All fees are non-refundable.
- (b) All licenses issued shall expire on December 31 of each year, and an application for renewal shall be made annually between November 1 and December 31 each year. Subsequent renewal applications and/or license fees must be received on or before December 1 of each year or the renewal applicant will be assessed a late fee as set forth in Rule 80-5-1-.02. A renewal application is not deemed received until all required information and corresponding fees have been provided by the licensee. A proper renewal application not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license will expire. Unless a proper renewal application has been received any license which is not renewed on or before December 31 will require the renewal applicant to file a reinstatement application in order to conduct business as a check casher in the State after that date.

(2) The responsibility of applicants and licensees to update information in NMLSR.

- (a) It shall be the sole responsibility of each applicant for a license and each licensee to keep current at all times its information on the NMLSR. Amendments to any information on file with the NMLSR must be made by the applicant or licensee within ten (10) business days of the date of the event necessitating the change. The Department shall have no responsibility for any communication not received by an applicant or licensee due to its failure to maintain current contact information on the NMLSR as required.
- (b) Amendments to any responses to disclosure questions by an applicant for a license or a licensee must be made within ten (10) business days following the date of the event necessitating the change. Failure by an applicant for a license to timely update the

applicant's responses to disclosure questions may result in the denial of the application. In the case of a licensee, failure to timely update any disclosure information may result in the revocation of its license.

- (c) It shall be the responsibility of each applicant for a license and each licensee to ensure that its control persons keep current at all times their information on the NMLSR. Amendments to any information on file with the NMLSR must be made by the control person within ten (10) business days of the date of the event necessitating the change. For purposes of this Rule, control person means any individual that has the power, either directly or indirectly, to direct or cause the direction of management and policies of an applicant or licensee, whether through the ownership of voting or nonvoting securities, by contract, or otherwise.
  - (d) Amendments to any responses to disclosure questions by a control person must be made within ten (10) business days following the date of the event necessitating the change. Failure by a control person of an applicant for a license to timely update the control person's responses to disclosure questions may result in the denial of the application. In the case of a licensee, failure by a control person to timely update any disclosure information may result in the revocation of its license.
- (3) A licensee may challenge information entered by the Department into the NMLSR. All challenges must be sent to the Department in writing addressed to the attention of the Deputy Commissioner of Non-Depository Financial Institutions. Once received, the Department shall consider the merits of the challenge raised and provide the licensee with a written reply that shall be the Department's final decision regarding the challenge.

Authority: O.C.G.A. §§ 7-1-61, 7-1-702.2.

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**CHAPTER 80-5**  
**FINANCIAL INSTITUTIONS**  
**SUBJECT 80-5-1**  
**SUPERVISION, EXAMINATION, REGISTRATION**  
**AND INVESTIGATION FEES. ADMINISTRATIVE LATE FEES**

80-5-1-.01 General.

Rule 80-5-1-.01. General.

- (1) The appropriation for the Department of Banking and Finance is enacted by the General Assembly and signed into law annually. An annual fee shall be assessed on financial institutions supervised or regulated by the Department. These fees are remitted to the Office of the State Treasurer.

- (2) Annual assessments are for the Department's fiscal year, July 1 through June 30. Assessments for depository institutions are based upon each financial institution's assets reported on the Report of Condition preceding the assessment date. All financial institutions will be assessed, either for a full year or for a partial year, as appropriate. Subject to an increased assessment due to an acquisition, annual assessments for Georgia chartered financial institutions existing on July 1, will be based on June 30 Call Report Assets, should be delivered on or about September 10, and are due and payable no later than September 30. A late payment penalty may be assessed for the full year billing at any time after the due date. Subject to the provisions herein, assessments related to a conversion to a Georgia state chartered institution or a charter issuance after July 1 will be prorated for the number of full and partial months as a Georgia state chartered institution and will be delivered as soon as practical and shall be due and payable upon receipt. A late payment penalty may be assessed for the partial year billing fourteen days after bill issuance. Under no circumstances, shall any portion of an annual assessment paid to the Department be refunded.
- (3) Newly chartered financial institutions will not be assessed for the first three full months plus any partial month from the begin business date. Thereafter, annual assessments as set forth herein shall apply. The initial assessment period for newly chartered financial institutions shall begin on the first day of the month after the first three full calendar months from the begin business date.
- (4) Assessment fees for a Georgia state chartered institution that is acquired by a federal or national institution or institution chartered by another state after July 1, but prior to the date that assessments are due and payable, will be prorated based on the number of full and partial months the institution operated as a Georgia state chartered institution. A Georgia state chartered institution that is acquired by a federal or national institution or an institution chartered by another state after the assessment date, shall pay the full assessment.
- (5) Assessment fees for a Georgia state chartered institution that is acquired by another Georgia state chartered institution after July 1, but prior to the date that assessments are due and payable, will be assessed on the combined total assets and offices of the combined institutions as of June 30. A Georgia state chartered institution that is acquired after the assessment date, shall pay the full assessment.
- (6) Assessment fees for a Georgia state chartered institution that converts to a federal or national institution or institution chartered by another state after July 1, but prior to the date that assessments are due and payable, will be prorated based on the number of full and partial months the institution operated as a Georgia state chartered institution. A Georgia state chartered institution that converts to a federal or national institution or institution chartered by another state after the assessment date, shall pay the full assessment.
- (7) Assessment fees for a national bank, federal credit union, or institution chartered by another state that is acquired by a Georgia state chartered institution after July 1 will be prorated based on the number of full and partial months the additional assets of the national bank,

federal credit union, or the institution chartered by another state were combined into the Georgia state chartered institution.

- (8) The Department has made available an Applications Manual, which manual includes the fees for each type of application, registration and notification.
- (9) The Department has policies which provide that certain qualifying institutions may expedite applications or submit shortened forms of applications. The fees for these expedited processes have been reduced accordingly. The criteria for banks to qualify for such treatment is set forth in Rule 80-1-1-.10 while the criteria for bank holding companies to qualify is set forth in Rule 80-6-1-.03.

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

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**CHAPTER 80-6**  
**HOLDING COMPANIES**  
**SUBJECT 80-6-1**

**APPLICATIONS AND ACQUISITIONS**

80-6-1-.01	Holding Companies, Generally.	80-6-1-.06	Public Information.
80-6-1-.02	Regular Applications.	80-6-1-.07	Hearings
80-6-1-.03	Qualifying Criteria for Expedited Processing: Acquisitions and One-bank Holding Company Formations.	80-6-1-.08	Proxies, Offering Circulars, Disclosure Statements.
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-.09	Non-Banking Acquisitions.
80-6-1-.05	Public Notices.	80-6-1-.10	Unlawful Acquisitions, Corporate Restructuring.
		80-6-1-.12	Repealed and Reserved.
		80-6-1-.13	Repealed and Reserved.
		80-6-1-.14	Repealed and Reserved.
		80-6-1-.16	Repealed and Reserved.

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

- (1) Georgia's holding company statutes (Code Sections 7-1-605 through 7-1-612) govern all holding companies which have or wish to acquire, by purchase or formation, banks chartered by the Department. Once a holding company acquires a Georgia bank, it shall be registered annually with the Department. Subsequent acquisitions by that holding company may require approval, a letter form notification, or after the fact notification, depending upon the relationship of the acquisition to Georgia banks. The Department requires the submission of certain reports from Georgia bank holding companies and from holding companies that own Georgia banks.
- (2) Interstate acquisitions by holding companies are dealt with in Part 19 of Article 2 of Title 7; related mergers of the banks in Part 20 of Article 2 of Title 7. Definitions in those Parts should be applied to interstate transactions.



- (3) Expedited processing is available to holding companies which qualify under the criteria in Department of Banking and Finance Rule 80-6-1-.03 or 80-6-1-.04, depending on the transaction. A letter form application with a copy of the federal application may be used and public notice may be coordinated so long as the Department is referenced in the notice as a regulator to whom comments should be submitted. A holding company lawfully owning a bank chartered by the Department that meets the criteria in Rule 80-6-1-.04 may qualify for expedited processing for formation of a de novo bank, provided the de novo bank is to be wholly owned by the holding company.
- (4) A bank holding company which acquires a bank chartered by the Department must apply and seek approval from the Department pursuant to Code Section 7-1-622. Approval to become a bank holding company of a Georgia bank as defined in Code Section 7-1-605 is similarly required. A bank holding company lawfully owning a bank in Georgia, or lawfully owning a branch of a bank in Georgia which was formed by the acquisition and subsequent merger of a Georgia bank, may form a de novo bank with Department approval pursuant to Code Section 7-1-608(b)(3).
- (5) An Applications Manual and a Statement of Policies are available from the Department. Details of and policies underlying all required applications, notifications and registrations are contained in these manuals.
- (6) Fees for all transactions are provided in Department and Banking and Finance Rule Chapter 80-5-1.
- (7) A Georgia bank holding company for the purposes of this Chapter shall be defined as in Code Section 7-1-621.

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

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#### Rule 80-6-1-.02. Regular Applications

- (1) A state bank must follow procedures and meet the criteria of the Federal Reserve Bank to become a financial holding company. No state application is necessary. Regular applications for permission to become a bank holding company as defined in O.C.G.A. § 7-1-605, or to acquire control of a banking subsidiary, or to continue to be a holding company after becoming a holding company under circumstances contemplated by Section 7-1-605 which are beyond the control of the company, shall be in letter form accompanied by the following exhibits:
  - (a) A copy of any form or documents filed with the Board of Governors of the Federal Reserve System;
  - (b) A letter from the applicant's legal counsel containing a definitive statement concerning whether any securities to be issued in the proposed transactions are subject to

- registration under State and/or Federal Securities Laws and stating that, in the opinion of such counsel, the applicant is taking the necessary action to comply with the applicable State and Federal Securities Laws and Regulations;
- (c) A draft copy of any proposed proxy statements or offering circulars or letters prepared in connection with the applicant's proposed bank acquisition;
  - (d) A copy of the most recent independent audit, if any and if not already on file with the Department, of the applicant's books and records, performed by independent public accountants; and
  - (e) Proof of publication of the notice described in Rule 80-6-1-.05, if notice is required.
- (2) Applicants desiring expedited processing for formation of a one-bank holding company for an existing bank with no publication requirement must meet the qualifying criteria in Department of Banking and Finance Rule 80-6-1-.03, and submit a letter application describing the transaction and support for qualification under the Department's criteria. Completed applications will be processed in 30 days.
- (3) Regular applications for permission for a holding company to acquire shares of stock in a bank including a savings bank or savings and loan association which will result in the holding company having direct or indirect control of five (5) percent to twenty-five (25) percent of the voting shares of the acquired bank shall be in letter form accompanied by the following exhibits:
- (a) Material requested in subparagraphs (a) through (e) of Paragraph (1) of this Rule.
- (4) Interstate and intrastate holding company acquisitions requiring approval may qualify for expedited processing. A letter form application describing the transaction shall be filed together with support for qualification under the Department's criteria and a copy of the federal form or documents. Publication may be done according to Department of Banking and Finance Rule 80-6-1-.05 or in conjunction with the federally required notice, provided the reference to the Department of Banking and Finance is included as provided in the notice regulation, Rule 80-6-1-.05.
- (5) Regular applications for permission for a holding company or a subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank, or to merge two or more holding companies, shall be in letter form accompanied by the following exhibits:
- (a) Material requested in paragraphs (a) through (e) of Paragraph (1) of this Rule.
- (6) Expedited processing for acquisitions or mergers described in Paragraph (5) of this rule is available to qualifying institutions under the same terms as in Paragraph (4).
- (7) Expedited processing may be allowed for a qualifying bank holding company lawfully owning a bank or branch office in Georgia, to form a de novo bank. The procedure is outlined in the Applications Manual.

- (8) No application filed pursuant to Paragraphs (3), (5) or (7) of this Rule shall request approval to acquire shares of more than one bank. In general, applications will be considered by the Department in order of receipt; simultaneous applications by a single applicant will be considered in the order requested by the applicant. No application filed pursuant to Paragraph (5) of this Rule shall request approval of more than one merger or acquisition.
- (9) Final copies of written materials to be transmitted to shareholders to consummate any transaction which has been the subject of an application under this Rule, marked to indicate changes from the preliminary materials filed pursuant to Paragraphs (1)(c), (3)(b) and (5)(b) of this Rule, shall be filed with the Department prior to the actual transmission thereof to the shareholders. The Department may, in the event changes in such materials necessitate additional review, require that transmission to shareholders be delayed until such time as its review shall have been completed. This section shall not be applicable to an application which is subject to registration under the provisions of The Securities Act of 1933, as amended, or the Georgia Uniform Securities Act of 2008, as amended.
- (10) Approval of an application filed pursuant to this Rule shall be valid for a period of twelve (12) months and shall expire at that time unless the acquisition has been completed prior to such expiration or unless extended by the Department.
- (11) Any material additions or changes in the method of acquisition by purchase or formation or in the representations set forth in an application must be approved by the Department, and could delay processing. The Department may examine, investigate, and evaluate facts related to any filing as necessary to reach an informed decision.

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

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Rule 80-6-1-.03. Qualifying Criteria for Expedited Processing: Acquisitions and One-bank Holding Company Formations

- (1) The qualifying criteria for a bank holding company to be eligible for expedited processing for an acquisition is as follows:
  - (a) Well-capitalized organization.
    1. Bank holding company (BHC). Both at the time of and immediately after the proposed transaction, the acquiring BHC is well capitalized.
    2. Insured depository institutions. Both at the time of and immediately after the proposed transaction.
      - (i) The lead insured depository institution of the acquiring BHC is well capitalized;

- (ii) Well-capitalized insured depository institutions control at least eighty (80) percent of the total risk-weighted assets of insured depository institutions controlled by the acquiring BHC; and
    - (iii) No insured depository institution controlled by the acquiring BHC is undercapitalized.
  - 3. Well capitalized and undercapitalized shall be as defined in the appropriate capital regulation and guidance of the applicable institution's primary federal regulator.
- (b) Well-managed organization.
  - 1. Satisfactory examination ratings. At the time of the transaction, the acquiring BHC, its lead insured depository institution, and insured depository institutions that control eighty (80) percent of the total risk-weighted assets of insured depository institutions controlled by the BHC are well managed as defined by the Board of Governors of the Federal Reserve System, and have received "satisfactory" or better composite ratings at the most recent examination.
  - 2. No poorly managed institutions. No insured depository institution controlled by the acquiring BHC has received one of the two lowest composite ratings at the institution's most recent examination or subsequent review by the state or appropriate federal banking agency for the institution.
  - 3. Recently acquired institutions excluded. Any insured depository institution that has been acquired by the BHC during the 12 month period preceding the date on which written notice is filed may be excluded from the preceding paragraph if:
    - (i) The BHC has developed a plan acceptable to the Department for the institution to restore the capital and management of the institution; and
    - (ii) All insured depository institutions excluded under this paragraph represent, in the aggregate, less than ten (10) percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the BHC.
- (c) Convenience and needs criteria.
  - 1. Effect on the community. The record indicates that the proposed transaction would meet the convenience and needs of the community standard in O.C.G.A. § 7-1-606(b) or the BHC Act; and
  - 2. Established CRA performance record. At the time of the transaction, the lead insured depository institution of the acquiring BHC and insured depository institutions that control at least eighty (80) percent of the total risk-weighted assets of insured institutions controlled by the BHC have received a satisfactory or better composite rating at the most recent CRA examination.

- (d) Public comment. No comment that is timely and substantive in response to any notice of a transaction is received by the Department or is made known to it by any other regulatory agency, other than a comment that supports approval of the proposal.
- (e) Competitive criteria. Without regard to any divestitures proposed by the acquiring BHC, the acquisition does not cause:
  - 1. Insured depository institutions controlled by the acquiring BHC to control in excess of thirty-five (35) percent of market deposits in any relevant banking market; or
  - 2. The Herfindahl-Hirschman index to increase by more than 200 points in any relevant banking market with a post-acquisition index of at least 1800.
  - 3. Any state or federal agency with authority to find that the consummation of the transaction is likely to have a significant adverse effect on competition in any relevant banking market.
- (f) Size of acquisition.
  - 1. Limited growth. Except as provided below, the sum of the aggregate risk-weighted assets to be acquired in the proposal and the aggregate risk-weighted assets acquired by the acquiring BHC in all other qualifying transactions does not exceed thirty-five (35) percent of the consolidated risk-weighted assets of the acquiring BHC. For purposes of this paragraph "other qualifying transactions" means any transaction approved under 12 CFR Section 225.14 or 12 CFR Section 225.23 during the 12 months prior to filing the notice; and
  - 2. Individual size limitation. The total risk-weighted assets to be acquired do not exceed \$7.5 billion;
  - 3. Small bank holding companies. The limited growth section shall not apply if, immediately following consummation of the proposed transaction, the consolidated risk-weighted assets of the acquiring BHC are less than \$300 million.
- (g) Supervisory Actions. During the 12 month period ending on the date on which the BHC proposes to consummate the proposed transaction, no formal administrative order, including a written agreement, cease-and-desist order, capital directive, prompt-corrective- action directive, asset-maintenance agreement or other formal enforcement action, is or was outstanding against the BHC or any depository institution subsidiary of the BHC, and no formal administrative enforcement proceeding involving any such enforcement action, order, or directive is or was pending.
- (h) Consummation of the transaction must not violate any provision of the Bank Holding Company Act.

- (i) In addition, the Department may deny or remove from expedited processing, any institution's application where it finds that:
  - 1. Safety and soundness concerns of the Department dictate a more comprehensive review;
  - 2. Any material adverse comment is received by the Department;
  - 3. Other supervisory concerns, legal issues, or policy issues come to the attention of the Department;
  - 4. Any other good cause exists for denial or removal. In this event, the institution will be notified that expedited processing is not available, the reason, and instructions as to how to proceed.
  
- (2) The qualifying criteria for a one-bank holding company formation is as follows:
  - (a) The shareholder or shareholders who control at least 67 percent of the shares of the bank will control, immediately after the reorganization, at least 67 percent of the shares of the holding company in substantially the same proportion, except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under state or federal law;
  - (b) No shareholder or group of shareholders acting in concert will, following the reorganization, own or control 10 percent or more of any class of voting shares of the BHC unless that shareholder or group of shareholders was authorized by the Department and the appropriate federal banking agency for the bank, to own or control 10 percent or more of any class of voting shares of the bank;
  - (c) The bank is adequately capitalized as defined in Section 38 of the Federal Deposit Insurance Act (12 USC § 1831o);
  - (d) The bank has received at least a composite "1" or "2" rating at its most recent examination, in the event that the bank was examined;
  - (e) At the time of the reorganization, neither the bank nor any of its officers, directors, or shareholders is involved in any unresolved supervisory or enforcement matters with any appropriate state or federal banking agency;
  - (f) The company demonstrates that any debt that it incurs at the time of the reorganization, and the proposed means of retiring this debt, will not place undue burden on the holding company or its subsidiary on a pro forma basis;
  - (g) The holding company would not, as a result of the reorganization, acquire control of any additional bank or engage in any activities other than those of managing and controlling banks; and
  - (h) In addition, the Department may deny or remove from expedited processing, any institution's application where it finds that:

1. Safety and soundness concerns of the Department dictate a more comprehensive review;
2. Any material adverse comment is received by the Department;
3. Other supervisory concerns, legal issues, or policy issues come to the attention of the Department;
4. Any other good cause exists for denial or removal. In this event, the institution will be notified that expedited processing is not available, the reason, and instructions as to how to proceed.

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

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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 Code Section 7-1-608(b)(3). The holding company must wholly own the proposed bank to qualify for expedited processing.
- (2) An eligible holding company must have:
  - (a) An assigned composite rating of 2 or better at its most recent state or federal examination; and
  - (b) At least seventy-five (75) percent of its consolidated depository institution assets comprised of eligible depository institutions.
- (3) An eligible depository institution, for the purposes of this Rule, shall be one that:
  - (a) Received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS) as a result of its most recent federal or state examination;
  - (b) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary federal regulator at its most recent examination, if the depository institution is subject to such examination;
  - (c) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination;
  - (d) Is well-capitalized as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator; and
  - (e) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary federal regulator or chartering authority.

- (4) An application may be removed from expedited processing for reasons including the following:
  - (a) Safety and soundness concerns of the Department dictate a more comprehensive review;
  - (b) Any material adverse comment is received by the Department;
  - (c) Other supervisory concerns, legal issues, or policy issues come to the attention of the Department;
  - (d) If applicable, any acquisition of fixed assets would cause the institution to exceed the state fixed asset limitation; or
  - (e) Any other good cause exists for denial or removal.

Authority: O.C.G.A. §§ 7-1-61; 7-1-606; 7-1-607; 7-1-608.

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#### Rule 80-6-1-.05. Public Notices

- (1) The applicant shall publish not more than thirty (30) days prior to filing the application the following notice in a newspaper of general circulation in the county where the bank or holding company to be acquired is located:

**NOTICE OF PROPOSED ACQUISITION OR MERGER BY A COMPANY OR A HOLDING COMPANY**

Pursuant to the Official Code of Georgia and regulations of the Department of Banking and Finance, notice is given that (name of company in boldface type), (city and state of principal place of business), (a holding company) (company), proposes to (acquire shares of) (merge with) (name of bank or holding company), (city and state of principal place of business), and has applied to the Department of Banking and Finance for permission to take such actions.

Persons wishing to comment on this proposal should submit their views in writing within thirty (30) days of the date of publication of this notice to the Department of Banking and Finance, (insert address).

- (2) Where an application for a de novo bank is made by a qualified holding company, a charter application notice for public comment will be required in such form as the Department may prescribe.
- (3) In lieu of the foregoing, such publication may be in a form and location prescribed by the Federal Reserve Bank or other Regulatory Authority having concurrent jurisdiction, for such a transaction, provided it contains a reference to the Department of Banking and Finance with its address, as a regulator to whom comments should be sent.



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

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#### Rule 80-6-1-.06. Public Information

Unless otherwise indicated in the instructions, applications, annual reports and registration statements filed with the Department or requested by applicants or registrants, submitted to the Department in connection with such filings shall be public information, subject to Rule 80-1-11-.01. Requests for confidential treatment shall be subject to review by the Department. Comments received pursuant to Rule 80-6-1-.05 shall be public information.

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

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#### Rule 80-6-1-.07. Hearings

- (1) Notwithstanding the provisions of Rule 80-6-1-.05, the Commissioner may, in his discretion, require public hearings to be held with respect to an application pending before him. Such hearings shall be held in accordance with the provisions of Rule 80-1-1-.05.
- (2) Whenever the Commissioner, in his/her discretion, has reason to believe that a company directly or indirectly exercises a controlling influence over the management or policies of a bank or another company, the Commissioner shall cause reasonable notice to be given to the banks or companies involved to show cause why such company should not be found to be a holding company as defined in O.C.G.A. § 7-1-605 at a hearing to be held at such time and place as shall be specified in the notice. The form of the heretofore required notice and hearings shall be in accordance with the Georgia Administrative Procedures Act.

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

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#### Rule 80-6-1-.08. Proxies, Offering Circulars, Disclosure Statements

- (1) It shall be a basis for denial of an application for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive or manipulative acts or practices in connection with any offer to purchase or exchange shares of stock in a bank or a holding company which is the subject of an application hereunder.
- (2) No Georgia bank holding company or holding company owning a Georgia bank shall offer to purchase or exchange any stock of any banking subsidiary, either directly or indirectly, unless such offer is accompanied by an offering statement prepared in accordance with standards prescribed for securities required to be registered under The Georgia Securities Act

of 2008, as amended. Purchases or exchanges of stocks which are subject to the registration requirements of The Securities Act of 1933, as amended (federal), or The Georgia Securities Act of 2008, as amended, or non-registered securities being acquired by a holding company whose securities are subject to registration under such acts, shall comply with the requirements under those acts.

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

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#### Rule 80-6-1-.09. Non-Banking Acquisitions

- (1) Whenever a Georgia bank holding company or a holding company owning a Georgia bank plans to engage in, or to acquire shares of stock in a company to be or which is currently engaged in, non-banking activities, the Department shall be notified of such intentions within ten (10) days of the filing of any application with the Federal Reserve System for approval to engage in such activities or acquire such shares or, in the event such approval is not required, within ten (10) days after the Board of Directors of the holding company authorizes such specific activities or acquisition or, in lieu thereof, ten (10) days after any notice of engagement in such activities or acquisitions is filed with the Federal Reserve.
- (2) Notice to the Department required pursuant to Section (1) of this Rule shall be in letter form and, insofar as is known at the time, shall state the following:
  - (a) Name and principal location of the company to be acquired, if any;
  - (b) Number of shares to be acquired, percentage of shares to be acquired to total shares outstanding, and price to be paid for such shares;
  - (c) Sources of funds to be used to pay for such shares and, if borrowed funds are to be used, the terms of any borrowings;
  - (d) Statement of Assets and Liabilities and Statement of Income for the most recent fiscal year and year-to-date on the company to be acquired or to otherwise be engaged in non-banking activities;
  - (e) Nature of business in which company is engaged or is to be engaged; and
  - (f) Description of additional markets to be served and additional nonbanking activities to be performed.
- (3) In the event a notice to the Federal Reserve is required, a bank holding company may provide only a copy of that notice to the Department in lieu of paragraph 2.

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

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Rule 80-6-1-.10. Unlawful Acquisitions, Corporate Restructuring

Transactions determined by the Commissioner to in substance constitute an internal corporate restructuring by a Georgia bank holding company shall not be considered to be an acquisition of control within the meaning of O.C.G.A. § 7-1-608.

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

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Rule 80-6-1-.12. Repealed and Reserved

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Rule 80-6-1-.13. Repealed and Reserved

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Rule 80-6-1-.14. Repealed and Reserved

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Rule 80-6-1-.16. Repealed and Reserved

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**SUBJECT 80-6-2**

**OPERATIONS**

- 80-6-2-.01 Audits.
- 80-6-2-.02 Reports.
- 80-6-2-.03 Liability Funding of Corporate Activities.
- 80-6-2-.04 Georgia Bank Holding Companies not Covered by Federal Bank Holding Company Act of 1956.

Rule 80-6-2-.01. Audits

- (1) Every Georgia bank holding company or a holding company that owns a Georgia bank and its non-banking subsidiaries shall be audited at least annually by independent public accountants in accordance with generally accepted auditing standards with copies of such audit maintained on file in the offices of the holding company.
- (2) Audit reports in which the auditor expresses an unqualified opinion shall be provided to the Department upon request. Audit reports in which the auditor expresses anything other than an unqualified opinion, including, but not limited to, a qualified opinion, an adverse opinion, or a disclaimer of opinion, shall be provided to the Department within fifteen (15) days following receipt by the holding company. Audit reports submitted to the Department shall be accompanied by the Letter to Management, if applicable, detailing any reportable conditions discovered during the audit engagement. Failure to obtain the required opinion

audit, or the auditor's report thereof, shall be reported to the Department within fifteen (15) days of discovery.

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

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#### Rule 80-6-2-.02. Reports

- (1) On or before the date of the annual stockholders' meeting of a Georgia bank holding company or a holding company owning a Georgia bank, the shareholders of the holding company, regardless of class or voting rights, shall be provided a copy of the audit report required in Rule 80-6-2-.01, or the following schedules prepared on the equity basis of accounting for the last fiscal year on a comparative basis with the preceding fiscal year:
  - (a) Year-end balance sheet on both a consolidated basis and a holding company only basis;
  - (b) Statement of income and expenses on both a consolidated and a holding company only basis;
  - (c) Reconciliation of changes in capital accounts on both a consolidated and a holding company only basis; and
  - (d) A statement of cash flows (holding company only).
- (2) Changes in control of voting shares of a Georgia bank holding company or a holding company owning a Georgia bank shall be reported to the Department in the same manner as changes in control of bank shares pursuant to O.C.G.A. § 7-1-236 and Rule 80-1-6-.01.
- (3) Failure to file required reports on a timely basis shall subject the holding company to the penalties imposed by O.C.G.A. § 7-1-68.
- (4) Notwithstanding the provisions of Paragraph (1), any company complying with the financial disclosure requirements promulgated by the Securities and Exchange Commission shall be deemed to have complied with Paragraph (1).

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

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#### Rule 80-6-2-.03. Liability Funding of Corporate Activities

No Georgia bank holding company or holding company owning a Georgia bank may enter into contractual debt obligations which in the aggregate are dependent upon revenues produced by subsidiaries for annual servicing during the term of the debt in excess of fifty (50) percent of the average annual consolidated net operating earnings of such subsidiaries for the three fiscal years immediately preceding the date of the extension of credit. The Department, upon specific written request of the holding company, may waive this requirement.

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

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Rule 80-6-2-.04. Georgia Bank Holding Companies not Covered by Federal Bank Holding Company Act of 1956

Companies determined to be holding companies pursuant to O.C.G.A. § 7-1-605, but not subject to the Federal Bank Holding Company Act of 1956, as amended, are required to file all reports and applications required by Rule Chapter 80-6-1 and Rule Chapter 80-6-2 notwithstanding such federal exemptions.

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

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**CHAPTER 80-9**  
**SUSPICIOUS ACTIVITIES**  
**SUBJECT 80-9-1**

**CURRENCY TRANSACTION REPORTS AND SUSPICIOUS ACTIVITIES**

80-9-1-.01 State Requirements.

80-9-1-.01 State Requirements

- (1) A financial institution required to report any currency transaction in excess of \$10,000 including a transaction in excess of \$100,000 may satisfy state currency transaction filing and reporting requirements by filing a timely report (FinCEN Form 104) with the federal authority designated in the Currency and Foreign Transaction Reporting Act of 1970 ("Bank Secrecy Act").
- (2) Banks and credit unions are required to follow federal guidelines for detecting abuses or the structuring of transactions designed to avoid Bank Secrecy Act reporting.

Authority: O.C.G.A. §§ 7-1-61, 7-1-689, 7-1-706.