Housekeeping overview

The Department highlights the following substantive changes in the attached draft housekeeping legislation.

Supervision:

1) **Credit Union Permissive Investments**: Credit unions are authorized to invest in certain identified investments and the authorization is typically limited to a percentage of a certain financial measure. Georgia law utilizes varying different measures to determine the permissible amounts of investments (e.g., 1) equity capital, 2) shares and deposits, 3) shares, deposits, and surplus). These different standards have created confusion among credit unions – as well as Department examiners – and led to apparent unintentional violations of the law. In addition, from a safety and soundness standpoint, the measures that utilize the shares or deposits of a credit union do not truly reflect the financial condition of a credit union. Based on these limitations, the Department proposes that permissive investments be measured solely on the net worth of the credit union and that the term "net worth" be defined in order to try and eliminate any confusion as to what is included in the calculation. Further, because the net worth calculation will typically be significantly less than a measure based upon shares or deposits, the Department proposes that the percentages of certain investments be increased so that it is roughly equivalent. Finally, credit unions currently are limited in the amount that they can invest in general obligations issued by the State of Georgia or its municipalities. The Department proposes that credit unions be permitted to invest in general obligations issued by states and municipalities without an investment limitation. This change would treat general obligations of states and municipalities the same as general obligations of the federal government. (O.C.G.A. §§ 7-1-4(24); 7-1-650).

2) **Possible expansion of threshold for Board approval of secured loans for small credit unions**: Credit union boards are required to approve any secured loan over 5% of the credit union's net worth prior to committing to fund the loan. Given the recent significant increase in the price of automobiles, this has meant that many smaller asset sized credit unions have had to obtain board approval prior to making a loan. A small credit union has indicated that this limitation has resulted in the credit union losing a handful of car loans a month. Losing a few car loans a month could be very impactful for these small credit unions whose business lines are typically only auto loans and small unsecured signature loans. The proposed change maintains the requirement that the credit union board must approve any loan over 5% of net worth but, upon request by a credit union, the Department can increase the threshold so that a small credit union can make a loan of up to $150,000 without getting prior board approval. (O.C.G.A. § 7-1-658).

3) **Department approval of credit union dividends**: Georgia law defines "dividends" paid by a credit union to include interest paid on certain deposit accounts as well as extraordinary distributions made to members of the credit union. The Department is required to approve any "dividend" that exceeds 100% of earnings before payment of

the dividend. This requirement results in credit unions having to seek approval from the Department to pay interest that has been contractual agreed to be paid by a credit union to a member. The proposed change removes interest paid on deposit accounts from the definition of dividends so the Department will no longer have to approve credit unions paying interest to its members. The proposed change also provides that the Department will have to approve the payment of an extraordinary distribution as set forth in the Department's rules. The Department anticipates that its rules will provide for the approval of the payment of a dividend if: 1) the dividend is more than 50% of net income for the previous fiscal year; 2) adversely classified assets exceed 80% of net worth; or 3) the net worth ratio is less than 7%. The proposed change will result in the Department only reviewing requests to make extraordinary distributions in situations where such payment might stress the credit union. This approach to the approval of dividends is consistent with the treatment of banks. (O.C.G.A. § 7-1-660).

4) **Remove restriction from an officer of a credit union from serving on both the audit committee and the credit committee**: Georgia law provides that an individual can't serve on the audit committee and also be on the credit committee or an officer of the credit union. Although this is a "best practice," it is an incredibly challenging standard for some of our smaller credit unions to meet as many have difficulties finding and retaining board members that are not insiders. Thus, the Department proposes that the prohibition be modified to simply prohibit an employee from serving on the audit committee as an employee. Such prohibition seems appropriate as an employee could steer the committee away from problematic areas within the credit union. It is worth noting that banks do not have a provision prohibiting individuals from serving on both an audit committee and credit committee and the Department does not permit bank employees to serve on the audit committee. (O.C.G.A. § 7 -1-655).

5) **Fully align trust powers between banks, credit unions, and trust companies**: Generally speaking, banks, credit unions, and trust companies have the ability to exercise the same trust powers under Georgia law with the approval of the Department. One exception is that Georgia law provides that banks and trust companies that have not been approved to exercise trust powers can contract with a bank or trust company that has been approved to exercise trust powers to provide trust services to its customers. The Department proposes that this lone disparity be eliminated so that banks, trust companies and credit unions that do not exercise trust powers can contract with banks, trust companies, or credit unions to provide trust services to their customers or members. (O.C.G.A. §§ 7-1-310; 7-1-612).

6) **Foreign bank branch offices:** All foreign banks doing business in this country are subject to oversight by the Federal Reserve. In addition to oversight by the Federal Reserve, foreign banks are subject to prudential regulation by the federal government (Office of the Comptroller of the Currency) or the individual states. The Federal Reserve primarily recognizes three different types of foreign bank locations: representative offices, agencies, and branches. Georgia law currently recognizes foreign representative offices (we have 6 that are licensed) and foreign agencies (we do not have any that are currently licensed). Georgia law does not currently authorize the

establishment of a foreign bank branch. The primary difference between a foreign branch and a foreign agency is a foreign branch can take uninsured deposits whereas a foreign agency cannot take any deposits. These uninsured deposits are primarily from foreign companies doing business in the United States or retail deposits from foreign nationals.[1] It is the Department's understanding that the foreign branch offices help facilitate international trade (e.g. issue letters of credit) for the foreign company doing business in the United States. Approximately 30 states permit foreign bank branches and the Department intends to use Texas law as the foundation and supplement it with provisions from federal and Florida law. The Department envisions drafting a substantial rewrite to all of the foreign bank laws in an effort to make the Georgia license competitive with the licenses offered in the other states. Authorizing foreign banks to operate branches in Georgia will help Georgia compete for these companies against the federal government and the other states for these type of banking facilities. In addition, it could have the added benefit of making Georgia more competitive to attracting foreign companies as the primary wholesale banking relationship for the foreign company could be located in Georgia.

Non-Depository Financial Institutions:

7) **Money service businesses model law changes**: The Conference of State Bank Supervisors ("CSBS") along with representatives from the money service business industry have recently developed a model law. A stated goal of the model law is to harmonize definitions and requirements between the various states as it relates to regulated activity definitions, exemptions, control requirements, and prudential standards. Another goal is to ensure consumer protection and prevent bad actors from entering the money transmission ecosystem. The model law was approved in 2 phases. The Phase 1 changes the Department sought to pursue were included in HB891, the Department's housekeeping bill from last session. The Department has thoroughly reviewed Phase 2 and, based on that review, proposes the following changes: a) collapsing the two different license types – money transmitter and seller of payment instruments – into just a money transmitter license; b) defining acting in concert for purposes of determining when people act together to exercise control of a licensee and must be vetted; c) defining average daily money transmission liability for purposes of determining when a licensee needs an increased bond over the statutory minimum; d) defining payroll processing services – although payroll processing is not expressly spelled out in the current law as requiring a money transmission license, the current definition of money transmission captures payroll processing and the Department has historically required payroll processors to be licensed; e) defining stored value which is currently captured under the payment instrument definition in OCGA § 7-1-680 (17) and, thus, selling of stored value is currently a licensable activity; f) defining tangible net worth and requiring licensees to maintain a certain net worth based upon their total assets; g) making a number of modifications to language in currently existing exemptions to get closer alignment with the model law and adding the following

[1] A foreign branch can take a retail deposit from a U.S. citizen so long as the initial deposit in the account is in excess of the FDIC deposit insurance limits which is currently $250,000 per depositor.

exemptions from licensure: 1) agent of the payee; 2) intermediary exemption (this is for companies when they are transmitting funds between affiliated entities); 3) companies that are overseen and regulated by the Federal Reserve (e.g. a bank holding company); 4) the electronic transfer of government benefits; 5) boards of trade; and 6) agent of the bank; h) providing that a licensee must notify its authorized agents in the event its license is revoked, suspended, or no longer active; i) providing that licensees are required to maintain permissive investments, that the Department will set forth the types of permissive investment by rule, and that such permissive investments are held in trust for the benefit of customers; j) requiring that a license be posted in physical locations where money transmission is conducted as opposed to each place of business; k) providing that certain changes of control do not have to be pre-approved by the Department but instead the Department needs to be notified after the fact of such changes; l) authorizing the Department to investigate an entity asserting an exemption for the sole purpose of determining if the exemption is in fact satisfied; m) adding the failure to issue a refund to a customer and failure to honor a valid payment instrument as prohibited acts; and n) including insolvency as a ground to revoke or suspend a license. (O.C.G.A. §§ 7-1-4; 7-1-241; 7-1-680; 7-1-681; 7-1-682; 7-1-683; 7-1-683.1; 7-1-683.2; 7-1-684; 7-1-686; 7-1-688; 7-1-689; 7-1-690; 7-1-691; 7-1-692; 7-1-707; 7-1-845).

8) **Replace requirement that licensees run GCIC checks on certain employees with a requirement that commercial background checks be run on these employees**: SB470, which was introduced at the behest of an out of state mortgage lender, limited the felony prohibition to employees that met the parameters of a "covered employee." An unanticipated consequence of SB470 is that employers are now required to obtain GCIC checks on every employee that satisfies this definition no matter where the employee resides. Before the passage of SB470, GCIC checks were only required of individuals that resided in Georgia. Given the limited utility of GCIC checks for individuals that reside out of state, the industry requested that the Department seek an amendment limiting the GCIC check requirement to covered employees that are located in Georgia. However, in reviewing the request, it became apparent that such an interpretation would disproportionally impact Georgia based licensees as they would be required to conduct GCIC checks for a large portion of their workforce while many licensees located out of state would not be required to conduct a GCIC check for a large portion of their workforce. Thus, the Department proposes to eliminate the requirement that licensees conduct GCIC checks and instead replace it with a requirement that licensees conduct commercial background checks. This should not impose an additional burden on out of state licensees that have covered employees not located in Georgia as they should already be conducting commercial background checks on these individuals, and it should also reduce the burden on Georgia based licensees as they will be able to conduct commercial background checks instead of GCIC checks. Further, although SB470 was limited to the mortgage industry, the Department believes that the GCIC requirement should be replaced with a commercial check requirement for money service businesses, check cashers, and installment lenders as well. (O.C.G.A. §§ 7-1-684; 7-1-703; 7-1-1004; 7-3-42).

9) **Provide that notices of administrative actions can be delivered electronically and remove the requirement that final orders be delivered via certified mail**: Georgia law requires that notices of administrative actions against mortgage licensees be delivered via certified or registered mail. The Department seeks to include the email address the licensee is required to maintain on NMLS to the list of permissible methods of service. The majority of actions issued by the Department are against individual mortgage loan originators and these natural persons frequently will not accept delivery of registered or certified mail. As a result, the Department expends time and resources to provide these individuals with notice of a pending action. If the Department is permitted to serve notices via an email provided by the licensee and required to be maintained by the licensee, then the Department will be able to provide prompt notice of the action to the licensee and operate in a more efficient manner. In addition, the Department seeks to eliminate the requirement that the Department mail a copy of a final order by certified or registered mail and replace it with a requirement that such final order simply be mailed and posted on NMLS. The recipient of a final order will have already been placed on notice of a proposed action, will have had the opportunity to contest the matter, and, once issued, the final order will be posted on NMLS. Thus, the requirement to deliver by registered or certified mail seems to serve little purpose and eliminating it will save the Department the time and expense associated with such mailings. (O.C.G.A. § 7-1-1017).

10) **Non-profit exemption from the requirement to obtain an installment lender license**: Unless exempt, Georgia law provides that any entity that makes a loan of $3,000 or less or services a loan of $3,000 or less must be licensed as an installment lender. The proposed exemption seeks to exempt 501(c)(3) non-profit corporations from the licensure requirement so long as they do not impose any interest, fees, or other changes in connection with making or servicing an installment loan. If fees and other charges are not imposed, then it appears that the likelihood of consumer harm is fairly remote. (O.C.G.A. §§ 7-3-4).

11) **Ability for an installment lender to charge simple interest**: Georgia law currently provides that an installment lender "shall" charge compound interest. The Department proposes to amend the provision so that licensees "may" charge compound interest. By making this revision, a licensee will have the option of charging simple interest as opposed to compound interest. Generally speaking, a simple interest calculation is more favorable to consumers than compound interest. In addition, a number of the newer fintech lenders, prefer the use of simple interest as it simplifies the models these companies utilize across various states. (O.C.G.A. § 7-3-11).