

Title 5: Banking and Consumer Finance

Part 4: Organizational Rules

Part 4 Chapter 1 Organization and Method of Operation

Rule 1.1 Authority. This regulation is adopted as a rule to conform to the requirements of Section 25-43-2.104 of the Mississippi Code of 1972, Annotated as amended, regarding agency organization, method of operation, and where/how the public may obtain information.

Source: *Miss. Code Ann. § 25-43-2.104 (2005).*

Rule 1.2 Authority. Authority of the Department of Banking and Consumer Finance to examine banking institutions. The Department of Banking and Consumer Finance was created and solely charged with the execution of all laws relating to corporations, carrying on a banking business in the State of Mississippi. The office of the Department of Banking and Consumer Finance shall be in the city of Jackson Mississippi, and the Secretary of State shall provide suitable quarters therefore.

Organizational Structure

1. Commissioner

The management, control and direction of the department shall be vested in the Commissioner of Banking and Consumer Finance, who shall be directly responsible for the proper functioning of the department. The commissioner shall be a banker who possesses not less than ten (10) consecutive years of active banking experience of which five (5) years' experience were performed in a major policy-making function as an executive officer, or shall be a person who possesses fifteen (15) years of active experience as a state or federal financial institutions examiner. The commissioner shall have been active in such major policy-making function or actively employed by the state or federal financial institutions regulatory authority within the previous five (5) years of his appointment. The commissioner shall be appointed by the Governor, with the advice and consent of the Senate, for a term of office of four (4) years, commencing on the day of appointment or on July 1 of the year in which the Governor is inaugurated, whichever comes first. The commissioner shall serve until his successor is appointed and qualified, but in no event shall he serve past the July 1 occurring after the end of the term of the Governor who appointed him, unless he shall be reappointed by the new Governor. If, for any cause, a vacancy occurs in the office of the commissioner, the Governor shall make the appointment for the unexpired term.

The commissioner shall be of good moral character, thoroughly understanding the theory and practice of banking, and must be a qualified elector of the State of Mississippi. The commissioner shall not be an officer, director or employee of any banking corporation during his entire term as commissioner, effective from the time of his appointment.

The commissioner may be removed by the Governor for good cause, but only after notice and a hearing.

2. Deputy commissioner

The commissioner shall appoint a deputy commissioner, with the approval of the board, who shall perform such duties as may be required of him by the commissioner. If the office of the commissioner is vacant or if the commissioner is absent or unable to act, the deputy commissioner shall be the acting commissioner. The deputy commissioner shall have five (5) years' experience as a bank officer or employee, or three (3) years' experience as a bank president or managing officer of a bank, or five (5) years' experience as a state or federal bank examiner.

Copies of papers in the office of the department may be certified by the deputy commissioner, with the seal of the department affixed thereto, with like effect as though certified by the commissioner. The commissioner shall be responsible for all acts of the deputy commissioner, and may dismiss him at his pleasure, with the reasons therefore to be reported to the board within ten (10) days of the dismissal.

3. Examiners

The commissioner shall employ such assistants, to be known as state banking examiners, as may be necessary for the efficient operation of the department, to aid him in the discharge of the duties and responsibilities imposed upon him by law. The minimum qualifications for such employment shall be possession of a bachelor's degree from a recognized college or university, or three (3) years' experience as a bank examiner, bank officer or employee, small loan company officer or employee, or other consumer finance officer or employee and such other qualifications set out for banking examiners in the plan for the state personnel system. However, notwithstanding any provisions to the contrary, any person who is serving as a state banking examiner in the former Department of Bank Supervision on March 21, 1980, shall be qualified to serve as a state banking examiner in the department. The state bank examiners shall not, directly or indirectly, be connected with any banking business in Mississippi or elsewhere during their respective terms of office, after four (4) months from the time of qualifying as an examiner.

The commissioner may employ such additional employees as may be necessary to carry out those duties and responsibilities imposed upon him by law, who shall possess such qualifications set out for their particular position in the plan for the state personnel system.

No examiner or other employee related by consanguinity or affinity to the commissioner within the third degree computed according to the civil law shall be employed by him.

The examiners and all other persons employed by the commissioner under the provisions of this section shall be compensated as provided in the compensation plan for the state personnel system, unless otherwise provided by law. The compensation for such employees shall be payable monthly out of the funds of the department.

The commissioner shall be responsible for all acts of the examiners and the other employees. Any examiner or other employee may be dismissed only in accordance with the laws, rules and regulations applicable to the state personnel system.

As a condition of employment with the department, the commissioner shall require all employees and applicants for employment with the department to be fingerprinted to determine their suitability for employment as examiners or assistants as needed. If no disqualifying record is identified at the state level, the Department of Public Safety shall forward the fingerprints to the Federal Bureau of Investigation (FBI) for a national criminal history record check. The Department of Banking and Consumer Finance shall pay all of the costs in connection with the criminal history record check procedure. These record checks shall not be used by the Department of Banking and Consumer Finance for any purpose other than to determine suitability for employment with the department.

Source: *Miss. Code Ann. § 81-1-59 (2001); § 81-1-61(2001); § 81-1-63(2001); § 81-1-65 (2007).*

Rule 1.3 Departmental responsibility.

1. **Bank Examinations.** It shall be the duty of the commissioner to apportion the work of examining banks among the examiners in such a way that each bank, under the provisions of law, shall be examined at least once during an eighteen-month period and more often, if necessary, in the discretion of the commissioner, at irregular intervals and without prior notice. However, neither the commissioner nor any examiner shall examine one (1) bank twice in succession unless the commissioner, for cause, so determines. In the event the commissioner's office, because of work load or other good sufficient cause, is unable to conduct an examination of a bank as provided for in this section, the commissioner is hereby authorized to accept the examination of any state bank performed by the Federal Deposit Insurance Corporation or the Federal Reserve Bank in lieu of the examination provided for in this section. However, in no case shall the commissioner be authorized to accept any such examination of any state bank performed by either the Federal Deposit Insurance Corporation or the Federal Reserve Bank for any two (2) consecutive eighteen-month periods.
2. **Credit Union Examinations.** Credit unions shall be subject to the supervision of the Department of Banking and Consumer Finance. The Commissioner of Banking and Consumer Finance is empowered with authority to promulgate from time to time rules and regulations concerning the operation of credit unions; provided that such rules and regulations shall be consistent with and in conformity with the laws of the State of Mississippi. Credit unions shall make a report of condition thereto at least annually on blank forms to be supplied by said department. Credit unions shall transmit to the department such call reports within a time limitation established by the commissioner; however, such time limitation cannot exceed that set by the National Credit Union Administration. For any failure or delay in furnishing this report, the credit union shall be subject to an administrative fine, which may be imposed by the commissioner, of Fifty Dollars (\$ 50.00) a day for each day while in such default. Reports shall be verified by both the chief elected official and the treasurer and additional reports may be required by the said department.
3. **Trust Companies.** Commissioner shall have supervision over authorized trust institutions

and shall examine.

a. For the purposes of this article, the term "authorized trust institution" means any state trust company, trust office or representative trust office.

b. Every authorized trust institution shall be under the supervision of the commissioner. The commissioner shall execute and enforce through the department and such other agents as are now or may hereafter be created or appointed, all laws which are now or may hereafter be enacted relating to authorized trust institutions. For the more complete and thorough enforcement of the provisions of this chapter, the commissioner may promulgate such rules or regulations not inconsistent with the provisions of the chapter, as may, in its opinion, be necessary to carry out the provisions of the laws relating to authorized trust institutions and as may be further necessary to insure safe and conservative management of an authorized trust institution under its supervision taking into consideration the appropriate interest of the creditors, stockholders, participants and the public in their relations with such authorized trust institutions. All authorized trust institutions doing business under the provisions of this chapter shall conduct their business in a manner consistent with all laws relating to authorized trust institutions, and all rules, regulations, and instructions that may be promulgated or issued by the commissioner.

c. The commissioner, or his duly authorized representative, for the purpose of discovering violations of this chapter and for the purpose of determining whether companies or offices are subject to the provisions of this article, may examine authorized trust institutions that have a charter, license or registration under this chapter and companies or offices that are reasonably suspected by the commissioner of conducting business that requires a charter, license or registration under this chapter, including all relevant books, records and papers employed by those companies or offices in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those companies or offices, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without a charter, license or registration as required under this chapter.

4. **Consumer Loan Broker Activities.** The commissioner, or his duly authorized representative, for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, may examine persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business that requires a license under this chapter, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without a license as required under this chapter.

5. **Insurance Premium Finance Companies.** The commissioner, or his duly authorized representative, for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, may examine

persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business that requires a license under this chapter, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without a license as required under this chapter.

6. **Money Transmitter Activities.** The commissioner, or his duly authorized representative, for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, may examine persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business that requires a license under this chapter, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without a license as required under this chapter.
7. **Debt Management Activities.** The commissioner may exercise the following powers and functions:
 - a. *Complaint investigation.* The commissioner may receive and act on complaints, take action to obtain voluntary compliance with this chapter or refer cases to the Attorney General, who shall appear for and represent the commissioner in court.
 - b. *Rules.* The commissioner may adopt reasonable administrative regulations, not inconsistent with law, for the enforcement of this chapter.
 - c. *Examination of licensees.* To assure compliance with the provisions of this chapter, the department may examine the books and records of any licensee without notice during normal business hours. The commissioner shall charge the licensee an examination fee in an amount not less than Three Hundred Dollars (\$ 300.00) nor more than Six Hundred Dollars (\$ 600.00) for each office or location within the State of Mississippi, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner.
 - d. *Examination of nonlicensees.* The department, its designated officers and employees, or its duly authorized representatives, for the purposes of discovering violations of this chapter and for the purpose of determining whether any person or individual reasonably suspected by the commissioner of conducting business that requires a license under this chapter, may investigate those persons and individuals and examine all relevant books, records and papers employed by those persons or individuals in the transaction of business, and may summon witnesses and examine them under oath concerning matters as to the business of those persons, or other such matters as may be relevant to the discovery of violations of this chapter,

including, without limitation, the conduct of business without a license as required under this chapter.

8. **Small Loan Companies.** The commissioner, or his duly authorized representative, for the purpose of discovering violations of this article and for the purpose of determining whether persons are subject to the provisions of this article, may examine persons licensed under this article and persons reasonably suspected by the commissioner of conducting business that requires a license under this article, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this article, including without limitation the conduct of business without a license as required under this article.
9. **Pawn Shops.** The Commissioner of Banking shall develop and provide any necessary forms to carry out the provisions of this article. To assure compliance with the provisions of this article, the commissioner may examine the pawn books and records of any licensee without notice during normal business hours.

Any expenses incurred for such examinations are included in the licensee's application fee; however, the commissioner may charge the licensee any actual expenses incurred while examining the licensee's pawn records or books which are located outside of the State of Mississippi.

10. **Title Pledge Activity.** The commissioner, or his duly authorized representative, for the purpose of discovering violations of this article and for the purpose of determining whether persons are subject to the provisions of this article, may examine persons licensed under this article and persons reasonably suspected by the commissioner of conducting business that requires a license under this article, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this article, including without limitation the conduct of business without a license as required under this article.
11. **Check Cashers.** The commissioner, or his duly authorized representative, for the purpose of discovering violations of this article and for the purpose of determining whether persons are subject to the provisions of this article, may examine persons licensed under this article and persons reasonably suspected by the commissioner of conducting business which requires a license under this article, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this article, including without limiting the conduct of business without a license as required under this article.

12. Motor Vehicle Sales. The commissioner, or his duly authorized representative, for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, may examine persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business that requires a license under this chapter, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without a license as required by this chapter.

13. Credit Availability Activities. The commissioner, or his duly authorized representative, for the purpose of discovering violations of this article and for the purpose of determining whether persons are subject to the provisions of this article, may examine persons licensed under this article and persons reasonably suspected by the commissioner of conducting business which requires a license under this article, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this article, including without limitation the conduct of business without a license as required under this article.

14. Mortgage Companies. The department, its designated officers and employees, or its duly authorized representatives, for the purposes of discovering violations of this chapter and for the purpose of determining whether any person or individual reasonably suspected by the commissioner of conducting business that requires a license under this chapter, may investigate those persons and individuals and examine all relevant books, records and papers employed by those persons or individuals in the transaction of business, and may summon witnesses and examine them under oath concerning matters as to the business of those persons, or other such matters as may be relevant to the discovery of violations of this chapter including, without limitation, the conduct of business without a license as required under this chapter.

Source: *Miss. Code Ann.* § 81-1-81(1) (2016); § 81-13-15 (2001); § 81-27-7.001 (2007); § 81-19-18 (2000); § 81-21-10 (2000); § 75-15-32 (2000); § 81-22-17 (2019); § 75-67-244 (2000); § 75-67-341 (2001); § 75-67-447 (2000); § 75-67-523 (2013); § 63-19-56 (2004); § 75-67-625 (2018); § 81-18-21(3) (Rev. 2020).

Rule 1.15 Public Access Information. The Department of Banking and Consumer Finance may be contacted to participate in formal and informal proceedings and related rule-making matters by mail, e-mail, or telephone, or in person during regular business hours utilizing the following contact information:

Mississippi Department of Banking and Consumer Finance
Post Office Box 12129
Jackson, MS 39236-2129

Phone (601) 321-6901

Additional public information regarding the DBCF and its supervised or regulated entities may be found at the DBCF website: www.dbcf.ms.gov.

Source: *Miss. Code Ann. §§ 25-43-2.104; 25-43-2.105 (2005)*.

Part 4 Chapter 2: Rulemaking Oral Proceedings

Rule 2.1 Authority. These rules were promulgated pursuant to Mississippi Code Ann, § 25-43-3.104(2)(d) of the Administrative Procedures Law, and apply to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and amendments to rules before the Department of Banking and Consumer Finance (DBCF) pursuant to the Administrative Procedures Law.

Source: *Miss. Code Ann. § 25-43-2.105 (Rev. 2005)*.

Rule 2.2 Scheduling oral proceedings. Where an oral proceeding has not previously been held or scheduled, the DBCF will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, an agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule.

Source: *Miss. Code Ann. § 25-43-2.105 (Rev. 2005)*.

Rule 2.3 Format of request. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). The request may be in the form of a letter addressed to DBCF or as a pleading filed with a court. Each request must include the full name, telephone number, and mailing address of the requestor(s). All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.

Source: *Miss. Code Ann. § 25-43-2.105 (Rev. 2005)*.

Rule 2.4 Notice of Oral Proceeding. The date, time and place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State. The Agency Head or designee, who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

Source: *Miss. Code Ann. § 25-43-2.105 (Rev. 2005)*.

Rule 2.5. Public Participation Guidelines. Public participation shall be permitted at oral proceedings in accordance with the following:

1. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.

2. Persons wishing to make oral presentations at such a proceeding shall notify the DBCF at least three business days prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not previously contacted the DBCF.
3. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.
4. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
5. Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing. Written materials may, however, be submitted at the oral proceeding.
6. There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the participant's time where the orderly conduct of the proceeding so requires.

Source: *Miss. Code Ann. § 25-43-2.105 (Rev. 2005)*.

Rule 2.6 Conduct of Oral Proceeding. The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall (i) call proceeding to order; (ii) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the Department for the proposed rule; (iii) call on those individuals who have contacted the Department about speaking on or against the proposed rule; (iv) allow for rebuttal statements following all participants' comments; (v) adjourn the proceeding.

The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

Source: *Miss. Code Ann. § 25-43-2.105 (Rev. 2005)*.

Rule 2.7 Submissions and Records. Physical and documentary submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the DBCF, part of the rulemaking record, and are subject to the DBCF's public records request procedure. The DBCF may record oral proceedings by stenographic or electronic means.

Source: *Miss. Code Ann. § 25-43-2.105 (Rev. 2005)*.

Part 4 Chapter 3: Request for Declaratory Opinions

Rule 3.1 Authority. This regulation to conform with requirements of Section 25-43-2.105 et seq. of the Mississippi Code of 1972, as amended

Source: *Miss. Code Ann. § 25-43-2.105 (2005).*

Rule 3.2 Requests for Opinions. Any person with a substantial interest in the subject matter may make a request to the DBCF for a declaratory opinion by following the specified procedures. The term ‘substantial interest in the subject matter’ as used in this chapter means: that a party is directly affected by the DBCF’s administration of the laws within the DBCF’s primary jurisdiction. The term ‘primary jurisdiction of the Agency’ as used in this chapter means the DBCF has a constitutional or statutory grant of authority in the subject matter at issue.

Correspondence should be submitted to the following address:

Mississippi Department of Banking and Consumer Finance
Post Office Box 12129
Jackson, MS 39236-2129
Phone (601) 321-6901

Additional public information regarding the DBCF and its supervised or regulated entities may be found at the DBCF website: www.dbcf.ms.gov.

Source: *Miss. Code Ann. §§ 25-43-2.104; 25-43-2.105 (2005).*

Rule 3.3 Subjects which may be addressed. The DBCF will issue declaratory opinions regarding the application of specified facts to: (1) a statute administered or enforceable by the DBCF, (2) a rule promulgated by the DBCF, or (3) an order issued by the DBCF.

Source: *Miss. Code Ann. § 25-43-2.105 (2005).*

Rule 3.4 Circumstances in which Declaratory Opinions will not be issued. The DBCF may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

1. The matter is outside the primary jurisdiction of the DBCF;
2. Lack of clarity concerning the question presented;
3. There is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
4. The statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
5. The facts presented in the request are not sufficient to answer the question presented;
6. The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;

7. The request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the rule, statute or order on which a declaratory opinion is sought;
8. No controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute, rule, or order;
9. The question presented by the request concerns the legal validity of a statute, rule or order;
10. The request is not based upon facts calculated to aid in the planning of future conduct, but is, instead, based on past conduct in an effort to establish the effect of that conduct;
11. No clear answer is determinable;
12. The question presented by the request involves the application of a criminal statute or sets forth facts which may constitute a crime;
13. The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
14. The question is currently the subject of an Attorney General's opinion request; or,
15. The question has been answered by an Attorney General's opinion.

Additionally, a declaratory opinion will not be issued where a similar request is pending before this agency, or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law.

A declaratory opinion will not be issued if it may adversely affect the interests of the State, the DBCF, or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise. Where a request for a declaratory opinion involves a question of law, the DBCF may refer the matter to the State Attorney General.

Moreover, a declaratory opinion will not be issued where the question involves eligibility for a license, permit, certificate or other approval by the DBCF or some other agency and there is a statutory or regulatory application process by which eligibility for said license, permit, or certificate or other approval may be determined.

Source: *Miss. Code Ann. § 25-43-2.105 (2005)*.

Rule 3.5 Where to send requests. All requests must be mailed or delivered to the DBCF. The request and its envelope shall clearly state that it is a request for a declaratory opinion. No oral and telephone requests will be accepted for official opinions.

Submit request to the following address:

Mississippi Department of Banking and Consumer Finance
Post Office Box 12129
Jackson, MS 39236-2129

Source: *Miss. Code Ann. § 25-43-2.105 (2005)*.

Rule 3.6 Requestor information. Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request. The signing party shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any agency, administrative or judicial tribunal. A request must be limited to a single transaction or occurrence.

Source: *Miss. Code Ann. § 25-43-2.105 (2005).*

Rule 3.7 Request content. Each request must contain the following:

1. A clear identification of the statute or rule at issue
2. The question for the declaratory opinion
3. A clear and concise statement of all facts relevant to the question presented
4. The identify of all other known persons involved in or impacted by the factual situation causing the request including their relationship to the facts, name, mailing address and telephone number
5. Statement sufficient to show that the person seeking relief has a substantial interest in the subject matter.

The terms of the proposed opinion suggested by the requestor may be submitted with the request or may be requested by the agency;

Source: *Miss. Code Ann. § 25-43-2.105 (2005).*

Rule 3.8 Memorandum of Authorities. A request may contain an argument by the requestor in support of the terms of the proposed opinion suggested by the requestor. The argument may be submitted in the form of a memorandum of authorities, containing a full discussion of the reasons and any legal authorities, in support of such position of the requestor. The agency may request that the argument and memorandum of authorities be submitted by any interested party.

Source: *Miss. Code Ann. § 25-43-2.105 (2005).*

Rule 3.9 Agency Response. Written agency opinions prepared in response to this rule may be issued by the Commissioner, or with her authorization, by the Deputy Commissioner, or by the director of the division responsible for implementation of the statute, rule or order. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the DBCF shall, in writing:

1. issue an opinion declaring the applicability of the specified statute, rule, or order to the specified circumstances;
2. decline to issue a declaratory opinion, stating the reasons for its action; or
3. agree to issue a declaratory opinion or a written statement declining to issue a

declaratory opinion, by a specified time but no later than ninety (90) days after receipt of the written request.

The forty-five (45) day period shall begin on the first State of Mississippi business day that the request is received by the DBCF.

Source: *Miss. Code Ann. § 25-43-2.105 (2005)*.

Rule 3.10 Opinion not final for thirty days. A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of thirty (30) days, the DBCF may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error. Each opinion must state the date when the opinion is final.

Source: *Miss. Code Ann. § 25-43-2.105 (2005)*.

Rule 3.11 Procedure After Request for Declaratory Opinion Received. The DBCF may give notice to any person that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from persons other than the requestor.

The requestor, or his attorney, shall append to the request for a declaratory opinion a listing of all persons, with addresses, known to the requestor who may have an interest in the declaratory opinion sought to be issued, and shall mail a copy of the request to all such persons. The requestor or his attorney shall certify that a copy of the request was mailed to all such persons together with this statement: ‘Should you wish to participate in the proceedings of this request, or receive notice of such proceedings or the declaratory opinion issued as a result of this request, you should contact the DBCF within twenty days of the date of this request.’

Source: *Miss. Code Ann. § 25-43-2.105 (2005)*.

Rule 3.12 Hearings at the Discretion of the Agency. Provision for Hearing. If the DBCF in its sole discretion deems a hearing necessary or helpful in determining any issue concerning a request for a declaratory opinion, the DBCF may schedule such a hearing. Notice of the hearing shall be given to all interested parties unless waived. Notice mailed by first class mail 7 calendar days prior to the hearing shall be deemed appropriate.

The procedure for conducting a hearing, including but not limited to the manner of presentation, the time for presentation, and whether and how evidence may be taken, shall be within the discretion of the DBCF.

The DBCF will allow the requestor to participate in any hearing. The DBCF may allow any other persons or entities to participate in the hearing.

Source: *Miss. Code Ann. § 25-43-2.105 (2005)*.

Rule 3.13 Public availability of requests and declaratory opinions. Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying at the expense of the viewer during normal business hours. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

Source: *Miss. Code Ann. § 25-43-2.105 (2005).*

Part 4 Chapter 4, Public Records Request Regulations

Mississippi Public Records Act Source Authority: Miss. Code Ann. § 25-61-1, et seq. (1998).

Rule 4.4.1 General Requests for Inspection and/or Reproduction of Records pursuant to Mississippi Public Records Act.

Each person has a right to inspect and reproduce any public record on file in the offices of the Mississippi Department of Banking and Consumer Finance (“DBCF”), except those records expressly exempted by statute (including but not limited to § 81-1-89 of Mississippi Code of 1972) or DBCF rule. This regulation is intended to provide general guidelines for requests to view or reproduce public records; it is not intended to replace any existing procedure for such requests specified in DBCF Regulations in Title 5, Part 5 pertaining to the State Board of Banking Review.

It is the general policy of DBCF to neither confirm nor deny any ongoing investigation.

The public records policy of the DBCF has been adopted in accordance with the Mississippi Public Records Act of 1983, Section 25-61-1, et seq, Miss. Code Ann. (1972). All records and portions of records not exempt from disclosure will be made available in accordance with these rules.

Source: *Miss. Code Ann. §§ 26-61-1.*

Rule 4.4.2: Definitions.

The following terms have been defined for purposes of this policy.

Public Record: A public record shall mean any book, record, paper, account, letter, map, photograph, film, card, tape, recording or reproduction thereof, and any other documentary material, regardless of physical form or characteristic, having been used, being in use or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction work, duty or function of the DBCF, or required to be maintained by the DBCF.

Non-exempt Record: A non-exempt record is that part of a public record which does not fall under one of the exceptions to or exemptions from disclosure in the Public Records Act.

Identifiable Record: A record is identifiable if a reasonably specific description of the record has been given, such as the date of the record, the subject matter, division or person involved, etc. which will permit location or retrieval of the record.

Working Day: A working day is any day other than a weekend, state holiday, or other day on which the DBCF is authorized to be closed or all the employees of the office are authorized to be absent.

Incident Report means a narrative description, if such narrative description exists and if such narrative description does not contain investigative information, of an alleged offense, and at a minimum shall include the name and identification of each person charged with and arrested for the alleged offense, the time, date and location of the alleged offense, and the property involved, to the extent this information is known.

Investigative Report means records of a law enforcement agency containing information beyond the scope of the matters contained in an incident report, and generally will include, but not be limited to, the following matters if beyond the scope of the matters contained in an incident report:

- (i) Records that are compiled in the process of detecting and investigating any unlawful activity or alleged unlawful activity, the disclosure of which would harm the investigation which may include crime scene reports and demonstrative evidence;
- (ii) Records that would reveal the identity of informants and/or witnesses;
- (iii) Records that would prematurely release information that would impede the public body's enforcement, investigative or detection efforts;
- (iv) Records that would disclose investigatory techniques and/or results of investigative techniques;
- (v) Records that would deprive a person of a right to a fair trial or an impartial adjudication;
- (vi) Records that would endanger the life or safety of a public official or law enforcement personnel, or confidential informants or witnesses;
- (vii) Records pertaining to quality control or PEER review activities; or
- (viii) Records that would impede or jeopardize a prosecutor's ability to prosecute the alleged offense.

Source: *Miss. Code Ann. § 25-61-3.*

Rule 4.4.3: Availability of Records.

Access to all non-exempt records of the DBCF that have been properly requested, deemed subject to disclosure under the Public Records Act, and for which applicable cost payment has been made will be allowed at a scheduled time during regular business hours (8:00 to 5:00 on

working days). These records will be made available for inspection and/or copying. If any public record which is held to be exempt from disclosure, as designated below, contains material which is not exempt, the DBCF shall separate the exempt material and make the non-exempt material available for examination and/or copying. The Commissioner or his designee has the authority to specify the mode, manner, time and place of access.

Source: *Miss. Code Ann. § 25-61-5; Miss. Ethics Comm. Model Public Records Rule 4.5(2).*

Rule 4.4.4: Procedures for Handling Public Records Requests.

All requests to examine, copy or obtain public records, shall be in writing utilizing the standard Request for Public Records form, a copy of which is attached hereto as Exhibit A to these rules and is provided at www.dbcf.ms.gov. The request must identify the records, **with particularity**, give the name, mailing address, email address and telephone number of the requesting agency or individual, and must be signed by the requesting party. This requirement may be waived on a case by case basis by the Commissioner or his designee to facilitate the orderly and timely release of the information.

Requests must be submitted by U.S. Mail to the agency's designated Compliance Officer, Richard Rogers, at Post Office Box 12129, Jackson, Mississippi 39326-2129. **An emailed or faxed request does not satisfy the written request requirements.** The Office shall respond to the request in writing within 7 working days from the date of request.

If the records will be disclosed, the Office will give an estimate of the total cost, if any, for compliance with the request. If the estimate is agreeable to the requestor, the DBCF will produce the records requested no later than 14 working days from the date the request and payment are received, or as mutually agreed upon by the parties. Payments must be made by money order, or cashier's check. Denials will be handled pursuant to Rule 4.4.8.

Source: *Miss. Code Ann. § 26-61-5; Miss. Ethics Comm. Model Public Records Rule 3.6.*

Rule 4.4.5: Fees.

Any person desiring copies of public records as defined in the Public Records Act, shall be entitled to obtain mechanically reproduced copies at a charge of fifteen cents (\$.15) per page, which represents the actual cost of such reproduction.

The costs for searching, reviewing, duplicating or separating of non-exempt material from documents, etc., containing exempt material may be charged in addition to a mechanical reproduction charge of fifteen cents (\$.15) per page. The charge for the hours shall be based upon the hourly salary of the lowest paid employee of the DBCF qualified and available to do the job.

Mailing costs calculated at the applicable United States Postal Service rates shall be charged where appropriate. The cost of mailing a notice to third parties via certified mail, return receipt requested, shall be charged to persons requesting the public records.

Source: *Miss. Code Ann. § 26-61-7; Miss. Ethics Comm. Model Public Records Rule 8.*

Rule 4.4.6: Records Furnished by Third Parties Containing Trade Secrets, Confidential Commercial or Financial Information.

Records furnished to the DBCF by third parties, which may contain trade secrets or confidential commercial or financial information, will not be released until reasonable notice to the third parties has been given. For the purpose of providing advance notice to submitters of trade secret or confidential commercial or financial information, thirty (30) days from the submitter's receipt of written notice shall be deemed a reasonable time for the disclosure of the requested records in the absence of a court order to the contrary.

Source: *Miss. Code Ann. § 26-61-9.*

Rule 4.4.7: Exempt Records.

Any record expressly exempt from the Public Records Act or any record specifically declared to be exempt, confidential, or privileged by any other Mississippi statute, constitutional provision, or judicial order or directive, shall not be subject to inspection and copying. Those records which are specifically exempt by law and which fall within the jurisdiction of the DBCF include, but are not limited to, the following:

- Any reports of examinations or investigations, including all information obtained during the course of such examinations and investigations, conducted pursuant to any statutory authority of the DBCF (*Miss. Code Ann. §§ 81-1-89(1), 81-18-21(8), and 25-61-11*);
- Investigative records (*Miss. Code Ann. § 25-61-12(2)*);
- Personnel records and applications for employment, except those which may be released to the person who made the application or with the prior written consent of the person who made the application. (*Miss. Code Ann. § 25-1-100(1)*);
- Test questions and answers which are to be used in employment examinations (*Miss. Code Ann. § (25-1-100(2))*);
- Letters of recommendation respecting any application for employment (*Miss. Code Ann. § (25-1-100(3))*);
- Records which represent and constitute the work product of any attorney and which are related to litigation initiated by or against the DBCF or in anticipation of prospective litigation, including all communications between such attorney made in the course of an attorney/client relationship (*Miss. Code Ann. § (25-1-102)*);
- All communications made in the course of an attorney-client relationship (*Miss. Code Ann. §§ 25-1-102; 26-61-11; AG Opinion No. 2004-0170*);
- Appraisal information which concerns the sale or purchase of real or personal property for public purposes prior to public announcement of the purchase or sale, where the release of

such records would have a detrimental effect on such sale or purchase (*Miss. Code Ann. § (31-1-27)*);

- Any constitutional law, state or federal statutory law, or decision of a court of this state or the United States that declares a public record to be confidential or privileged, or provides that a public record shall be exempt from the Mississippi Public Records Act (*Miss. Code Ann. § (25-61-11)*).

Source: *Miss. Code Ann. § 26-61-11*.

Rule 4.4.8 Denials.

Denials shall contain the specific reasons for the denial. Copies of all denials shall be maintained on file by the DBCF for not less than three years from the date denial is made.

Petition for Internal Administrative Review of Denial: Any person who objects to the initial denial or partial denial of a records request may, within ten (10) business days of the date of such denial, petition for a review of that decision. The petition must be submitted in writing, via U.S. Mail, to the agency's designated Compliance Officer, Richard Rogers, at Post Office Box 12129, Jackson, Mississippi 39236-2129. An emailed or faxed petition does not satisfy the written request requirement.

Consideration of Petition for Review: The Compliance Officer will provide the petition and any other relevant information to the Commissioner who will either confirm or reverse the denial.

Review by the Ethics Commission. Pursuant to Miss. Code Ann. § 25-61-13, if DBCF denies a requestor access to public records, the requestor may ask the Ethics Commission to review the matter. The Ethics Commission has adopted rules on such requests. They may be found at www.ethics.state.ms.us.

Judicial review. Any person whose request for public records was denied may institute a suit in the chancery court of Hinds County, seeking to reverse the denial, as set forth in Miss. Code Ann. § 25-61-13.

Source: *Miss. Code Ann. §§ 26-61-5(3) and 25-61-13; Miss. Ethics Comm. Model Public Records Rule 9.*



**REQUEST FOR PUBLIC RECORDS OF THE
DEPARTMENT OF BANKING AND CONSUMER FINANCE**

(Please note that requests for records of other state or local agencies must be directed to those agencies.)

Date of Request: _____

Person Requesting: _____

Representing: _____

Street/Mailing Address: _____

City, State, Zip: _____

Telephone: _____ Email Address: _____

Documents Requested (Please be as clear and concise as possible): _____

Review Requested: _____ Personally Inspect _____ Copy of Material

Electronic Copy of Material (if available): _____

Further Instructions: _____

Requestor's Signature: _____

Please submit this request via U.S. Mail, postage prepaid, to the following **(an emailed or faxed request does not satisfy the written request requirements):**

Department of Banking and Consumer Finance
ATTN: Richard Rogers, Compliance Officer
Post Office Box 12129
Jackson, MS 39236-2129

Note: Actual costs of gathering, reviewing, and reproducing requested materials will be the responsibility of the requestor. Pursuant to Section 25-61-7 of the Mississippi Code, these costs must be paid in advance. If you do not receive a response from our office within seven business days of submitting your request, please contact our office to confirm that we have received your request.

(EXHIBIT A)