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

**Supervision:**

1. **Credit union legal lending limit**: During the 2020 legislative session, the Department worked with the credit union industry to revise the legal lending limit for credit unions which resulted in an aggregate increase in the legal lending limit for credit unions. As part of the revision, secured and unsecured obligations are combined for purposes of determining whether all of the obligations need to be fully secured or not. An exception to the combination rule allows credit unions to make loans up to the unsecured limit and secured loans up to the secured limit so long as the total aggregate limit is $50,000 or less. The rationale for the exception is that it would permit small credit unions to continue their practice of making car loans and small signature loans without having to secure the signature loans while at the same time not significantly increasing the safety and soundness risk to these institutions. The Department proposes that the exception be increased to $150,000 as the price of cars has significantly increased since the exception from the combination rule was first introduced. Looking at the Department’s credit union portfolio, this will only apply to small credit unions, those with assets of $20 million or less. (O.C.G.A. § 7-1-658).

1. **Credit union field of membership**: The field of membership for credit unions currently provides that “societies, associations, partnerships, and corporations composed of persons who are eligible for membership or located within the field of membership” may join the credit union. The Department proposes to expand its applicability to limited liability companies as these entities do not fall within the current scope of entities eligible for membership. The Department does not believe that the legal structure of an entity should control whether or not it is eligible to receive banking services from a credit union. (O.C.G.A. § 7-1-651).
2. **Ability to call special meetings at a credit union**: Currently, a special meeting of the members of a credit union can be called by the Board of Directors or by written request of ten percent of the members. During the 2023 session, legislation was passed and signed by the Governor which significantly updated the non-profit corporate code. SB148. The Department reviewed SB148 and proposes that the revisions to O.C.G.A. §§ 14-3-702(a)(2) and 14-3-820(b) be incorporated into the special meeting provision related to credit unions found in Title 7. This provision will provide that a special meeting can be called by the chair of the Board of Directors, the CEO of the credit union, 20% of the directors, or 5 percent of the members unless the bylaws or articles of the credit union call for a higher percentage but such percentage cannot exceed 25 percent of the members. (O.C.G.A. § 7-1-661).
3. **Clarifying the term “officer” as it relates to credit unions**:Throughout the Code, Georgia law refers to “officers” of credit unions. A concern was raised by industry that this creates some confusion as to whether the reference is to an officer of the Board of Directors, an executive officer of the credit union, or any officer of the credit union. The proposed amendment defines the term “executive officer” and includes language to indicate whether the reference to an officer is an executive officer or officer of the Board. (O.C.G.A. §§ 7 -1-630; 7-1-633; 7-1-655; 7-1-656; 7-1-658).
4. **Bank formation changes**: The Department is in the midst of reviewing all of its processes in an effort to streamline applications and notifications for both banks and credit unions. As part of the review, these law changes have been identified related to the formation of new banks. As this is an on-going process, it is very possible that the Department will identify future proposed revisions to the laws related to de novo banks. The proposed revision removes the requirement that the articles of incorporation provide the home addresses of the incorporators and replaces it with a requirement that their county of residence be listed. In addition, the proposed amendment provides that the Department may elect to not act on an application if it requires approval from a federal regulatory body as opposed to the Department having to act on the application within 90 days and then withdraw the approval if the application is not approved by the federal regulator. Finally, although retaining the prohibition against incorporators receiving promoters’ fees, the proposed revision eliminates the requirement that incorporators provide an affidavit that they did not receive any promoter fees as well as provide an affidavit of the expenses to be incurred related to the formation of the bank. There are a number of requirements related to the formation of a bank and it seems arbitrary that these are the lone areas that expressly require the submission of an affidavit. (O.C.G.A. §§ 7-1-391; 7-1-392; 7-1-394).
5. **Notices and filing with the Secretary of State:** If the holding company of a national bank or an out-of-state bank acquires the holding company of a Georgia chartered bank, then the Department does not approve the transaction but does have an opportunity to object prior to the consummation of the transaction. Given that the Department does not approve the transaction, there is no statutory mechanism in place for the Department to document that the Georgia bank holding company has merged out of existence so that the Secretary of State’s records can accurately reflect the dissolution of the corporation. The proposed amendment provides that the Department will provide the Secretary of State with notice that the statutory conditions for the merger to take place have been satisfied. In addition, the Secretary of State’s office requested that the Department propose an amendment providing that foreign banks shall file an annual registration with the Secretary of State’s corporation division. The Department has shared this proposed language with the Secretary of State’s office and it is acceptable to them. (O.C.G.A. §§ 7-1-606; 7-1-623; 7-1-1114).
6. **Updating the definition of subsidiary**: The definition of subsidiary for a financial institution is currently narrower than the definition of subsidiary for a bank holding company set forth in O.C.G.A. § 7-1-605. The proposed amendment seeks to align the two definitions except it maintains the ownership threshold for an entity to be considered a subsidiary of a bank at 50% compared to the 25% threshold for a subsidiary of a bank holding company. The reason that this distinction was maintained is that federal law makes this distinction in the percentage of ownership between banks and bank holding companies. The proposed amendment will provide that an entity is a subsidiary of a bank if the bank controls the election of the majority of the directors on the Board or that the Department determines that the bank controls the entity after notice and an opportunity for a hearing. (O.C.G.A. § 7-1-4 (37)).
7. **Updates to the Merchant Acquirer Limited Purpose Bank Act:** Roughly 12 years ago the Merchant Acquirer Limited Purpose Bank (MALPB) Act became law in Georgia. The purpose of the law was to create a path for merchant acquirers, many of which are located in Transaction Alley here in Georgia, direct access to the payment card networks (i.e. Visa, MasterCard, etc.) without having to contract with a bank to utilize its bank identification number (a practice referred to as rent-a-BIN). The payment card networks were not receptive to this charter when the law was first passed. In fact, even though the Department did charter an MALPB it never obtained approval from the networks to operate. Based on our discussions, at least one of the networks is now receptive to the idea and there are three significant players in the space that have indicated that they intend on submitting an application for the charter in the near future. As part of those discussions as well as our previous experience with the chartered MALPB, we have identified some potential areas for updating. The Department proposes that the Act be revised to permit an LLC to be chartered as an MALPB as opposed to just a corporation. In addition, the Department proposes that the Act be amended so that the Department can waive or modify the requirement that the majority of the directors be residents of Georgia. If the parent of the MALPB and its related subsidiaries are outside the State, then satisfying this requirement could be incredibly challenging. Finally, the Act provides that the MALPB must have 50 employees in Georgia within one year of the charter being granted. Given the previous lengthy delays in the networks approving access to the payment networks, the Department proposes that the Act be revised so that an MALPB has one year from the date it begins operations to satisfy the employee requirement. (O.C.G.A. §§ 7-9-2; 7-9-4; 7-9-5; 7-9-8; 7-9-11.8).

**Non-Depository Financial Institutions:**

1. **Eliminate the requirement for exempt mortgage companies to register with the Department**: Georgia law provides numerous exemptions for companies from the terms of the Georgia Residential Mortgage Act. Only one of these exemptions from licensure, which deals with subsidiaries of bank holding companies, requires the exempt entity to register with the Department. The registration process is similar to an application and places a burden on the registrant as well as the Department for little meaningful benefit as the subsidiary of a bank holding company will be overseen by the Federal Reserve and the bank’s primary regulator. Further, less than 1% of the mortgage companies overseen by the Department are company registrants. Finally, the use of the term has the potential to create confusion because under federal law natural persons that operate as mortgage loan originators for banks or credit unions are classified as registrants. Thus, the Department proposes that the Georgia Residential Mortgage Act be amended to remove all reference to the registration of companies. (O.C.G.A. §§ 7-1-1000 through 7-1-1002, 7-1-1003.2; 7-1-1003.3; 7-1-1004; 7-1-1005; 7-1-1007 through 7-1-1011; 7-1-1013 through 7-1-1018).
2. **Modifying the exemption from mortgage licensing for certain securitized transactions and creating an exemption for loans held in trust for securitization or other transfers in the secondary market**: A common practice in the mortgage industry is for individual mortgages to be combined in a pool and then for securities to be sold that draw on the debt and interest payments from the individual mortgages contained in the pool. In many cases, the individual mortgages are held by a trust or other entity before they are pooled together and ultimately securitized. Typically, the entity that holds the mortgages prior to bundling them in a pool does not service the loans, does not foreclose on the loans in event of a default, and only holds the mortgages for a very short period of time. There seems to be very little, if any, consumer exposure to these specific entities given the pass through nature of their roles. The exemption currently provides that a person that holds a mortgage loan for the sole purpose of securitization in the secondary market does not need a loan license if it pools the loans for less than 7 days. The Department proposes that the exemption be amended to expand the time period to pool the loans from 7 to 14 days as well as provide that the person that is pooling the loans cannot service the pooled loans. In addition to modifying the current exemption, the Department proposes an expanded exemption for trusts that hold pools of loans related to the secondary market if the trustee of the trust is a financial institution exempt from the licensing requirements. In order to qualify for the exemption the pooled loans cannot be serviced by the trust or the trustee and the trust or the trustee cannot foreclose on the loans. The rationale for this broader exemption that is limited to trusts with a financial institution in the position of a trustee is that the trustee is overseen by the financial institution’s primary regulator. (O.C.G.A. § 7-1-1001).
3. **Provide a specific mechanism for the amount of retained closing fees by installment lenders**: The primary purpose in transferring the regulation of installment lenders from the Office of the Insurance Commissioner to the Department was to obtain efficiencies in the regulation of the industry. At a high-level, the bill did not change the general operations of the industry, such as the permissible interest rate and charges, but, instead, it changed the regulatory and administrative processes that apply to the industry. O.C.G.A. § 13-1-14(b) sets forth the calculation for installment lenders as well as other entities to retain a portion of a closing fee in the event a loan is prepaid but the amount that can be retained is capped at $25.00. However, the installment lenders have informed the Department, which has been confirmed by the examiners at the Department that were formally at the Insurance Commissioner’s office, that the Insurance Commissioner’s office interpreted the statute to permit the licensee to retain the greater of the pro rata fee or $25.00. In order to align the historical practices with the statutory provisions, the Department proposes that the Georgia Installment Loan Act be revised to provide that in the event a loan is prepaid within 90 days that the installment lender can retain the pro rata portion of the closing fee or $25.00 whichever is greater. (O.C.G.A. § 7-3-17).

In addition to these more substantive changes, the Department proposes the following general clean-up provisions: a) clarify that the restriction on a loan production office from remitting loan proceeds is limited to the borrower (O.C.G.A. § 7-1-590); b) correcting a cross-reference from the corporate provisions to the non-profit corporate provisions in Title 14 (O.C.G.A. § 7-1-635.1); c) requiring that credit unions take minutes of meetings of members, the board of directors, and board committees and strike redundant provisions related to credit union meetings (O.C.G.A. § 7-1-655); d) clarify that credit unions can pay dividends on income as opposed to dividends on deposits (O.C.G.A. § 7-1-656); and e) authorize an out of state trust company to be structured as an LLC instead of just a corporation (O.C.G.A. § 53-13-2).