

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

**Proposing rule making related to waivers
and providing an opportunity for public comment**

The Iowa Finance Authority hereby proposes to amend Chapter 11, “Iowa Main Street Loan Program,” and Chapter 18, “Waivers and Variances from Administrative Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 16.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

Purpose and Summary

The proposed amendments update rules in accordance with changes included in 2020 Iowa Acts, House File 2389, section 10. The changes call for deletions of the word “variance” when the word is used in relation to “waiver.” Amendments are also proposed relating to submission of information regarding waivers on the Legislative Services Agency’s Internet site.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 265—Chapter 18.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on March 2, 2021. Comments should be directed to:

Kristin Hanks-Bents
Iowa Finance Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: kristin.hanks-bents@iowafinance.com

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental

subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 265—11.2(16) as follows:

265—11.2(16) Waiver. The authority may by resolution waive ~~or vary~~ particular provisions of these rules in accordance with ~~rule 265—1.11(16) or, after August 1, 2001,~~ 265—Chapter 18.

ITEM 2. Amend **265—Chapter 18**, title, as follows:

WAIVERS AND VARIANCES FROM ADMINISTRATIVE RULES

ITEM 3. Amend rule **265—18.1(17A,16)**, definitions of “Authority” and “Waiver,” as follows:

“*Authority*” means the Iowa finance authority whose powers are exercised by a board of nine voting members appointed by the governor pursuant to Iowa Code section 16.2.

“*Waiver*” ~~or “variance”~~ means an action by the authority which suspends in whole or in part the requirements or provisions of a rule as applied to a person on the basis of the particular circumstances of that person.

ITEM 4. Amend rule 265—18.4(17A,16) as follows:

265—18.4(17A,16) Criteria for waiver ~~or variance~~. In response to a petition completed pursuant to rule 265—18.6(17A,16), the authority may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the authority finds, based on clear and convincing evidence, all of the following:

1. to 4. No change.

In determining whether a waiver ~~or variance~~ should be granted, the authority shall consider the public interest, policies and legislative intent of the statute on which the rule is based.

ITEM 5. Amend rule 265—18.6(17A,16), introductory paragraph, as follows:

265—18.6(17A,16) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester (for an example of a petition for waiver ~~or variance~~, see Exhibit A at the end of this chapter):

ITEM 6. Amend rule 265—18.12(17A,16) as follows:

265—18.12(17A,16) ~~Summary reports~~ Submission of waiver information. ~~The authority shall semiannually prepare a summary report identifying~~ Within 60 days of granting or denying a waiver, the authority shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the authority's actions on waiver requests. If practicable, the report shall detail the extent to which granting a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself. ~~Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

ITEM 7. Amend rule 265—18.13(17A,16), introductory paragraph, as follows:

265—18.13(17A,16) Voiding or cancellation. A waiver ~~or variance~~ is void if the material facts upon which the petition is based are not true or if material facts have been withheld. A waiver ~~or variance~~ issued by the authority pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the authority issues an order finding any of the following:

ITEM 8. Amend ~~265—Chapter 18~~, Exhibit A, as follows:

Exhibit A

Sample Petition for Waiver/~~Variance~~

BEFORE THE IOWA FINANCE AUTHORITY

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).



PETITION FOR WAIVER

A petition for waiver ~~or variance~~ from a rule adopted by the authority shall include the following information in the petition for waiver ~~or variance~~ where applicable and known:

- a. Provide the petitioner’s (person asking for a waiver ~~or variance~~) name, address, and telephone number.
 - b. Describe and cite the specific rule from which a waiver ~~or variance~~ is requested.
 - c. Describe the specific waiver ~~or variance~~ requested; include the exact scope and operative time period that the waiver ~~or variance~~ will extend.
 - d. Explain the important facts that the petitioner believes justify a waiver ~~or variance~~. Include in your answer (1) why applying the rule will result in undue hardship on the petitioner; and (2) how granting the waiver ~~or variance~~ will not prejudice the substantial legal rights of any person; and (3) that the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.
 - e. Provide a history of prior contacts between the authority and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver ~~or variance~~; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative or examination reports relating to the regulated activity, license, grant or loan within the past five years.
 - f. Provide information known to the petitioner regarding the treatment by the authority of similar cases.
 - g. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver ~~or variance~~.
 - h. Provide the name, address, and telephone number of any person that would be adversely affected or disadvantaged by the granting of the waiver ~~or variance~~.
 - i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver ~~or variance~~.
 - j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the authority with information relevant to the waiver ~~or variance~~.
- I hereby attest to the accuracy and truthfulness of the above information.

Petitioner’s signature

Date

Petitioner should note the following when requesting or petitioning for a waiver ~~or variance~~:

1. The petitioner has the burden of proving to the authority, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in an undue hardship on the petitioner; and (b) waiver ~~or variance~~ in the specific case would not prejudice the substantial legal rights of any person; and (c) the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.

2. The executive director may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver ~~or variance~~.

3. All petitions for waiver ~~or variance~~ must be submitted in writing to the attention of the executive director of the Iowa finance authority at the address set forth in rule 265—1.3(16). If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.