

BANKING DIVISION[187]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 535B.14, the Banking Division of the Commerce Department hereby gives Notice of Intended Action to amend Chapter 18, "Mortgage Bankers and Mortgage Brokers," Iowa Administrative Code.

The proposed amendments update existing rules to conform to recent legislative changes and in response to a review for necessary corrections.

Interested persons may make written comments on the proposed amendments on or before October 14, 2008. Such written material should be directed to the Superintendent of Banking, Banking Division, Department of Commerce, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Superintendent of Banking, Department of Commerce, at (515)281-4014 or at 200 East Grand Avenue, Suite 300.

These amendments are intended to implement Iowa Code sections 17A.3 and 524.213 and 2008 Iowa Acts, House File 2556 and Senate File 2428.

The following amendments are proposed.

ITEM 1. Amend rule 187—18.1(17A,535B) as follows:

187—18.1(17A,535B) Definitions. For the purposes of this chapter, the definitions in Iowa Code chapter 535B, ~~2005 Iowa Acts, chapter 83, and 2006 Iowa Acts, Senate File 2353,~~ shall apply. In addition, unless the context otherwise requires:

"Criminal background check" means a state criminal background check and a national criminal history check through the Federal Bureau of Investigation.

"Individual registrant" means a natural person who is registered with the administrator in accordance with the provisions of ~~2005 Iowa Acts, chapter 83, section 6~~ Iowa Code section 535B.4A.

"Individual registration" means ~~a written or an~~ electronic registration submitted by a natural person to the administrator to act as a mortgage banker or mortgage broker in this state in accordance with the provisions of ~~2005 Iowa Acts, chapter 83, section 6~~ Iowa Code section 535B.4A. To be considered active, an individual registrant must be an employee of or an exclusive agent of a licensee.

"License application" means ~~a written or an~~ electronic application submitted to the administrator for a license to operate as a mortgage banker or mortgage broker in accordance with the provisions of Iowa Code section 535B.4.

"Licensee" means a person who has a license to operate as a mortgage banker or mortgage broker in accordance with the provisions of Iowa Code section 535B.4.

"Makes at least four mortgage loans," as used in Iowa Code section 535B.1(4) "*a*," means the person is listed on loan documents as the lender for at least four mortgage loans.

"Mortgage application" means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. A completed application has all the information that the creditor regularly obtains and considers in evaluating an application for the amount and type of credit requested.

"Nationwide mortgage licensing system and registry" or *"NMLS&R"* means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage providers, mortgage lenders, mortgage brokers, and mortgage servicers.

“*Servicing a loan*” or “*servicing a loan*” means undertaking the direct collection of payments on a loan from the borrower or the right to undertake direct collection of payments on a loan from the borrower.

ITEM 2. Amend subrules 18.2(2), 18.2(4) and 18.2(5) as follows:

18.2(2) The license application shall be accompanied by a fee of \$500 plus \$40 per additional branch location. The \$500 fee is not subject to refund.

18.2(4) The administrator shall approve or deny a license application in accordance with the provisions of Iowa Code section 535B.5. A person shall not be eligible for licensing unless all individual registrants who are employed by, under contract with, or exclusive agents of the person have successfully completed the registration and background checks required by ~~2005 Iowa Acts, chapter 83, section 6~~ Iowa Code section 535B.4A.

18.2(5) Licenses expire on the next ~~June 30~~ December 31 after issuance. However, licenses granted on or after ~~April 1~~ November 1 but before ~~July 1~~ January 1 will not expire until ~~June 30~~ December 31 of the following year. For example, a license granted on ~~April 17, 2007~~ November 17, 2008, would not expire until ~~June 30, 2008~~ December 31, 2009.

ITEM 3. Amend rule 187—18.3(17A,535B) as follows:

187—18.3(17A,535B) Renewal of license.

18.3(1) No change.

18.3(2) Application to renew a license shall be submitted to the administrator before ~~June 1~~ December 1 of the year of expiration ~~on forms provided by the administrator through the NMLS&R~~. All requested information shall be provided to the administrator ~~on or with the application form as directed by the NMLS&R~~. Applications for renewal of a license to transact business solely as a mortgage broker must be accompanied by a fee of \$200. Applications for renewal of a license to transact business as a mortgage banker must be accompanied by a fee of \$400. In addition, the licensee shall pay a branch office renewal fee of \$40 per branch. The administrator may assess late fees of up to \$10 per day for applications submitted after ~~June 1~~ December 1.

~~**18.3(3)** Application forms for renewal of a license may be obtained from the administrator’s office or will be available on the administrator’s Web site. Licensees may renew electronically or by submitting a written application. While the administrator generally mails renewal application forms or reminders to licensees before May 1 preceding license expiration, the failure of the administrator to mail an application form or the failure of a licensee to receive an application form shall not excuse the licensee from the requirement to timely renew.~~

~~**18.3(4)**~~ **18.3(3)** The administrator shall grant an application to renew a license if:

a. The administrator receives the application by ~~June 1~~ December 1, accompanied by the appropriate renewal fee, or the administrator receives the application after ~~June 1~~ December 1 but before ~~July 1~~ January 1 and it is accompanied by the appropriate renewal fee and the appropriate late fee;

b. The application is fully completed with all necessary information; and

c. The application does not reveal grounds to deny a license.

~~**18.3(5)**~~ **18.3(4)** A renewal application received by the administrator after ~~June 30~~ December 31 may, at the discretion of the administrator, be rejected for processing or may be treated as a new application for a license. A licensee who fails to renew a license before the expiration date is not authorized to act as a mortgage banker or mortgage broker in Iowa after the expiration date.

ITEM 4. Amend rule 187—18.4(17A,535B) as follows:

187—18.4(17A,535B) Individual registration requirements.

18.4(1) A natural person who applies for individual registration pursuant to ~~2005 Iowa Acts, chapter 83, section 6~~ Iowa Code section 535B.4A to act as a mortgage banker or mortgage broker in this state shall apply with the administrator on forms provided by the administrator. The administrator may consider an application withdrawn if it does not contain all of the information required and the

information is not submitted to the administrator within 30 days after the administrator requests the information.

18.4(2) Prior to applying for an individual registration, an applicant must complete at least 20 hours of education approved by the NMLS&R, which shall include at least:

- a. Three hours of federal law and regulations;
- b. Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
- c. Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

18.4(3) Prior to applying for an individual registration, an applicant must pass, in accordance with the standards established under Public Law 110-289, Title V, the S.A.F.E. Mortgage Licensing Act, a qualified written test developed by the NMLS&R and administered by a provider approved by the NMLS&R. An applicant must achieve a test score of not less than 75 percent correct answers to questions to pass the qualified written test.

18.4(2) 18.4(4) The fee for an initial individual registration is \$50, plus the actual cost of obtaining the criminal background check. The fee is not subject to refund.

18.4(3) 18.4(5) An applicant must submit to a criminal background check.

18.4(4) 18.4(6) The administrator may deny an application for individual registration for any of the following reasons:

a. ~~Another~~ This state or another state or jurisdiction has denied, suspended, revoked, or refused to renew the applicant's authorization to act as a mortgage banker or mortgage broker or has denied, suspended, revoked or refused to renew a similar license or registration under this state's or the other state's or jurisdiction's law. An agreement made between a person and this state or another state or jurisdiction not to operate as a mortgage banker or mortgage broker in that state shall be considered a denial of that person's authorization to act as a mortgage banker or mortgage broker in that state.

b. No change.

c. The applicant has been convicted of a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for individual registration; or at any time preceding such date of application if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. For the purposes of this paragraph, "convicted of" includes a guilty plea, deferred judgment, deferred sentence, or other similar finding of guilt by a court of competent jurisdiction.

~~e. d.~~ d. The applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or another similar offense, in a court of competent jurisdiction in this state or in any other state, territory or district of the United States, or in any foreign jurisdiction. For the purposes of this paragraph, "conviction" "convicted of" includes a guilty plea, deferred judgment, deferred sentence, or other similar finding of guilt by a court of competent jurisdiction.

~~e. e.~~ e. The applicant has had a professional license of any kind revoked in any state or jurisdiction. An agreement to surrender a license and not to operate in an occupation in which a professional license is required shall be considered a revocation for the purposes of this rule.

~~e. f.~~ f. The applicant is under 18 years of age.

g. The applicant has made a false statement of material fact on an application for an individual registration or has been otherwise implicated in the submission of a false application.

h. The applicant has demonstrated a lack of moral character in a manner that the administrator reasonably believes will impair the applicant's ability to act as a mortgage banker or broker in full compliance with the public interest and state policies described in Iowa Code chapter 535B.

~~f. i.~~ i. The applicant has failed to pay child support and is identified in a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J.

~~g. j.~~ j. The applicant has failed to pay student loans and is identified in a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code chapter 261.

k. The applicant has failed to pay state debt and is identified in a certificate of noncompliance from the department of revenue according to the procedures set forth in 2008 Iowa Acts, Senate File 2428.

~~18.4(5)~~ **18.4(7)** As required by ~~2005 Iowa Acts, chapter 83, section 6~~ Iowa Code section 535B.4A, an individual registrant must be employed by, under contract with, or an exclusive agent of a licensee under Iowa Code section 535B.4. However, the administrator may consider an application for individual registration from a person not currently employed by, under contract with, or an exclusive agent of a licensee. If the administrator determines that the applicant is otherwise eligible for individual registration, the administrator shall approve the registration in “unattached” status.

~~18.4(6)~~ **18.4(8)** An individual registration expires on the next ~~June 30~~ December 31 after approval. However, individual registrations approved on or after ~~April 1~~ November 1 but before ~~July 1~~ January 1 will not expire until ~~June 30~~ December 31 of the following year. For example, an application for individual registration approved on ~~April 17, 2007~~ November 17, 2008, would not expire until ~~June 30, 2008~~ December 31, 2009.

~~18.4(7)~~ **18.4(9)** The administrator may issue a temporary individual registration for a period not to exceed 180 days to an applicant who has submitted to a national criminal history check as required by ~~2005 Iowa Acts, chapter 83, section 6, as amended by 2006 Iowa Acts, Senate File 2353~~ Iowa Code section 535B.4A, pending the results of the national criminal history check. The temporary individual registration issued pursuant to this subrule is subject to the expiration and renewal requirements of ~~subrule 18.4(6)~~ 18.4(8) and rule 187—18.5(17A,535B). If compliant with the aforementioned expiration and renewal requirements, the temporary individual registration issued pursuant to this subrule is valid until such time as the individual registration is issued, the temporary individual registration is renewed, or the temporary individual registration expires or is revoked. The administrator may revoke the temporary individual registration at any time prior to issuing an individual registration if the results of the national criminal history check reveal information that would be grounds for the administrator to deny an application for an individual registration or if an applicant fails to resubmit to the national criminal history check within 30 days of notice from the administrator to do so.

~~18.4(8)~~ A provision of ~~2005 Iowa Acts, chapter 83, section 6, requires an individual registrant to submit to a state criminal background check before being registered for the first time. 2006 Iowa Acts, Senate File 2353, section 17, amends that provision to require that an individual registrant submit to a national criminal history check through the Federal Bureau of Investigation prior to being registered. 2005 Iowa Acts, chapter 83, section 6, as amended by 2006 Iowa Acts, Senate File 2353, is effective July 1, 2006. As a result of the timing of the effective date of the Act, the forms necessary to obtain a national criminal history check through the Federal Bureau of Investigation were not available to some applicants for individual registrations at the time the applicants initially applied for individual registrations. To address these timing considerations, the administrator may issue a temporary individual registration for a period ending on June 30, 2007, to an applicant who filed an application with the administrator before the forms necessary to obtain a national criminal history check through the Federal Bureau of Investigation were available, provided that the applicant submitted to a state criminal background check. An applicant who receives a temporary individual registration pursuant to this subrule must submit to a national criminal history check as soon as the forms become available. The administrator may revoke a temporary individual registration issued under this subrule at any time prior to issuing an individual registration if the applicant fails to submit to the national criminal history check within 30 days of notice from the administrator to do so or the results of the national criminal history check reveal information that would be grounds for the administrator to deny an application for an individual registration.~~

ITEM 5. Amend rule 187—18.5(17A,535B) as follows:

187—18.5(17A,535B) Renewal of individual registration.

18.5(1) No change.

18.5(2) ~~An~~ Before December 1 of the year of expiration, an individual registration shall be renewed ~~on forms provided by the administrator, and through the NMLS&R, with all requested information shall be provided as directed by the NMLS&R, on or with the registration form. An individual registration renewal must be filed with the administrator before June 1 of the year of expiration and must be~~

accompanied by a fee of \$50. The administrator may assess a late fee of \$5 per day, not to exceed \$100, for an individual registration renewal accepted for processing after ~~June 1~~ December 1.

~~18.5(3)~~ Forms for renewal of an individual registration may be obtained from the administrator's office or will be available on the administrator's Web site. Individual registrants may renew electronically or by submitting a written application. While the administrator generally mails renewal application forms or reminders to individual registrants before May 1 preceding expiration of individual registration, the failure of the administrator to mail an individual registration renewal form or the failure of an individual registrant to receive an individual registration renewal form shall not excuse the individual registrant from the requirement to timely renew.

~~18.5(4)~~ **18.5(3)** The administrator may reject an individual registration renewal if the registration renewal is not complete or all required fees, including late fees, are not remitted.

~~18.5(5)~~ **18.5(4)** The administrator shall grant an application to renew an individual registration if:

a. The administrator receives the registration renewal by ~~June 1~~ December 1, accompanied by the \$50 renewal fee, or the administrator receives the registration renewal after ~~June 1~~ December 1 but before ~~July 1~~ January 1 and it is accompanied by the \$50 renewal fee and the appropriate late fee;

b. The registration renewal is fully completed with all necessary information, including proper disclosure of completion of required continuing education; and

c. The registration renewal does not reveal grounds to deny an individual registration.

~~18.5(6)~~ **18.5(5)** A registration renewal received by the administrator after ~~June 30~~ December 31 may, at the discretion of the administrator, be rejected for processing or may be treated as a new individual registration. An individual registrant who fails to renew before the expiration date is not authorized to act as a mortgage banker or mortgage broker in Iowa after the expiration date unless specific written permission is provided by the administrator.

ITEM 6. Amend subrule 18.6(4) as follows:

18.6(4) An individual registrant in unattached status shall not be authorized to act as a mortgage banker or mortgage broker in Iowa unless the individual registrant is employed by, under contract with, or an exclusive agent of persons listed as exemptions pursuant to Iowa Code section 535B.2 ~~as amended by 2005 Iowa Acts, chapter 83, section 4.~~

ITEM 7. Amend rule 187—18.8(17A,535B) as follows:

187—18.8(17A,535B) Changes in the licensee's business; fees.

18.8(1) No licensee or individual registrant shall conduct the residential mortgage lending activities authorized in Iowa Code chapter 535B ~~as amended by 2006 Iowa Acts, Senate File 2353, section 16,~~ under any name other than that stated on the license or individual registration certificate.

18.8(2) to 18.8(4) No change.

18.8(5) A licensee shall maintain on file with the administrator, through the NMLS&R, a list of all individual registrants who are employed by, under contract with, or exclusive agents of the licensee. The licensee shall pay a change in sponsorship fee of \$30 to add an individual registrant to the licensee's list in the NMLS&R.

18.8(6) When an individual registrant ceases to be employed by, under contract with, or an exclusive agent of a licensee, the licensee shall notify the administrator ~~in writing,~~ through the NMLS&R, within five business days. The notification shall include the reasons for the termination of the individual registrant's employment, contract, or agency.

18.8(7) and 18.8(8) No change.

ITEM 8. Amend subrule 18.10(1) as follows:

18.10(1) The continuing education year shall begin on the first day of ~~May~~ November each year and shall end on ~~April 30~~ October 31 the following year. Each person who is an individual registrant on ~~December 31~~ June 30 shall complete at least 12 hours of continuing education from ~~May 1~~ November 1 (preceding ~~December 31~~ June 30) to ~~April 30~~ October 31 (following ~~December 31~~ June 30). For example, a person who is an individual registrant on ~~December 31, 2006~~ June 30, 2009, shall complete at least 12 hours of continuing education from ~~May 1, 2006, to April 30, 2007~~ November 1, 2008, to

October 31, 2009. Due to the change in the licensing year, a person who was an individual registrant on June 30, 2008, has from May 1, 2007, to October 31, 2008, to complete at least 12 hours of continuing education.

ITEM 9. Amend **187—Chapter 18**, as follows:

Rules 187—18.1(17A,535B) to 187—18.20(17A,535B) are intended to implement Iowa Code chapter 535B ~~as amended by 2005 Iowa Acts, chapter 83, and 2006 Iowa Acts, Senate File 2353.~~

ITEM 10. Adopt the following new rule 187—18.23(82GA,SF2428):

187—18.23(82GA,SF2428) Nonpayment of state debt. The administrator shall deny the issuance or renewal of an individual registration upon the receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in 2008 Iowa Acts, Senate File 2428. In addition to the procedures set forth in 2008 Iowa Acts, Senate File 2428, this rule shall apply.

18.23(1) The notice required by 2008 Iowa Acts, Senate File 2428, section 14, shall be served on the individual registrant or applicant by restricted certified mail, return receipt requested, or personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the individual registrant or applicant may accept service personally or through authorized counsel.

18.23(2) The effective date of the denial of issuance or renewal of a license, as specified in the notice required by 2008 Iowa Acts, Senate File 2428, section 14, shall be 60 days following service of the notice upon the individual registrant or applicant.

18.23(3) The administrator is authorized to prepare and serve the notice required by 2008 Iowa Acts, Senate File 2428, section 14, upon the individual registrant or applicant.

18.23(4) Individual registrants and applicants shall keep the administrator informed of all court actions and all centralized collection unit actions taken under or in connection with 2008 Iowa Acts, Senate File 2428, and shall provide the administrator copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to 2008 Iowa Acts, Senate File 2428, section 15, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

18.23(5) All fees for applications, individual registration renewals or reinstatements must be paid by individual registrants or applicants, and all continuing education requirements must be met before an individual registration will be issued, renewed or reinstated after the administrator has denied the issuance or renewal of an individual registration pursuant to 2008 Iowa Acts, Senate File 2428.

This rule is intended to implement 2008 Iowa Acts, Senate File 2428.