

BANKING DIVISION[187]

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CHAPTER 1
DESCRIPTION OF ORGANIZATION
[Prior to 4/22/87, see Banking Department[140] Ch 1]

187—1.1(17A,524) Definitions. The definitions of terms listed in Iowa Code section 17A.2 shall apply for these terms as they are used throughout this chapter. In addition, as used in this chapter:

“*Division*” means the division of banking.

“*Superintendent*” means the superintendent of banking.

187—1.2(17A,524) Scope and application. This chapter describes the office of the superintendent and the established place at which, the employees from whom and the methods whereby the public may obtain information, make submittals on requests or obtain decisions.

187—1.3(17A,524) Division of banking. The division of banking is a subdivision of the department of commerce and consists of the superintendent and those employees who discharge the duties and responsibilities imposed upon the superintendent by the laws of this state. The superintendent has general control, supervision and regulatory authority over all entities which the division is given authority to regulate pursuant to the Code of Iowa. The division consists of two separate bureaus. The bank bureau has primary responsibility relating to the supervision, regulation and chartering of state banks. The finance bureau has primary responsibilities relating to the supervision, regulation and licensing of regulated loan companies; industrial loan companies; mortgage bankers, brokers, and registrants; delayed deposit service licensees; persons engaged in the business of selling written instruments; and persons engaged in the business of debt management.

1.3(1) Organization—superintendent. The superintendent is the administrator of the division. The superintendent is appointed by the governor, by and with the approval of the senate, for a term of four years. The superintendent’s office is located at 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. The superintendent is assisted by the following officials who are responsible to the superintendent:

a. Bank bureau chief. The bank bureau chief performs such duties as the superintendent prescribes, including general supervision of all bank examining personnel, administration and supervision of regulatory examinations, and administration and supervision of all matters relating to the exercise of banking powers authorized by the laws of this state. During the absence or disability of the superintendent, or as directed by the superintendent, a deputy superintendent who possesses the powers and performs the duties of the superintendent may be appointed by the superintendent.

b. Bank analysts. Bank analysts perform such duties as the superintendent prescribes, including advanced technical analysis and review of examination and financial reports of banks and bank holding companies; assessing, measuring, and monitoring the risk conditions in state banks and bank holding companies; assisting the superintendent and banking council in the analysis of applications submitted to the division for approval; and the review and analysis of bank examination reports.

c. Finance bureau chief. The finance bureau chief performs duties prescribed by the superintendent, including general supervision over all matters relating to the licensing and supervision of regulated loan companies; industrial loan companies; mortgage bankers, brokers, and registrants; delayed deposit service licensees; persons engaged in the business of debt management; and persons engaged in the sale of written instruments.

d. Comptroller. The comptroller performs duties prescribed by the superintendent, including management of the administrative functions and fiscal affairs of the division of banking. The comptroller is also responsible for administration of personnel policies, work rules, payrolls, and employee benefits for all employees of the division.

e. Examiners. Regulatory examinations are performed by examining personnel situated in examination regions throughout the state. Each region is headed by a supervisor who is assisted by a staff of examiners. Each examiner performs duties prescribed by the superintendent in a manner consistent with the laws of this state and may be predominantly trained in the specialized fields of

commercial bank and bank holding company regulation, trust asset administration, finance company and mortgage banking regulation, data processing, and other areas within the jurisdiction of the office of the superintendent.

1.3(2) *Field organization.* Rescinded IAB 10/9/96, effective 11/13/96.

This rule is intended to implement Iowa Code sections 17A.3 and 524.208.

187—1.4(17A,524) Forms and instructions. Rescinded IAB 3/2/05, effective 4/6/05.

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CHAPTER 2
APPLICATION PROCEDURES
[Prior to 4/22/87, see Banking Department[140] Ch 2]

187—2.1(17A,524) Organization of a state-chartered bank.

2.1(1) Application. Persons desiring to organize a state-chartered bank should first meet with the superintendent to discuss the proposal. An “Application to Organize a State Bank” and supplementary forms may be obtained for submission to the superintendent.

2.1(2) Investigation. The superintendent may conduct an investigation as deemed necessary.

2.1(3) Preliminary approval. The superintendent may grant preliminary approval of an application to organize a state-chartered bank. If preliminary approval is granted, the superintendent may, if it is determined that such action is necessary or desirable for the protection of the public interest, at any time withdraw that approval.

2.1(4) Decision. The superintendent shall approve or deny the application within 180 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.

2.1(5) Corporate organization. The proposed state bank does not come into existence until articles of incorporation have been approved by the superintendent and filed and recorded by the secretary of state and a certificate of incorporation has been issued.

2.1(6) Commencement of business. If the superintendent is satisfied that the proposed state bank has met all requirements and conditions and is ready to commence business, the superintendent shall issue an Authorization To Do Business which provides that the state bank is authorized to commence business as of a specified date.

This rule is intended to implement Iowa Code section 524.303.

187—2.2(17A,524) Conversion of national bank into state bank.

2.2(1) Application. A national bank desiring to become a state-chartered bank should first meet with the superintendent to discuss the proposal. An application and supplementary forms may be obtained for submission to the superintendent.

2.2(2) Examination and investigation. The superintendent may conduct an examination or investigation of the national bank as deemed necessary.

2.2(3) Decision. The superintendent shall approve or deny the application within 90 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.

2.2(4) Corporate documents. If approval is granted, articles of conversion with a plan of conversion attached shall be delivered to the secretary of state for filing and recording.

2.2(5) Commencement of business as state-chartered bank. The conversion shall be effective as of the date of filing of articles of conversion in the office of the secretary of state unless a later date is specified in the articles of conversion. The superintendent’s Authorization To Do Business as a state-chartered bank will be issued to be effective on the date of conversion.

2.2(6) Resulting state-chartered bank. The resulting state bank shall submit the oath of directors, list of shareholders, and certificate of elections and appointments to the superintendent on forms to be provided by the superintendent. The oath of directors is to be signed prior to the first meeting of the board of directors following the effective date of the conversion. The list of shareholders is to be completed as of the effective date of conversion.

This rule is intended to implement Iowa Code sections 524.1410 and 524.1413 to 524.1415.

187—2.3(17A,524) Merger or purchase and assumption.

2.3(1) Definition. For purposes of this rule, the term “merger” means a merger in which the resulting bank is a state-chartered bank.

2.3(2) Application. State banks or national and state banks desiring to merge or a state bank desiring to purchase the assets and assume the liabilities of another bank should first meet with the superintendent

to discuss the proposal. An application and supplementary forms may be obtained for submission to the superintendent.

2.3(3) *State-chartered bank as seller.* In the case of a purchase and assumption, if the bank being acquired is a state bank, appropriate forms and instructions for the voluntary liquidation of the bank may be obtained from the superintendent.

2.3(4) *Examination and investigation.* The superintendent may conduct an examination or investigation as deemed necessary.

2.3(5) *Decision.* The superintendent shall approve or deny the application within 90 days after the purchase and assumption application has been accepted for processing and within 180 days after the merger application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant. If the application is approved, the superintendent shall issue the appropriate authorizations.

2.3(6) *Cash out merger.* Before the superintendent approves any plan of merger that requires state bank shareholders to sell their shares of stock for cash, a determination shall be made by the superintendent that the cash price being paid for such shares is reasonable. The following factors may be considered by the superintendent in making the determination as to whether the cash out merger price for the bank stock is reasonable:

- a. The book value of the bank stock.
- b. Recent sales prices of the bank stock.
- c. Appraisals of the bank stock.
- d. Bank earnings and stock dividend payment history.
- e. Number of shares being purchased.
- f. Any other relevant factors as the superintendent may prescribe.

This rule is intended to implement Iowa Code sections 524.1401 to 524.1405.

187—2.4(17A,524) Establishment of a bank office.

2.4(1) *Application.* A state-chartered bank desiring to establish and operate a bank office shall submit to the superintendent an “Application to Establish a Bank Office,” which is available upon request.

2.4(2) *Investigation.* The superintendent may conduct an investigation as deemed necessary.

2.4(3) *Guidelines.* In determining whether to approve or deny a bank office application for other than a mobile office, a bank-owned courier service, or a convenience office, the superintendent will consider the following factors:

- a. Whether the convenience and needs of the public and existing customers of the applicant bank will be served by the proposed office.
- b. Whether the population density and other economic characteristics of the area primarily to be served by the proposed office afford reasonable promise of adequate support for the office.
- c. Whether the capital structure of the applicant bank is adequate in relation to the costs and anticipated increased business, if any, occasioned by the proposed office.
- d. The history of operation and management of the applicant bank.
- e. Such other factors as the superintendent may determine are relevant.

2.4(4) *Decision.* The superintendent shall approve or deny the application within 120 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant. If the application is approved, the superintendent shall issue a bank office certificate for the establishment and operation of the bank office to be effective on a specific date and at a designated location.

This rule is intended to implement Iowa Code sections 524.312, 524.1201, 524.1303, and 524.1403.

187—2.5(17A,524) Change of location of principal place of business or bank office.

2.5(1) *Application.* A state bank desiring to relocate its principal place of business or a bank office shall submit to the superintendent an “Application to Move Main Office or Bank Office,” which is available upon request.

2.5(2) Investigation. The superintendent may conduct an investigation as deemed necessary.

2.5(3) Decision. The superintendent shall approve or deny the application within 180 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant. If the application is approved, the superintendent shall issue the appropriate authorizations for the conduct of business at the new location.

This rule is intended to implement Iowa Code sections 524.312 and 524.1202.

187—2.6(17A,524) Change of control.

2.6(1) Application. An application by any person to purchase or otherwise acquire, directly or indirectly, outstanding shares of a state bank which would result in control or a change in control shall be submitted in the format requested by the superintendent and shall, at a minimum, contain the following information:

a. Copy of the agreement between the purchaser and seller for the sale of stock which results in the buyer acquiring a majority interest in the state bank.

b. Terms of any bank stock loan including the amount to be borrowed, rate of interest, number of years the loan is to run, collateral pledged to secure the indebtedness and any other pertinent information relating to such loan.

c. Financial statement of the purchaser and a résumé related to the purchaser's past experience and affiliations.

d. Pro forma statement of the purchaser's income and expenses during the term of the bank stock loan and a statement from the purchaser indicating which assets will be converted to cash or pledged as security to provide the initial equity.

e. Projections of statement of condition of the state bank to be purchased during the term of the bank stock loan.

f. Projections of income and expenses of the state bank to be purchased during the term of the bank stock loan.

g. Any plans which the purchaser may have which would represent major changes in the present staff or policies of the state bank involved.

h. When requested by the superintendent, an affidavit signed by the purchaser stating that the majority interest in the state bank is not being acquired for the benefit of another person or company.

2.6(2) Investigation. The superintendent may conduct an investigation as deemed necessary.

2.6(3) Decision. The superintendent shall approve or deny the application within 90 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant. If the application is approved, a certificate of approval, in letter form, will be delivered to the applicant. Upon receipt of such certificate, the applicant may proceed to conclude the purchase transaction, subject to such terms and conditions as the superintendent may impose.

This rule is intended to implement Iowa Code section 524.544.

187—2.7(17A,524) Renewal, amendment or restatement of articles of incorporation.

2.7(1) Application. Sample forms and instructions for making application to the superintendent to renew, amend or restate existing articles of incorporation of a state bank will be furnished upon request to the superintendent. State banks desiring to effect a reverse stock split or similar change in capital structure by such renewal, amendment, or restatement should contact the superintendent to discuss the proposal prior to its adoption.

2.7(2) Investigation. The superintendent may conduct an investigation as deemed necessary.

2.7(3) Reverse stock split. Before the superintendent approves any renewal, amendment, or restatement of existing articles of incorporation of a state bank that would effect a reverse stock split or similar change in the capital structure of the state bank and require any of its shareholders to surrender their shares of bank stock for cash, all of the following requirements shall have been satisfied:

a. The board of directors shall adopt a resolution granting all shareholders of the state bank the rights and remedies of a dissenting shareholder as provided for in Iowa Code chapter 490, division XIII;

b. The state bank shall have provided to all of its shareholders a full and adequate disclosure of all material aspects of the proposed transaction, which disclosure shall have accompanied the notice of the shareholder meeting held to consider the proposed renewal, amendment, or restatement of existing articles of incorporation; and

c. A determination shall have been made by the superintendent that the cash price being paid for the surrendered stock is reasonable. The following factors may be considered by the superintendent in making the determination as to whether the cash price for such stock is reasonable:

- (1) The book value of the bank stock;
- (2) Recent sales prices of the bank stock;
- (3) Appraisals of the bank stock;
- (4) Bank earnings and stock dividend payment history;
- (5) Total number of shares being surrendered; and
- (6) Any other relevant factors as the superintendent may prescribe.

2.7(4) Decision. The superintendent shall approve or deny the application within 90 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant. If the application is approved, the renewed, amended or restated articles of incorporation will be approved and forwarded to the secretary of state for filing and recording. Upon filing such articles, the secretary of state will return the original to the state bank and will also issue a certificate to the state bank indicating the date the filing was effective. Thereafter, the state bank will operate in accordance with its renewed, amended or restated articles of incorporation.

This rule is intended to implement Iowa Code sections 524.314, 524.1505, 524.1508, and 524.1509.

187—2.8(17A,524) Acquisition by regional bank holding company. Rescinded IAB 10/9/96, effective 11/13/96.

187—2.9(17A) Licensing of a debt management company.

2.9(1) Application. Persons desiring a license to operate a debt management company should contact the superintendent for the proper application and related forms.

2.9(2) Investigation. The superintendent may conduct such investigation as deemed necessary. Matters investigated include:

- a. The character, fitness, financial responsibility and experience of the applicant.
- b. A determination that applicant has not been convicted of a felony or a misdemeanor involving moral turpitude or had a record of defaulting in payment of money collected for others, including discharge of such debts through bankruptcy proceedings.
- c. A review of a current credit report to be submitted directly to the superintendent at the expense of the applicant.

2.9(3) Decision. The superintendent shall approve or deny the application within 60 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.

2.9(4) Exemptions. A debt management company may be exempted from licensure if it is a nonprofit religious, fraternal, or cooperative organization, including a credit union. The services provided by such a company must be gratuitous, meaning that the service is provided without charge or the imposition of a fee of any kind. The company may request donations, but that request must clearly indicate that the donations are voluntary and are not a requirement or condition for providing the debt management service. A donation shall be outside of the transaction, meaning that a donation shall not be deducted from a payment to a creditor or billed to a creditor.

This rule is intended to implement Iowa Code sections 533A.2(1) "f" and 533A.3.

187—2.10 Reserved.

187—2.11(17A) Securing permission from the superintendent to engage in the business of selling certain instruments for the payment of money. A formal application, as such, is not required by the

superintendent. A current financial statement is required together with either a \$50,000 surety bond or deposit agreement for a like amount of securities to be approved by the superintendent. Surety bond form or deposit agreement form may be secured from the superintendent.

This rule is intended to implement Iowa Code section 533B.1.

187—2.12(17A,524) Supplemental application procedures.

2.12(1) Scope. Subrules 2.12(2) to 2.12(14) contain procedures by which the superintendent may reach informed decisions with respect to those applications which the superintendent shall deem a public hearing necessary. These procedures provide a method by which all persons interested in the subject matter of such applications or other cases in which a public hearing is deemed necessary may present their views. Nothing contained herein shall be construed to prevent interested persons from presenting their views in a more informal manner when deemed appropriate by the superintendent or to prevent the superintendent from conducting such other investigation as may be deemed appropriate.

2.12(2) Notice of filing of application. Except in the case of proposed transactions where notice by publication is governed by statute, the applicant shall, within 15 days after the superintendent has notified the applicant in writing that an application has been accepted for processing, publish one time in a newspaper of general circulation in the community in which the applicant proposes to engage in business a notice containing the name of the applicant or applicants, the subject matter of the application, and the date upon which the application was accepted for processing. Immediately thereafter, the applicant shall furnish the superintendent with proof of such publication. The superintendent may solicit, in whatever manner deemed appropriate, comments from banks which may be affected by or have an interest in the pending application.

2.12(3) Public file. The public file in each case shall consist of the application with supporting data and supplementary information with the exception of material deemed by the superintendent to be confidential. In addition, the public file shall contain all data and information submitted by interested persons in favor of or in opposition to such application, excluding any material deemed by the superintendent to be confidential. The superintendent or the superintendent's designee shall not deem information confidential for purposes of the two immediately preceding sentences unless the person submitting the information requests that such information be deemed confidential. All factual information contained in any internal investigation report made by a bank examiner shall also be made a part of the public file, unless deemed confidential by the superintendent.

a. The public file shall be available for inspection in the office of the superintendent upon request from a protesting person and to such other persons as the superintendent shall deem to have a direct interest therein during such periods of time as the superintendent shall prescribe.

b. No documentation in the public file may be removed from the superintendent's office by persons other than members of the superintendent's staff. Photocopies may be made available, on request, to protesting and other interested parties. The charge for such copies shall be made in accordance with a written schedule maintained by the superintendent.

2.12(4) Written comments and requests for an opportunity to be heard. Within ten days after the notice of publication described in subrule 2.12(2), any interested person may submit to the superintendent written comments concerning the application or a written request for an opportunity to be heard before the superintendent or the superintendent's designee. The request shall state the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation to the superintendent. In the absence of a request, the superintendent, when it is believed to be in the public interest, may order a hearing to be held.

2.12(5) Place of hearing. Hearings granted by the superintendent shall be heard in the office of the superintendent. The superintendent, in any matter, reserves the right to conduct hearings at any location deemed to be appropriate.

2.12(6) Date of hearing. An opportunity to be heard shall be given as soon as practicable after ordered.

2.12(7) Notice of hearing. The notice given by the superintendent concerning the hearing shall set forth the subject matter of the application, the legal authority for such hearing, and the date, time, and

place of the hearing. The notice shall be sent to the person or persons requesting the hearing, the applicant and to other interested persons who have sent written comments to the superintendent.

2.12(8) Attendance at hearing. Each person who wishes to be heard shall notify the superintendent within five days after the date of the notice described in subrule 2.12(7) of their intention to attend and shall submit the number and names of witnesses to be presented.

2.12(9) Presiding officer. The presiding officer at the hearing shall be the superintendent or such other person as may be designated by the superintendent.

2.12(10) Hearing rules. The applicant and each participant may make opening statements of a length within the discretion of the presiding officer. Such opening statements should concisely state what the participant intends to show. The applicant shall have the opportunity to present a statement first. Following the opening statements, the applicant shall present data and materials, oral or documentary. Following the applicant's presentation, the persons protesting the application shall present their data and materials, oral or documentary. The protesters may agree, with the approval of the presiding officer, to have one of their number make their presentation. Following the evidence of the applicant and the protester, the presiding officer may recognize other interested persons who may present their views with respect to the application under consideration. After all the above presentations have been concluded, the participants before the panel may make short and concise summary statements reviewing their position. The applicant shall present a concluding summary statement.

a. The obtaining and use of witnesses is the responsibility of the parties. All witnesses will be present on their own volition, but any person appearing as a witness may be subject to questioning by any participant. The refusal of a witness to answer questions may be considered by the superintendent in determining the weight to be accorded the testimony of that witness. Witnesses shall be sworn.

b. The presiding officer shall have the authority to exclude data or materials deemed to be improper or irrelevant. Formal rules of evidence shall not be applicable to these hearings. Documentary material must be of a size consistent with ease of handling, transportation and filing, and copies must be provided for each participant. While large exhibits may be used during the hearing, copies of such exhibits must be provided by the party in reduced size for submission as evidence. Two copies of all such documentary evidence shall be furnished to the superintendent, and one copy shall be furnished to each other person represented at the proceeding.

c. The superintendent or the superintendent's designee shall determine all procedural questions not governed by these rules. The superintendent or the superintendent's designee shall have the authority to limit the number of witnesses to be used by any party, and to impose such time limitations as shall be deemed reasonable.

d. A transcript of each proceeding shall be arranged for by the superintendent's office, with all expenses of such service, including the furnishing of one copy of the transcript to the superintendent, being borne by the person or persons requesting the opportunity to be heard, except for hearings ordered by the superintendent's office on its own volition, in which case, the applicant will bear the expense of furnishing transcripts of the record.

e. The public file described in subrule 2.12(3) shall automatically be deemed a part of the record of these proceedings as well as all evidence submitted and the transcript described in paragraph "d" of this subrule.

2.12(11) Closing of the public file. If requested by any participant, the public file shall remain open for five days following receipt of the transcript by the superintendent during which time the applicant and protesters may submit additional written statements. A copy of any statement so submitted during this period of time shall also be sent simultaneously to the other persons represented at the hearing.

2.12(12) Reserved.

2.12(13) Decision. The applicant and all persons so requesting in writing shall be notified of the final disposition of the application by the superintendent.

2.12(14) Computation of time. In computing any period of days provided for in this rule, the day of the event from which the period begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the

period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. As used in this subrule, "legal holiday" means a day on which the office of the superintendent remains closed.

This rule is intended to implement Iowa Code sections 17A.3, 524.305, 524.312, 524.1201, 524.1303, and 524.1403.

187—2.13(524) Integral facility determination. Rescinded IAB 3/2/05, effective 4/6/05.

187—2.14(524) Investment in a bank service corporation or other subsidiary.

2.14(1) Application. An application by a state bank to invest in a bank service corporation or other subsidiary for purposes of engaging in an authorized activity shall be in letter form and shall, at a minimum, contain the following information.

a. A detailed description of the proposed authorized activity of the bank service corporation or other subsidiary.

b. A detailed description of the location(s) where the bank service corporation or other subsidiary proposes to conduct its authorized activity.

c. Evidence that the bank service corporation or other subsidiary:

(1) Will be adequately capitalized in relation to the risks associated with the proposed authorized activity;

(2) Will have sufficient managerial resources to perform the proposed authorized activity;

(3) Will obtain all licenses and approvals from other regulatory agencies necessary to perform the proposed authorized activity;

(4) Will maintain a separate and adequate accounting system and other corporate records; and

(5) Will conduct its authorized activity pursuant to independent policies and procedures designed to inform customers and prospective customers of the bank service corporation or other subsidiary that it is a separate organization from the state bank.

d. A legal opinion that the proposed authorized activity of the bank service corporation or other subsidiary is permissible under state and federal laws and regulations, if requested by the superintendent.

e. The amount which the state bank proposes to initially invest in the bank service corporation or other subsidiary.

f. A copy of the resolution adopted by the state bank's board of directors authorizing the investment in the bank service corporation or other subsidiary.

2.14(2) Investment limitation. Unless state or federal statutes impose specific limitations relating to investments in the shares of a corporation by a state bank, a state bank's investment in a bank service corporation or other subsidiary shall not exceed 15 percent of its aggregate capital as defined in Iowa Code section 524.103, nor shall more than 5 percent of its total assets be invested in all bank service corporations or subsidiaries. At the superintendent's discretion, a higher investment limitation may be established for an investment by a state bank in an operations subsidiary, as defined in section 524.103. For purposes of this rule, the terms "invest" or "investment" shall include any advance of funds to a bank service corporation or other subsidiary, whether by the purchase of stock, the making of a loan or otherwise.

2.14(3) Investigation. The superintendent may conduct an investigation as deemed necessary.

2.14(4) Decision. The superintendent shall approve or deny the application within 60 days after the application is accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.

2.14(5) Revocation. The superintendent may revoke a previously granted approval to invest in a bank service corporation or another subsidiary and order divestiture of the shares, pursuant to the contested case provisions of Iowa Code chapter 17A, if any of the following occur.

a. The financial condition of the state bank has significantly deteriorated.

b. The superintendent determines the authorized activity is being conducted unlawfully or in an unsafe or unsound manner.

c. Other relevant factors occur which the superintendent may determine are grounds for a revocation of the authorized activity.

This rule is intended to implement Iowa Code chapter 524.

187—2.15(524) Securities activities.

2.15(1) Scope. Iowa law authorizes state-chartered banks to engage in any aspect of the securities business. The evolution of this authority by state banks has been confined primarily to recommending and selling interests in mutual funds, annuities, and other nondeposit investment products on bank premises. The sale of these nondeposit investment products on bank premises may be conducted directly by a state bank, through a subsidiary or an affiliate of a state bank, or through an arrangement with a third-party vendor. The sale of these retail products on the premises of a state bank, where traditionally only federally insured deposits are taken, has led to some confusion among retail customers about what is being purchased and whether or not it is insured. The purpose of this rule is to place greater emphasis on board of director involvement in any proposed securities activities on the premises of the state bank and, if retail product sales are part of that proposed activity, enhance customer protections through proper disclosures.

2.15(2) Board responsibilities. The board of directors of a state bank shall evaluate the risks associated with the securities activities proposed and the method by which the securities activities will be conducted on its premises. The board of directors shall be responsible for ensuring that any securities activities conducted on its premises will comply with all applicable state and federal laws and regulations as well as any policy statements issued which relate to securities activities. Specifically, if a state bank develops and implements a particular program where nondeposit investment products are recommended and sold to retail customers, that program shall ensure that customers are clearly and fully informed of the nature of and risks associated with those types of products. If an affiliate, a subsidiary, or a third-party vendor is used to recommend and sell nondeposit investment products, all signs, advertisements and other promotional material should clearly identify the affiliate, subsidiary, or third-party vendor as the seller and should not suggest by use of a trade name that the state bank is the seller. The board of directors shall be responsible for complying with the joint federal Interagency Statement on Retail Sales of Nondeposit Investment Products or any substitution therefor or revision thereof.

2.15(3) Application. An application by a state bank to engage in any securities activities shall be in letter form and shall, at a minimum, contain the following information.

a. A commitment that the proposed securities activities will be conducted either directly by the state bank, through a subsidiary or an affiliate of the state bank, or through an arrangement with a third-party vendor. In specific cases, it may be necessary for the applicant to provide a legal opinion stating that the proposed activities are authorized.

b. A commitment that the state bank's board of directors has evaluated the risks associated with the proposed securities activities and has adopted a written statement that addresses these risks and the procedures to be used to ensure compliance with all applicable laws, regulations and policy statements. The scope and level of detail of the written statement should reflect the state bank's level of involvement in the securities activities. If securities activities are to be conducted on bank premises by an affiliate, a subsidiary, or a third-party vendor, the written statement should also address the scope of those activities, as well as the procedures for monitoring compliance by the affiliate, subsidiary, or third-party vendor with all applicable laws, regulations and policy statements.

c. A commitment that, if securities activities are to be conducted through an affiliate, a subsidiary, or a third-party vendor, the board of directors has performed an appropriate review of the affiliate, subsidiary, or third-party vendor. A copy of the written agreement between the parties shall accompany the application.

d. A commitment that the location(s) on bank premises where the proposed securities activities will be conducted will be physically distinct and separate from the area where deposits are taken. Proper signs or other means must be used to distinguish the area where the sale of retail nondeposit investments products will be conducted from the area where insured deposits are normally taken. If

securities activities are to be conducted on bank premises by an affiliate, a subsidiary, or a third-party vendor, all signs or other means used to identify this area shall provide to the retail customer a clear and accurate representation of the entity conducting the securities activities.

e. A commitment that clear and concise oral and written disclosures will be provided to retail customers. A copy of the proposed written disclosures shall accompany the application.

f. A commitment that the state bank, its subsidiary or affiliate, or a third-party vendor will complete background checks on all personnel authorized to recommend and sell nondeposit investment products and that all such personnel will be properly trained and appropriately licensed prior to commencing any securities activities and thereafter while conducting securities activities on the premises of the state bank.

Notwithstanding the application requirements set forth herein, if the securities activity being conducted is limited to discount brokerage or referral services, then the state bank only needs to notify the superintendent that it intends to engage in the limited securities activity.

2.15(4) Investigation. The superintendent may conduct an investigation as deemed necessary.

2.15(5) Decision. The superintendent shall approve or deny the application within 60 days after the application is accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.

2.15(6) Revocation. The superintendent may revoke a previously granted approval to conduct securities activities on the premises of the state bank, pursuant to the contested case provisions of Iowa Code chapter 17A, if any of the following occur.

a. The financial condition of the state bank has significantly deteriorated.

b. The superintendent determines the securities activities are being conducted unlawfully or in a unsafe or unsound manner.

c. Other relevant factors occur which the superintendent may determine are grounds for a revocation of the securities activities.

This rule is intended to implement Iowa Code section 524.825.

187—2.16(524) Contracts.

2.16(1) Scope. Futures contracts shall be defined as standardized contracts traded on and guaranteed by organized exchanges to purchase or sell a specified security or a bank certificate of deposit on a future date at a specified price. Forward contracts shall be defined as over-the-counter contracts for forward placement or delayed delivery of securities in which one party agrees to purchase and another to sell a specified security at a specified price for future delivery. Contracts specifying settlement in excess of 30 days following the trade date shall be deemed to be forward contracts. Standby contracts shall be defined as optional forward contracts. For an example, the buyer of a standby contract (put option) pays a fee for the right or option to sell securities to the other party at a stated price at a future time. The seller of a standby contract receives the fee and must stand ready to buy the securities at the other party's option.

Futures contracts, forward contracts and standby contracts may be used by the state banks to reduce their existing interest rate risk exposure resulting from their overall investment activities and as a general hedge against interest rate exposure associated with undesired mismatches in interest-sensitive assets and liabilities. At no time shall futures, forward and standby contracts be used to speculate on future interest rate movements.

State banks may, without the prior approval of the superintendent, purchase shares in permissible investment companies, up to a maximum of 15 percent of aggregate capital, which use futures contracts, forward contracts and standby contracts, as well as repurchase agreements and securities lending arrangements as a part of their portfolio management strategies. However, it remains the responsibility of the board of directors making these purchases to ensure that a particular investment company is a proper holding for the bank's investment portfolio.

2.16(2) Application. An application by a state bank to engage in futures contracts, forward contracts and standby contracts shall be in letter form and shall, at a minimum, contain the following information.

a. A description of the type(s) of contracts the state bank proposes to purchase and sell.

b. A copy of the board of directors' resolution authorizing the specific type(s) of contracts proposed to be purchased and sold.

c. A copy of the policy adopted by the state bank's board of directors which shall include specific policy objectives that outline permissible contract strategies and their relationship to overall investment activities and asset-liability management; the names, responsibilities, and authority limits of the personnel authorized to engage in futures, forward and standby contracts; limitations applicable to futures, forward and standby contract positions; the personnel to be used to review at least monthly the bank's contract positions to ascertain compliance with such limits; the exchanges and firms through which authorized personnel may conduct futures, forward and standby contracts; and the dollar limit on transactions with each firm.

d. A representation that the state bank has sufficient managerial resources to engage in futures, forward and standby contracts.

e. A copy of the board of directors' resolution stating that the board members have read and understood the "Federal Deposit Insurance Corporation Statement of Policy Concerning Interest Rate Futures Contracts, Forward Contracts, and Standby Contracts" and will comply with the policy statement.

2.16(3) Investigation. The superintendent may conduct an investigation as deemed necessary.

2.16(4) Decision. The superintendent shall approve or deny the application within 60 days after the application is accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.

2.16(5) Revocation. The superintendent may revoke the approval of the state bank to engage in futures, forward and standby contracts, pursuant to the contested case provisions of Iowa Code chapter 17A, if any of the following occur.

a. The financial condition of the state bank has significantly deteriorated.

b. The superintendent determines the futures, forward or standby contract activities are being conducted unlawfully or in an unsafe or unsound manner.

c. Other relevant factors occur which the superintendent may determine are grounds for a revocation of the activities.

This rule is intended to implement Iowa Code section 524.901.

187—2.17(17A,524) Mobile offices, courier services, and convenience offices.

2.17(1) Definitions.

"*Bank-owned courier service*" means a service that has the sole purpose of serving specific customers with pick-up or delivery services for banking activities such as deposits, withdrawals, and loan transactions.

"*Convenience office*" means a bank office at a fixed site that is open only at certain times or dates, such as at a nursing home, college orientation, or fair. The sole purpose of a convenience office is to serve the convenience of the bank's customers at specified special events or who may have limited mobility.

"*Mobile office*" means a bank office that does not have a permanent site and functions out of a mobile banking unit that stops at predetermined locations to conduct banking activities.

2.17(2) Policy. The board of directors of a state bank that operates a mobile office, bank-owned courier service, or convenience office shall adopt a policy governing operation of the mobile office, bank-owned courier service or convenience office. The policy shall be appropriate for the nature and scope of the state bank's use of the mobile office, bank-owned courier service, or convenience office and shall, at a minimum, include the following:

a. The policy shall address the steps the bank will take to protect the security of the office, its customers, employees, its customers' financial information and deposits. The security plan may include implementation of customer and employee security systems such as security cameras, external lighting, and internal or attached protection zones.

b. The policy shall require the bank to maintain deposit insurance coverage for the mobile office, bank-owned courier service, or convenience office.

c. The policy shall require the bank to main adequate insurance coverage covering the bank in case of robbery, accident, other loss of items, delay in the delivery of items to other destinations, and other liabilities associated with operating the office.

d. The policy shall address types of activities the bank will conduct from the mobile office, bank-owned courier service, or convenience office.

e. The policy shall require a bank office manager or officer of the bank to be physically present at the mobile office, bank-owned courier service, or convenience office during a majority of its business hours as required by Iowa Code section 524.1201.

f. The policy shall require the bank to maintain a daily log of operations including descriptions of the time and locations of each stop made by the mobile office or bank-owned courier service, the locations and the hours a convenience office was operated and the names of the bank personnel working at the mobile office, bank-owned courier service, or convenience office during those times.

g. The policy shall address what, if any, signage the bank will place on the mobile office, bank-owned courier service, or convenience office.

h. For mobile offices and bank-owned courier services, the policy shall address how the bank will determine the locations at which it will provide services and the times it will be at those locations. The policy shall address how the bank will ensure that the mobile office, bank-owned courier service, or convenience office is located in a safe location and that it has the necessary permission of the owner of the property where the mobile office, bank-owned courier service, or convenience office is located to operate at that location.

2.17(3) Publication requirements. A bank that submits an application to operate a mobile office or bank-owned courier service shall describe the general geographic area to be served by the mobile office or courier service in the notice of application it publishes pursuant to 187 IAC 2.12(2). Publication in several newspapers may be required to establish mobile offices or bank-owned courier services that will serve several communities or geographic areas. The publication need not identify specific sites to be served by the mobile office or courier service, but should state the general geographic area to be served, such as the city, county, or other identifiable geographic area. Changes in the general geographic area to be served require additional publication of notice in the new geographic areas and are subject to approval by the superintendent.

2.17(4) Necessary federal approval. If the bank must receive approval from any federal agency, such as the Federal Deposit Insurance Corporation (FDIC), prior to operating a mobile office, bank-owned courier service, or convenience office, such federal approval will be a condition of approval by the superintendent of banking of the application to operate a mobile office, bank-owned courier service, or convenience office.

2.17(5) Interstate banking. A mobile office or bank-owned courier service shall not operate in another state unless it has obtained any required permissions from the other state and the appropriate federal regulator.

This rule is intended to implement Iowa Code section 524.1201.

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[Filed 3/10/06, Notice 2/1/06—published 3/29/06, effective 5/3/06]

CHAPTER 3
EXAMINATIONS

187—3.1(524) Satisfaction of examination requirements. The requirement for an examination of state-chartered banks at least once during each two-year period set forth in Iowa Code section 524.217(1)“a” may be satisfied by an examination conducted by the banking division, the Federal Deposit Insurance Corporation, or the Federal Reserve System when such examinations address the statutory requirements of Iowa Code section 524.217(1)“a.”

This rule is intended to implement Iowa Code section 524.217.

[Filed 11/22/00, Notice 10/18/00—published 12/13/00, effective 1/17/01]

CHAPTER 4
STATE BANKING COUNCIL
[Prior to 4/22/87, see Banking Department[140] Ch 4]

187—4.1(524) Composition of council. The state banking council is a statutory council composed of the superintendent, who is an ex officio member and chairperson, and six other members. All members of the council are appointed by the governor.

187—4.2(524) Term of office. The terms of office for members of the state banking council, other than the superintendent, shall be four-year, staggered terms. Beginning May 1, 2005, members shall be appointed by the governor as follows: one member shall be appointed for a one-year term, one member shall be appointed for a two-year term, two members shall be appointed for three-year terms, and two members shall be appointed for four-year terms.

187—4.3(524) Function of the council. The state banking council shall act in an advisory capacity concerning matters submitted to it by the superintendent pertaining to the administration of the Iowa banking Act.

187—4.4(524) Meetings and method of contacting members of the council. The state banking council meets at least once each calendar quarter on such date and at such place as the council may decide. The council generally meets in the office of the superintendent, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827, which is also the address to correspond with any of the council members. The council shall meet at such other times as may be deemed necessary by the superintendent or a majority of the council members. Four members of the council shall constitute a quorum for each meeting.

187—4.5(524) Board policy relating to reconsideration of certain applications which have been previously denied by the superintendent. Rescinded IAB 3/2/05, effective 4/6/05.

These rules are intended to implement Iowa Code section 524.205.

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CHAPTER 5
 PETITIONS FOR RULE MAKING
 [Prior to 4/22/87, see Banking Department[140] Ch 3]

187—5.1(17A) Petition for rule making. Any person may file a petition for rule making with the division at the Division of Banking, Attn: Rules Coordinator, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. A petition is deemed filed when it is received by that office. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF COMMERCE	
DIVISION OF BANKING	
Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	} PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the division's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 5.4(17A).

5.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

5.1(2) The division may deny a petition because it does not substantially conform to the required form.

187—5.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The division may request a brief from the petitioner or from any other person concerning the substance of the petition.

187—5.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Division of Banking, Attn: Rules Coordinator, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827.

187—5.4(17A) Division consideration.

5.4(1) Within 14 days after the filing of a petition, the division must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the division must schedule a brief and informal meeting between the petitioner and the division, a member of the division, or a member of the staff of the division, to discuss the petition. The division may request the petitioner to submit additional information or argument concerning the petition. The division may also solicit comments from any person on the

substance of the petition. Also, comments on the substance of the petition may be submitted to the division by any person.

5.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the division must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the division mails or delivers the required notification to petitioner.

5.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the division's rejection of the petition.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed July 1, 1975]


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[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 6
DECLARATORY ORDERS
[Prior to 4/22/87, see Banking Department[140] Ch 3]

187—6.1(17A) Petition for declaratory order. Any person may file a petition with the division of banking for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the division of banking, at the Iowa Division of Banking, Attn: Rules Coordinator, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. A petition is deemed filed when it is received by that office. The division shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF COMMERCE DIVISION OF BANKING		
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).		PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 6.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

187—6.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the division shall give notice of the petition to all persons not served by the petitioner pursuant to 6.6(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons.

187—6.3(17A) Intervention.

6.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within six days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

6.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the division of banking.

6.3(3) A petition for intervention shall be filed at Division of Banking, Attn: Rules Coordinator, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. Such a petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition

for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF COMMERCE
DIVISION OF BANKING

Petition by (Name of Original Petitioner)
for a Declaratory Order on (Cite provisions
of law cited in original petition).



PETITION FOR
INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

187—6.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The division of banking may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

187—6.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to Division of Banking, Attn: Rules Coordinator, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827.

187—6.6(17A) Service and filing of petitions and other papers.

6.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

6.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with Division of Banking, Attn: Rules Coordinator, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

6.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule on contested cases 187—11.12(17A).

187—6.7(17A) Consideration. Upon request by petitioner, the division of banking must schedule a brief and informal meeting between the original petitioner, all intervenors, and the division of banking, a member of the division of banking, or a member of the staff of the division of banking, to discuss the

questions raised. The division may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the division of banking by any person.

187—6.8(17A) Action on petition.

6.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the superintendent or the superintendent's designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

6.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule on contested cases 187—11.2(17A).

187—6.9(17A) Refusal to issue order.

6.9(1) The division shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the division to issue an order.
3. The division of banking does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other division or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a division decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the division of banking to determine whether a statute is unconstitutional on its face.

6.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final division action on the petition.

6.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

187—6.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

187—6.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

187—6.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the division of banking, the petitioner, and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other

persons, a declaratory order serves only as precedent and is not binding on the division. The issuance of a declaratory order constitutes final division action on the petition.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 7
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The Iowa division of banking hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices, which are printed in the first Volume of the Iowa Administrative Code.

187—7.1(17A,22) Definitions. As used in this chapter:

“Agency” means the Iowa division of banking.

“Superintendent” means the superintendent of banking.

187—7.3(17A,22) Requests for access to records.

7.3(1) Location of records. A request for access to a record should be directed to the office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Iowa Division of Banking, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

7.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays.

7.3(7) Fees.

c. Supervisory fee. In lieu of “(specify time period)” insert “one-half hour”. Delete the parenthetical sentence at the end of the paragraph.

187—7.9(17A,22) Disclosures without the consent of the subject.

7.9(1) Open records are routinely disclosed without the consent of the subject.

7.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 7.10(17A,22) or in any notice given for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

187—7.10(17A,22) Routine use.

7.10(1) “Routine use” means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

7.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer

or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

187—7.11(17A,22) Consensual disclosure of confidential records.

7.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 7.7(17A,22).

7.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

187—7.12(17A,22) Release to subject.

7.12(1) The subject of a confidential record may file a written request to review confidential records about that person, as provided in rule 7.6(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code subsection 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code subsection 22.7(5))

d. As otherwise authorized by law.

7.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

187—7.13(17A,22) Availability of records.

7.13(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

7.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Tax records made available to the agency (Iowa Code sections 422.20 and 422.72).

b. Records which are exempt from disclosure under Iowa Code section 22.7.

c. Minutes of closed meetings of a government body (Iowa Code subsection 21.5(4)).

d. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d."

e. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the agency
- (Iowa Code sections 17A.2 and 17A.3).

f. All papers, documents, reports (including shareholder lists furnished to the superintendent pursuant to Iowa Code section 524.541), reports of examinations and other writings relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state (Iowa Code section 524.215).

g. Reports of examinations conducted by the superintendent and reports of examination received by or furnished to the superintendent pursuant to Iowa Code section 524.217.

h. All information obtained by examiners and described in Iowa Code section 524.212.

i. All applications, reports, materials, documents, information and other writings obtained from the Federal Deposit Insurance Corporation, Federal Reserve Bank, Comptroller of the Currency or any agency of the United States government which would cause the denial of services or information to the agency. (Iowa Code section 22.9; the Privacy Act of 1974 (5 U.S.C. 552a) and Part 310 of the Federal Deposit Insurance Corporation Rules and Regulations (12 CFR 310).)

j. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

k. Any other information made confidential by law.

187—7.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information that is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 7.1(17A,22). The division of banking does not maintain groups of records to be retrieved by individual identifiers. Division records concerning regulated entities may contain financial and other personal information about individuals who are officers, shareholders, employees, or customers of regulated entities or do business with them. The division of banking does not currently have a data processing system which matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the agency are:

7.14(1) Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include an individual's employment history, such as hiring and recruitment correspondence, salary, payroll and benefit information, record of personnel actions, military status, affirmative action statistics, education and training completed, professional certification achievements, professional organizational involvement, performance evaluation reports, and other information concerning the employer-employee relationship. This information is collected pursuant to Iowa Code section 524.208, and some of the information is confidential under Iowa Code sections 22.7(11) and 22.7(18). The information is maintained on paper; and certain parts are also contained on the agency's data processing system, as well as the state's mainframe automated data processing system.

7.14(2) Payroll records. Records showing individual earnings, hours worked, leave usage, class, position, salary range, deductions, net pay with agency summaries, and other related information. These records contain personally identifiable information collected under the authority of Iowa Code section 524.208, and some of the information may be confidential under Iowa Code section 22.7(11). The information is maintained on paper, with certain records maintained on the state's payroll automated data processing system.

187—7.15(17A,22) Other groups of records routinely available for public inspection. This rule describes groups of records maintained by the agency other than record systems as defined in rule 7.1(17A,22). These records are routinely available to the public. However, the agency's files of these

records may contain confidential information. In addition, the records listed in subrules 7.15(1) to 7.15(4) may contain information about individuals.

7.15(1) Rule making. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored on an automated data processing system.

7.15(2) Banking council records. Agendas, minutes and materials presented to the Iowa division of banking council are available from the office of the Iowa division of banking, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5, or which are otherwise confidential by law. Banking council records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier and is not stored on an automated data processing system.

7.15(3) Publications. News releases, annual reports, project reports, agency newsletters, etc., are available from the office of the Iowa division of banking.

Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not retrieved by individual identifier and is not stored on an automated data processing system.

7.15(4) Orders issued by the superintendent. All findings of fact, conclusions of law, and orders issued by the superintendent subsequent to a public hearing under the provisions of chapter 17A, except as otherwise provided by law. (See Iowa Code section 17A.3.) These records may contain information about individuals.

7.15(5) Published materials. The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

7.15(6) Policy manuals. The agency's employees' manual, containing information concerning policies and procedures for programs administered by the agency, is available in the office of the agency. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for subscription information should be addressed to Iowa Division of Banking, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. Policy manuals do not contain information about individuals.

7.15(7) Reports to superintendent. Reports obtained by the superintendent pursuant to the provisions of Iowa Code section 524.220. These reports are considered open records.

7.15(8) Officers and directors. Lists of officers and directors filed with the superintendent pursuant to the provisions of Iowa Code section 524.541. These reports are considered open records, with the exception that lists of shareholders are confidential and not open to the public.

7.15(9) Other. All other records that are not exempted from disclosure by law.

187—7.16(17A,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the rules of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code section 22.11.

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CHAPTER 8
GENERAL BANKING POWERS
[Prior to 4/22/87, see Banking Department[140] Ch 8]

187—8.1 to 8.6 Rescinded, effective 7/1/79.

187—8.7 Rescinded, effective 7/10/81.

187—8.8(12B) Approved rating services. Rating services approved by the superintendent as provided by Iowa Code section 12B.10 for use by the treasurer of state and the treasurer of each political subdivision in determining qualifying commercial paper investments are Moody's Investors Services, New York, New York 10007, and Standard & Poor's, Chicago, Illinois 60606.

This rule is intended to implement Iowa Code section 12B.10.

187—8.9(524) General definition of bank. It is the superintendent's intent that the term "bank" used in Iowa Code section 524.103(8) means a corporation organized under Iowa Code chapter 524 or a corporation organized under 12 U.S.C. §21. The general definition of "bank" as set forth in Iowa Code section 524.103(8) does not include a state savings association, federal savings association, state credit union, or federal credit union.

This rule is intended to implement Iowa Code section 524.103(8).

187—8.10(524) Courier services. A state bank may provide courier services to its bank customers by using a third-party provider operated under the provider's name or using the state bank's employees operating in the bank's own name. Customer deposits picked up by a courier service become deposits of the bank at the time the deposits are picked up by the courier service.

8.10(1) Third-party courier services. A state bank that uses a third party to provide courier services to its customers may pay the third party directly for those services and may charge its customers for third-party courier services as the state bank deems appropriate. Superintendent approval is not required for a state bank to provide courier services to its customers by using a third party.

8.10(2) Bank-owned courier services. A state bank that establishes and operates courier services in its own name using its own employees must establish the vehicle it uses to provide courier services as a bank office in accordance with the provisions of 187 IAC 2.17(17A,524).

This rule is intended to implement Iowa Code section 524.213.

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CHAPTER 9
INVESTMENT AND LENDING POWERS
[Prior to 4/22/87, see Banking Department[140] Ch 9]

187—9.1(524) Bonds or securities investment characteristics. Rescinded IAB 10/9/96, effective 11/13/96.

187—9.2(17A,524) Real estate lending. This rule is promulgated to provide more uniformity with the final guidelines adopted by the Federal Deposit Insurance Corporation, the Federal Reserve System, and the Department of the Treasury. This rule shall apply to real estate loans either originated by the state bank or acquired by purchase, assignment, or otherwise.

9.2(1) Written policy. The board of directors of the state bank shall formulate and maintain a written real estate lending policy that is appropriate for its size and the nature and scope of its operation. Each policy must be comprehensive and consistent with safe and sound lending practices. The standards and limits established in the policy must be reviewed and approved at least annually by the board. The real estate lending policy should reflect the level of risk that is acceptable to the board and should provide clear and measurable underwriting standards that enable the state bank's lending staff to evaluate all relevant credit factors. The real estate lending policy, at a minimum, should:

- a. Identify the geographic area where the state bank will consider lending.
- b. Establish loan portfolio diversification standards.
- c. Set appropriate terms and conditions by type of real estate loan.
- d. Establish loan origination and approval procedures.
- e. Establish prudent underwriting standards which include clear and measurable loan-to-value limitations.
- f. Establish review and approval procedures for exempted loans.
- g. Establish loan administration procedures.
- h. Establish real estate appraisal and evaluation programs.
- i. Monitor the portfolio and provide timely reports to the board of directors.
- j. Establish procedures for conformance with secondary market investor requirements where applicable.

When formulating the real estate policy, the board should consider both internal and external factors, such as size and condition of the state bank, expertise of its lending staff, avoidance of undue concentrations of risk, compliance with all real estate-related laws and rules, and general market conditions.

9.2(2) Loan-to-value limits. The board of directors of the state bank shall establish its own internal loan-to-value (LTV) limits for real estate loans.

9.2(3) In transit loans. Real estate loans made for sale into the secondary market shall be considered in transit for a period of 90 days after being sold and shall not be considered risk assets for reserving purposes during this time period.

9.2(4) Reserved.

9.2(5) Evidence of title. The state bank shall obtain, when lending for the purpose of acquisition or for the purpose of refinance of acquisition when a new mortgage, deed of trust, or similar instrument is filed, either:

- a. A written legal opinion by an attorney admitted to practice in the state in which the real estate is located showing marketable title in the mortgagor and describing any existing liens and stating that the state bank's mortgage, deed of trust, or similar instrument is a lien on the real estate, or
- b. Title insurance written by an insurance company licensed to do business in the state in which the real property is located, describing any existing liens and insuring the title to the real property and the validity and enforceability of the mortgage, deed of trust, or similar instrument as a lien on the real property.

9.2(6) Insurance. Rescinded IAB 3/2/05, effective 4/6/05.

9.2(7) Disclosures. Rescinded IAB 3/2/05, effective 4/6/05.

9.2(8) Exceptions. There are certain real estate transactions in which other factors significantly outweigh the need to apply the provisions of this rule. Therefore, the following transactions are exempt from this rule:

a. Loans guaranteed, insured, or for which a written commitment for such has been issued by the U.S. government or its agencies.

b. Loans guaranteed, insured, or for which a written commitment for such has been issued by the state of Iowa, a political subdivision, or agency thereof, provided that the state bank has determined that the guarantor or insurer has the financial capacity and willingness to perform under the terms of the agreement.

c. Acceptance of real estate as collateral to secure debts previously contracted in good faith.

d. Securities collateralized by real estate, but in which a state bank may invest pursuant to Iowa Code section 524.901.

e. With the prior approval of the superintendent, any other loans approved, issued, insured or guaranteed by any other federal or state-sponsored program.

9.2(9) Exempted transactions. In addition to the exemptions set forth in subrule 9.2(8), it may be appropriate, in light of all relevant credit considerations, including community reinvestment factors, for state banks, in certain instances, to originate or purchase real estate loans that do not meet the requirements of this rule. State banks shall be allowed to make such loans; however, the aggregate amount of all real estate loans that fall into this category shall not exceed aggregate capital as reflected on the state bank's most recent consolidated report of condition, unless prior approval to exceed this limitation has been obtained from the superintendent. These exempted loans must be identified by the board of directors by name and outstanding balance and must be reviewed by the board no less frequently than annually. Examiners, during the course of their examinations, will determine whether these exempted loans are adequately documented and appropriate in light of overall safety and soundness considerations. No real estate loans to directors, officers, or principal shareholders or their related interests shall be allowed in the exempted category of this subrule.

This rule is intended to implement Iowa Code section 524.905.

187—9.3(17A,524) Leasing.

9.3(1) Definitions. For purposes of this rule, the term:

“Aggregate rentals payable” shall include the total of minimum lease payments (net of unearned income) that the lessee is obligated to make or can be required to make plus any guarantee of the residual value or of rental payments beyond the lease term by an eligible guarantor, provided the guarantor is financially capable of discharging the obligation.

“Bank officer” means an administrative official of the bank elected by the state bank's board of directors to carry out the bank's operating rules, including the bank's loan and lease policies.

“Full payout lease” shall be one in which the lessor's service is limited to the financing of the asset, with the lessee paying all other costs, including maintenance and taxes, and has the option of purchasing the asset at the end of the lease for a nominal price. The lease shall be fully amortized over the term of the lease or lifetime of the asset, whichever is less.

“Inception of the lease” means the date of the lease agreement or commitment, if earlier, or the date the lease is purchased by the state bank. For purposes of this definition, a commitment shall be in writing, signed by the parties in interest to the transaction, and shall specifically set forth the principal terms of the transaction. However, if the property covered by the lease is a fixture yet to be constructed or has not been acquired by the lessor at the date of the lease agreement or commitment, the inception of the lease shall be the date that construction of the property is completed or the property is acquired by the lessor. The inception date of a lease assumed in a business combination accounted for as a purchase is the date the combination is recorded for accounting purposes.

“Independent third-party appraiser” means an individual not involved with the lease transaction, except as the appraiser, with no direct or indirect interest, financial or otherwise, in the property appraised or the parties involved with the transaction. The bank shall take appropriate steps to ensure the appraiser exercises independent judgment and that the appraisal is adequate.

“Lease servicer” means an entity that collects monthly principal and interest payments from the lessee and then forwards the payments to the purchasing institution or maintains lease records for a fee.

“Leasing company” means an enterprise that makes leases or assembles leases for resale to a bank. Leases acquired by a state bank from an affiliated leasing company will be treated for purposes of this rule the same as if the lease was originated by the bank itself. In determining if an affiliate relationship exists, the provisions of Iowa Code section 524.1101 shall apply.

“Lessee” means the party using the leased property.

“Lessor” means the party owning the leased property.

“Residual value” means the estimated fair value of the leased property at the end of the lease term.

9.3(2) General direct and purchased lease guidelines.

a. The board of directors of the state bank shall formulate and maintain a written lease policy that is appropriate for the size, nature and scope of the bank’s operation. Each policy must be comprehensive and consistent with safe and sound banking practices. The standards and limits established in the policy must be reviewed and approved at least annually by the board. The bank’s lease policy, at a minimum, should:

- (1) Identify acceptable lease servicers and lessors (purchased leases only).
- (2) Establish aggregate volume of paper to be purchased from approved servicers and lessors (purchased leases only).
- (3) Identify geographic area where the bank will consider purchasing or originating leases.
- (4) Establish lease portfolio diversification standards.
- (5) Set appropriate terms and conditions by type of leases.
- (6) Establish lease origination and approval procedures.
- (7) Establish prudent underwriting standards.
- (8) Establish lease administration procedures.
- (9) Establish appraisal and evaluation programs.
- (10) Monitor the portfolio and provide timely reports to the board of directors.
- (11) Set forth permitted exceptions to the policy.

When formulating the lease policy, the board should consider both internal and external factors, such as size and condition of the state bank, expertise of the lending staff, avoidance of undue concentrations of risk, and general market conditions.

b. Whether the bank is serving as lessor or acquiring a lease through purchase, a bank officer shall perform an independent credit analysis of the lessee.

c. The bank or an affiliated leasing company shall obtain collateral values, lien status, lease agreements, participation agreements, and title documentation within 45 calendar days from the date of inception with original documentation being maintained in the bank’s or affiliated leasing company’s credit files.

d. A bank officer, an officer of an affiliated lease originator, or an independent third-party appraiser shall conduct at inception, and then at least annually thereafter, an inspection of the leased tangible personal property, unless prior approval to waive the inspection requirements has been obtained from the superintendent.

For a lease to a governmental unit, the bank shall conduct an inspection at time of inception or maintain written verification by an official of the governmental unit to confirm the existence of the leased property.

e. Ongoing documentation requirements to support the lease shall be the same as if the bank had made a direct loan to the lessee for purchase of the asset being leased.

f. The lease shall be a full-payout, noncancelable obligation of the lessee with the obligation serving the same purpose as other forms of bank financing. For purposes of this rule, a lease to a governmental unit which contains a fiscal funding clause would be considered a noncancelable lease if the likelihood of exercise of the fiscal funding clause is assessed as being remote.

g. Property covered by the lease shall be limited to tangible personal property, excluding livestock. In addition, a state bank may purchase or construct a municipal building, such as a school building, or other similar public facility and, as holder of legal title, lease the same to a municipality or other public

authority having resources sufficient to make payment of all rentals as they become due. The lease agreement shall address liability issues and shall provide that upon its expiration the lessee will become owner of the building or facility.

h. The lease shall require rental payments to be made on a periodic basis, but no less frequently than annually.

i. The term of a lease shall not exceed seven years if made to a nongovernmental unit or ten years if made to a governmental unit without the prior approval of the superintendent.

j. Aggregate rentals payable by the customer under leases of personal property shall conform to the limits imposed by Iowa Code section 524.904.

k. All lease receivables shall be booked in accordance with call report instructions.

l. Unguaranteed residual value established by the lessor for any lease, whether originated by the state bank or acquired through purchase, shall not exceed 25 percent of the original cost of the leased property. The amount of any estimated residual value guaranteed by a manufacturer, the lessee, or a third party which is not an affiliate of the bank may exceed 25 percent of the original cost of property where the bank has determined and can provide full supporting documentation that the guarantor has the resources to meet the guarantee.

While this guideline prohibits unguaranteed residual values to exceed 25 percent of the original cost, the estimated residual value shall be reasonable in relation to the type of property leased so the primary risk taken by the bank is the creditworthiness of the lessee and not the market value of the leased property. All estimated residual values shall be reviewed at least annually.

If the state bank carries the estimated residual value on its books and a review of the estimated residual value results in a lower estimate than had been previously established, the accounting for the transactions shall be revised using the new estimate. The resulting reduction in the net investment shall be recognized as a loss in the period in which the estimate is changed. An upward adjustment of the residual value shall not be made.

m. Consumer leases, whether originated or purchased by a state bank, shall conform to Iowa Code section 537.3202 and Chapter 5 of the Truth-in-Lending Act (15 U.S.C. 1601 et seq.).

n. If an affiliate of a state bank is regarded as the originator of a lease, the affiliate shall be subject to provisions of Iowa Code section 524.1105.

9.3(3) *Specific purchased lease guidelines.*

a. If the obligations acquired carry full recourse endorsements, guaranty, or an agreement to repurchase of the lessor or servicer negotiating the sale of the leases, then the endorser, guarantor, or repurchaser shall also be deemed to be a customer of the bank. This customer's obligation would be limited to 35 percent of aggregate capital of the state bank if the amounts exceeding 15 percent of aggregate capital consist of obligations as endorser of negotiable chattel paper negotiated by endorsement with recourse, or as unconditional guarantor of nonnegotiable chattel paper, or as transferor of chattel paper endorsed without recourse subject to a repurchase agreement.

b. The bank shall provide the necessary letters of assurance for each lease servicer as required under Iowa Code section 524.218.

c. Financial information or evidence of insurance coverage for errors, omissions, and fraudulent acts shall be obtained no less frequently than annually on any lease servicer. The financial information shall be evaluated to determine the creditworthiness of the lease servicer. The insurance coverage shall be in an amount sufficient for the volume of leases being serviced by the lease servicer. This documentation is to be maintained on file by the bank.

9.3(4) *Specific direct leasing guidelines.* Acceptable methods of accounting for investment tax credits shall be used.

9.3(5) *Exempted transactions.* In some instances, it may be appropriate, in light of all relevant credit considerations, to originate or purchase leases that do not conform with the requirements of 9.3(2) "c," "d," and "e." The outstanding aggregate rentals payable of all originated and purchased leases that fall into this category shall not exceed 25 percent of aggregate capital as reflected on the state bank's most recent consolidated report of condition, unless prior approval to exceed this limitation has been obtained from the superintendent. These exempted leases shall be identified by the board of directors

by name and outstanding balance and shall be reviewed by the board no less frequently than annually. Examiners, during the course of their examinations, will determine whether these exempted leases are adequately documented and appropriate in light of overall safety and soundness considerations. No leases to directors, officers, or substantial shareholders or their related interests shall be allowed in the exempted category of this subrule.

This rule is intended to implement Iowa Code section 524.908.

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CHAPTER 10
ELECTRONIC TRANSFER OF FUNDS

187—10.1(527) Scope. Iowa Code section 527.3 authorizes the administrator to issue rules applicable to financial institutions regarding the operation or control of a satellite terminal or pertaining to a financial transaction engaged in through a satellite terminal. Iowa Code section 527.11 empowers the administrator to adopt and promulgate rules which are necessary to properly and effectively carry out and enforce Iowa Code chapter 527. When the term “administrators” appears in this chapter, it signifies that joint action or enforcement may be taken by the administrators specified in Iowa Code sections 527.2 and 527.3.

187—10.2(527) Terms defined. For the purpose of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in Iowa Code section 527.2 shall be considered to be incorporated verbatim in these rules.

“*Cardholder*” means a person who has received an access device from a cardholder financial institution to access a customer asset account or customer asset accounts maintained at that financial institution by means of a satellite terminal.

“*Cardholder financial institution*” means the financial institution maintaining the customer asset account(s) of a cardholder which is accessible by means of an access device issued by that financial institution.

“*Certification*” means the process by which a central routing unit ensures that access devices, satellite terminals, software vendors, and the data processing center of an establishing or cardholder financial institution meet certain minimum operational standards established by the central routing unit to ensure that the central routing unit and electronic funds transfer system are in compliance with Iowa Code chapter 527. The certification process may be performed by a central routing unit prior to initial operation of a satellite terminal or data processing center and at any subsequent time as determined appropriate by a central routing unit to ensure continued compliance with Iowa Code chapter 527.

“*Customer card number*” means a unique number assigned to each cardholder to identify the cardholder financial institution, the cardholder, and the particular business location or office of the cardholder financial institution where the cardholder’s customer asset account(s) is maintained which may be accessed by the access device issued by the cardholder financial institution.

“*Electronic funds transfer system*” means the electronic system which is used to process transactions initiated at a satellite terminal and includes the access device, the satellite terminal, the cardholder financial institution and its data processing center, the establishing financial institution and its data processing center, and a central routing unit.

“*Establishing financial institution*” means the financial institution that owns or retains control of a satellite terminal.

“*Front-end processor*” means a data processing facility directly connected to an on-line point-of-sale terminal, as defined by Iowa law, which is utilized in an electronic funds transfer system in conjunction with another data processing facility that is certified by an approved central routing unit. A front-end processor and certified data processing facility that are directly connected constitute a single data processing center, as defined by Iowa law, only if the following specified conditions are satisfied: (1) All on-line point-of-sale satellite terminal transactions received by the front-end processor of the certified data processing facility that cannot be immediately authorized or rejected by the certified data processing facility must be immediately transmitted to an approved central routing unit, subject to the exceptions expressed in Iowa Code subsection 527.5(9); and (2) All on-line point-of-sale satellite terminal transactions received by the front-end processor of the certified data processing facility which are capable of being immediately authorized or rejected by the certified data processing facility must be transactions initiated by cardholders of financial institutions directly serviced by the certified data processing facility and must be immediately authorized or rejected by the certified data processing facility.

“*Reversal*” means the procedure implemented to cancel a previously transmitted transaction from a satellite terminal initiated by a cardholder through the use of an access device. A reversal may be cardholder generated or system generated.

“*Switch-behind*” means an electronic funds transfer system configuration in which a satellite terminal is directly connected to the establishing financial institution’s data processing center, which is directly connected to a central routing unit.

“*Switch-in-front*” means an electronic funds transfer system configuration in which a satellite terminal is directly connected to a central routing unit.

“*Transaction*” means each separate, identifiable financial function as authorized by Iowa Code chapter 527, performed at a satellite terminal capable of completing the financial function, by a cardholder properly using an access device and an electronic personal identifier at the satellite terminal.

187—10.3(527) Applications to operate a central routing unit.

10.3(1) *Approval required.* A central routing unit shall not be operated in the state of Iowa unless written approval for that operation has been obtained from the administrators.

10.3(2) *Application requirements.* A person desiring to operate a central routing unit shall submit to the administrators an application which shall contain all of the information and shall be accompanied by all documentation expressly provided for in Iowa Code section 527.9. The administrators will notify the applicant in writing whether the application is considered complete.

10.3(3) *Incomplete applications.* If the application is found by the administrators to be incomplete, the applicant will be notified within a reasonable period of that fact and of the specific deficiencies. Anytime after 30 days following any such notification, the application may be denied for lack of information, if requested supplemental information is not timely submitted by the applicant.

10.3(4) *Final notice.* Upon receiving a complete application, the administrators shall approve or disapprove an application for operation of a central routing unit within 60 days after the date of written notice to the applicant that the application is determined to be complete. The administrators shall notify the applicant in writing as to the decision to approve or disapprove.

This rule is intended to implement Iowa Code section 527.9.

187—10.4(527) Compliance examinations of a central routing unit.

10.4(1) *Performance examinations.* A central routing unit shall be subject to examination by the administrators for the purpose of determining compliance with Iowa Code chapter 527. Such an examination may be conducted after the central routing unit is operating under the approval of the administrators and shall be conducted at the time the approval of the administrators is sought in accordance with rule 10.3(527).

10.4(2) *Compliance factors.* A compliance examination of a central routing unit conducted by the administrators shall consider the following factors to ensure that the central routing unit and all other components of an electronic funds transfer system are in full compliance with the requirements of Iowa Code chapter 527:

a. Transaction charges. The transaction charges paid to the central routing unit by each financial institution which utilizes the central routing unit must be consistent with the schedule of charges set forth in the application to operate a central routing unit and must be consistent with the requirements of Iowa Code subsection 527.5(6).

b. Transmission capabilities. The central routing unit must be capable of accepting and routing and, if approved to operate, is being operated to accept and route transmissions of transaction data originating at any satellite terminal located in the state, whether receiving transaction data from a satellite terminal or from a data processing center or other central routing unit.

c. Connections with data processing centers. The central routing unit must be directly connected to every data processing center that is directly connected to a satellite terminal located in the state.

d. Transaction requirements. A central routing unit must ensure that an electronic funds transfer system consistently complies with the following transaction requirements:

(1) All cardholders initiating transactions at satellite terminals must use an access device and an electronic personal identifier issued by the cardholder financial institution, unless the use of an electronic personal identifier is not required by Iowa Code chapter 527 for transactions initiated at specified types of satellite terminals.

(2) All transactions must originate at satellite terminals certified by a central routing unit. Satellite terminals located in this state must meet all applicable state and federal requirements.

(3) All transactions shall be authorized either on an on-line real time basis or on a batch basis through a data processing center or a central routing unit.

(4) If the establishing financial institution's data processing center cannot authorize or reject a particular transaction, then the transaction must be routed to a central routing unit.

e. Validation. A central routing unit must validate and edit all transaction messages flowing through the electronic funds transfer system to ensure transaction integrity.

f. Error recovery. A central routing unit must be responsible for error recovery of all of the central routing unit's owned or controlled hardware, software, and communication facilities and must define all necessary interface requirements for data processing centers, satellite terminals, and financial institutions.

g. Authorization services. A central routing unit shall provide authorization services for all cardholder financial institutions which have agreed to such authorization services if:

(1) The cardholder financial institution's data processing center is unavailable or is responding slowly; or

(2) The cardholder financial institution's cardholder information is retained at the central routing unit for card authorization services.

h. Third-party audits. Third-party audits of an electronic funds transfer system, including a central routing unit, must be conducted at least annually to ensure adequate security and controls and must be documented for review by the administrators, upon request.

i. Duplication of critical processing hardware. A central routing unit must provide duplication of critical processing hardware to ensure functional integrity of the central routing unit.

j. Electronic funds transfer system reliability standards. A central routing unit must be available for processing transactions 99 percent of the time, on an annual basis, during the schedule of operation established by the central routing unit. To provide this continuous service to cardholders and the respective cardholder financial institution, a central routing unit must provide for data processing center backup service for all cardholder financial institutions which utilize a data processing center. This may be accomplished by either of the following:

(1) Cardholder financial institutions may maintain a cardholder authorization file at the central routing unit; or

(2) A central routing unit may authorize transactions based on cardholder financial institution's established parameters when the cardholder financial institution's data processing center is responding slowly or is in an inoperative state.

k. Confidentiality.

(1) A central routing unit shall not divulge specific transaction information to any person or financial institution concerning any cardholder, or an establishing or cardholder financial institution, unless such person or financial institution is part of, or is necessary to effect, the specific transaction, or unless disclosure of such information is required by applicable state or federal law.

(2) A central routing unit shall not divulge any statistics on the operations of any establishing or cardholder financial institution to any third party without the written consent of the particular financial institution.

(3) A central routing unit may disclose total terminal statistics that are generic to the central routing unit and which do not identify any particular financial institution or the operations of any particular financial institution.

(4) A central routing unit may disclose transaction(s) data to any federal or state regulatory authority as required by law.

10.4(3) *Certification processes of a central routing unit to demonstrate compliance.* To assist the administrators with compliance examinations of a central routing unit, a central routing unit shall certify financial institutions, satellite terminals located in the state, and data processing centers directly connected to the central routing unit located in this state or directly connected to cardholder financial institutions, to demonstrate that satellite terminals located in this state and the central routing unit are performing in accordance with the requirements of Iowa Code sections 527.5 and 527.9.

a. Certification of financial institutions. All establishing financial institutions and their data processing centers must comply with the following procedures, which shall be confirmed and certified by a central routing unit:

(1) The establishing financial institution and its data processing center must ensure that all transaction data transmitted by the establishing financial institution's data processing center conforms to the central routing unit's electronic communication format standards.

(2) The establishing financial institution's data processing center must be certified or recertified to support new terminal types or models, to utilize any new satellite terminal vendor, or to perform terminal hardware upgrades or software version updates, prior to actual transmission of transaction data by that data processing center to the central routing unit.

(3) Use of any satellite terminal located in this state must be available to all cardholders of cardholder financial institutions and other establishing financial institutions on a nondiscriminatory basis. A cardholder financial institution shall have the right to offer to its cardholders any type of transaction which is supported by a central routing unit. Establishing financial institutions must offer to all cardholders of any establishing or cardholder financial institution the same type of transactions at their satellite terminals located off the premises of the establishing financial institution as are offered to cardholders of the establishing financial institution.

(4) An electronic personal identifier must be issued by a cardholder financial institution for each cardholder access device. A central routing unit must provide for cardholder entry of the electronic personal identifier for all transactions transmitted to the central routing unit. The requirement to issue an electronic personal identifier is not applicable to access devices which are only for use at a limited function terminal, as defined by Iowa Code section 527.2.

(5) A central routing unit must approve access devices displaying its logo or trade name which are issued by cardholder financial institutions, including any access devices that are redesigned, so that the central routing unit may control the operational quality of the access devices and ensure uniform implementation of changes of such access devices.

(6) A control record must be maintained by a central routing unit for every satellite terminal deployed by an establishing financial institution which participates with the central routing unit.

(7) The establishing financial institution's data processing center must be responsible for forwarding transactions which it cannot authorize or reject to a central routing unit for further routing. The establishing financial institution's data processing center must set a timer for that particular transaction at the time the transaction is forwarded to the central routing unit. If the establishing financial institution's data processing center does not receive a transaction transmission response from the central routing unit within the time frames established by the central routing unit, then the establishing financial institution's data processing center must immediately generate and transmit a reversal for that particular transaction. The cardholder financial institution's data processing center must accept the reversal from a central routing unit and the cardholder financial institution must post valid reversals to the particular cardholder's customer asset account. To monitor such reversals, a central routing unit must log each transaction routed through the central routing unit, validate each transaction's completion and ensure that all transactions are sent to and received by the appropriate data processing centers for both the cardholder financial institution and the establishing financial institution.

(8) A central routing unit must certify all satellite terminals (whether switch-in-front or switch-behind) that an establishing financial institution proposes to use in conjunction with the central routing unit. This certification process shall test each satellite terminal for its ability to satisfactorily perform all transaction functions supported by the central routing unit in accordance with operational standards for satellite terminals as established by the central routing unit.

(9) An establishing financial institution must ensure that each of its satellite terminals provides a record of all approved or denied transactions at the satellite terminal by either an audit journal or the creation of duplicate receipts held within the satellite terminal and must ensure that the satellite terminal generates a customer receipt in compliance with 12 CFR 205.9 (Regulation E) and requirements established by the central routing unit.

(10) Proper maintenance and service of satellite terminals on both a regular and emergency basis are the responsibilities of the establishing financial institution.

b. Certification of data processing centers. All data processing centers connected to a central routing unit must comply with the following procedures and requirements, which shall be confirmed by a central routing unit:

(1) A data processing center shall operate in such a manner as to comply with all requirements established in Iowa Code chapter 527.

(2) A data processing center shall conform to a central routing unit's standards including, but not limited to, the following:

1. Format and message content.

2. Electronic personal identifier encryption.

3. Communications protocol.

4. Certification of on-line transaction transmissions for data processing centers, new terminals, and all establishing and cardholder financial institutions directly or indirectly connected to the central routing unit.

(3) A data processing center must meet minimum response time goals established by a central routing unit. Satellite terminal transactions shall be handled on a first-in, first-out basis. No data processing center may prioritize satellite terminal transactions.

(4) Rescinded IAB 10/25/06, effective 11/29/06.

(5) If a satellite terminal located in the state is not directly connected to an approved central routing unit, then the satellite terminal must be directly connected to a data processing center which is directly connected to an approved central routing unit. A data processing center or central routing unit is directly connected to a satellite terminal when a transaction transmission from the satellite terminal is received by the data processing center or central routing unit prior to being received or processed by or routed to any other data processing center or facility which categorizes, separates or routes the transaction transmission. A data processing facility certified by a central routing unit and a front-end processor directly connected to an on-line point-of-sale satellite terminal and directly linked to the data processing facility both constitute a data processing center for purposes of this paragraph.

(6) This subrule does not limit the authority of a data processing center to authorize or reject transactions requested by cardholders of a cardholder financial institution pursuant to an agreement whereby the data processing center authorizes or rejects requested transactions on behalf of the cardholder financial institution and provides to the cardholder financial institution, on a batch basis and not on an on-line real time basis, information concerning authorized or rejected transactions of cardholders of the cardholder financial institution.

c. Nonsupport of a satellite terminal by a central routing unit. A central routing unit has the authority to refuse or discontinue support of any satellite terminal (either switch-in-front or switch-behind) that is not established or maintained by the establishing financial institution in accordance with the certification procedures and requirements of this subrule if the central routing unit reasonably determines that initial or continued support of the noncomplying satellite terminal may jeopardize the safety and soundness of the operation of an electronic funds transfer system. If such action is contemplated by a central routing unit, written notice of the intended action and the reasons for not supporting particular satellite terminals shall be sent by the central routing unit to the appropriate establishing financial institution by certified or restricted certified mail, with a copy provided to the administrator, within 30 days of the date such action to discontinue support is to be taken, or within 10 days from the date the central routing unit determines it appropriate to refuse initial support of a newly established satellite terminal.

d. Appeals to division administrator.

(1) Whenever a central routing unit provides notice concerning the nonsupport of any satellite terminal located in the state upon the determination that the satellite terminal will not be, or is not being, maintained by the establishing financial institution in accordance with the requirements of this subrule and Iowa Code chapter 527, the establishing financial institution has the right to file a written appeal to the administrator within 30 days from the date the central routing unit issued a written notice of such action. The written appeal shall set forth any facts in dispute and shall state the reasons why the decision of the central routing unit to refuse initial or continued support of its satellite terminal or terminals should be reversed by the administrator. If the establishing financial institution fails to file a written appeal to the administrator, the financial institution is deemed to have consented to the nonsupport of its satellite terminal or terminals by the central routing unit.

(2) The administrator shall conduct hearings and exercise any other appropriate authority conferred by Iowa Code sections 527.3 and 527.5 regarding the operation or control of a satellite terminal which a central routing unit has initially determined to be operating in a manner inconsistent with the requirements of this subrule and Iowa Code chapter 527.

(3) Upon appeal, the administrator may affirm, modify, or reverse the initial determination of a central routing unit that a satellite terminal located in Iowa is not being operated or controlled in accordance with the requirements of this subrule and Iowa Code chapter 527.

(4) In the event of consent by the establishing financial institution, or if upon the record made at the hearing the administrator affirms the initial determination of the central routing unit, the administrator may initiate proceedings to revoke the privilege of the establishing financial institution to continue operation and control of the satellite terminal or terminals determined to be in noncompliance in accordance with the procedures established in paragraph “e” of this subrule, or may deny the initial application to establish or operate such noncomplying satellite terminals in accordance with rule 10.5(527).

(5) If the initial determination of the central routing unit is either reversed or modified, the administrator shall document the reasons for determining that the satellite terminals in question comply with the requirements of this subrule and Iowa Code chapter 527 or why the initial determination of the central routing unit has been modified and shall deliver a copy of these findings to the establishing financial institution and the appropriate central routing unit. Any further proceedings or hearings on the same subject matter shall be governed by the provisions of Iowa Code chapter 17A relating to contested cases.

e. Revocation of privilege.

(1) Whenever the administrator determines, upon notice and hearing pursuant to Iowa Code chapter 17A, that a satellite terminal located in this state, a data processing center, or a central routing unit is being operated within an electronic funds transfer system in violation of Iowa Code chapter 527 or the compliance procedures and standards established by this subrule, the administrator may revoke the approval to operate within the electronic funds transfer system. If the administrator does not have any direct authority over the facility because of the provisions of Iowa Code section 527.3, the administrator may revoke with respect to any financial institution over which the administrator does have direct authority the privilege to engage in transactions through or with that facility. With respect to revocation of the approval to operate a central routing unit, all of the administrators specified in Iowa Code section 527.3 may jointly participate, since all types of financial institutions may be served by the central routing unit. All references to the term “administrator” in this paragraph “e” shall signify all of the administrators with respect to revocation of the approval to operate a central routing unit.

(2) The administrator shall have additional authority to cause such revocations as established in Iowa Code section 527.12.

(3) If a central routing unit or satellite terminal of an establishing financial institution is determined by the administrator to fail to comply with the requirements of Iowa Code chapter 527 or this subrule at the time of application to the administrator, then the application may be denied by the administrator without the need for notice or opportunity for hearing.

(4) A revocation by the administrator performed pursuant to this subrule shall be effective when ordered by the administrator, anything in Iowa Code chapter 17A to the contrary notwithstanding.

(5) The administrator may bring an action in the district court in the name of the state to enjoin any financial institution or other person who continues to utilize or to operate a satellite terminal, data processing center, or central routing unit after the approval has been revoked.

(6) The administrator may bring an action to enjoin any person who fails to obtain any approval required by Iowa Code chapter 527.

187—10.5(527) Applications to establish a satellite terminal.

10.5(1) *Approval required.* A satellite terminal shall not be established or operated in the state of Iowa unless written approval for that establishment and operation has been obtained from the administrator. Exceptions to this requirement may exist based upon judicial rulings on applicability of Iowa Code subsections 527.5(3) and 527.5(7) to certain federally chartered financial institutions.

10.5(2) *Application requirements.* A person desiring to establish and operate a satellite terminal shall submit to the administrator an application which shall contain all of the information and shall be accompanied by all documentation expressly provided for in Iowa Code subsection 527.5(3).

10.5(3) *Incomplete applications.* If the application is found by the administrator to be incomplete, the applicant will be notified within a reasonable period of that fact and of the specific deficiencies. Anytime after 30 days following any such notification, the application may be denied for lack of information if requested supplemental information is not timely submitted by the applicant.

10.5(4) *Final notice.* Upon receiving a complete application, the administrator shall approve or disapprove an application for the establishment and operation of a satellite terminal within 30 days after the date of written notice to the applicant that the application is determined to be complete. The administrator shall notify the applicant in writing as to the decision to approve or disapprove.

10.5(5) *Denial of application.* If the administrator finds grounds, under any applicable law or rule, for denying establishment of a satellite terminal, the administrator shall notify the person filing the informational statement or an amendment thereto within 30 days of the filing thereof of the existence of such grounds. If such notification is not given by the administrator, the administrator shall be considered to have expressly approved the establishment and operation of the satellite terminal as described in the informational statement or amendment and according to the agreements attached thereto, and operation of the satellite terminal in accordance therewith may commence on or after the thirtieth day following such filing. However, this subrule shall not be construed to prohibit the administrator from enforcing the provisions of this chapter or Iowa Code chapter 527, nor shall it be construed to constitute a waiver of any prohibition, limitation or obligation imposed by this chapter or Iowa Code chapter 527.

10.5(6) *Failure to establish.* If the applicant fails to establish a satellite terminal within 60 days after the date of written notification of approval by the administrator or within 90 days of filing of the application if such notice is not given by the administrator and expressed approval is presumed, the application to establish and operate a satellite terminal in this state shall be considered to be withdrawn by the applicant and the satellite terminal shall not be established and operated in Iowa without reapplication or extension of the application period by the administrator.

10.5(7) *Notice to terminate satellite terminal operation.* If an establishing financial institution determines, for whatever reasons, that a satellite terminal it operates shall no longer be made available for continued use in the state of Iowa, written notice of such termination of service shall be provided to the administrator, with a copy to the central routing unit, at least 15 business days prior to such discontinuance of service.

This rule is intended to implement Iowa Code subsection 527.5(7).

187—10.6(527) Customer instruction in the use of a satellite terminal. Iowa Code subsection 527.5(4) prohibits employees of the establishing financial institution or affiliate from attending or operating a satellite terminal except on a temporary basis for the purpose of instructing customers in the proper use of the satellite terminal. For purposes of this rule, such temporary basis shall be defined to be no more than 30 calendar days from the date of initial operation of the satellite terminal.

Satellite terminals located on the premises of the establishing financial institution are exempt from this restriction.

This rule is intended to implement Iowa Code subsection 527.5(4).

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CHAPTER 11
CONTESTED CASES

187—11.1(17A) Scope and applicability. Except when inconsistent with Iowa Code chapter 524, this chapter applies to contested case proceedings conducted by the Division of Banking.

187—11.2(17A) Definitions. Except where otherwise specifically defined by law:

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“*Party*” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means the superintendent of banking, the superintendent’s designee or, under certain circumstances, the administrative law judge.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the superintendent did not preside.

187—11.3(17A) Time requirements.

11.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

11.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

187—11.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the division action in question. The request for a contested case proceeding should state the name and address of the requester, identify the specific division action which is disputed and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

187—11.5(17A) Notice of hearing.

11.5(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

11.5(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the division or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the division or the state and of parties’ counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., superintendent, superintendent's designee, administrative law judge from the department of inspections and appeals); and

i. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 11.6(17A), that the presiding officer be an administrative law judge.

187—11.6(17A) Presiding officer.

11.6(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the division head or members of the division.

11.6(2) The superintendent may deny the request only upon a finding that one or more of the following apply:

a. Neither the division nor any officer of the division under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. An administrative law judge with the qualifications identified in subrule 11.6(4) is unavailable to hear the case within a reasonable time.

d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

f. Funds are unavailable to pay the costs of an administrative law judge and an interdivision appeal.

g. The request was not timely filed.

h. The request is not consistent with a specified statute.

11.6(3) The superintendent shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 11.6(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

11.6(4) An administrative law judge assigned to act as presiding officer shall have the following technical expertness unless waived by the division: an administrative law judge shall have at least five years' experience as an executive officer in a bank or in the regulation or examination of banks.

11.6(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the superintendent. A party must seek any available intradivision appeal in order to exhaust adequate administrative remedies.

11.6(6) Unless otherwise provided by law, the superintendent, when reviewing a proposed decision upon intradivision appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

187—11.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the division in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

187—11.8(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

187—11.9(17A) Disqualification.

11.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a.* Has a personal bias or prejudice concerning a party or a representative of a party;
- b.* Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c.* Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f.* Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

11.9(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other division functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 11.9(3) and 11.23(9).

11.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

11.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 11.9(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 11.25(17A) and seek a stay under rule 11.29(17A).

187—11.10(17A) Consolidation—severance.

11.10(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

11.10(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

187—11.11(17A) Pleadings.

11.11(1) Petition. A petition in a contested case proceeding shall state in separately numbered paragraphs the following:

- a. The persons or entities on whose behalf the petition is filed;
- b. The particular provisions of statutes and rules involved;
- c. The relief demanded and the facts and law relied upon for such relief; and
- d. The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

11.11(2) Answer. An answer shall be filed within 20 days of service of a petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

11.11(3) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

187—11.12(17A) Service and filing of pleadings and other papers.

11.12(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the division, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

11.12(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

11.12(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with Division of Banking, Attn: Superintendent, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the division of banking.

11.12(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the division of banking, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

11.12(5) Proof of mailing. Proof of mailing includes either a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Division of Banking, Attn: Superintendent, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827 and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

187—11.13(17A) Discovery.

11.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

11.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 11.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

11.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

187—11.14(17A) Subpoenas.

11.14(1) Issuance.

a. A division subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

11.14(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

187—11.15(17A) Motions.

11.15(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

11.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the division or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

11.15(3) The presiding officer may schedule oral argument on any motion.

11.15(4) Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the division or an order of the presiding officer.

187—11.16(17A) Prehearing conference.

11.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

11.16(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

11.16(3) In addition to the requirements of subrule 11.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

11.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

187—11.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

11.17(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The division may waive notice of such requests for a particular case or an entire class of cases.

11.17(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

187—11.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with division rules. Unless otherwise provided, a withdrawal shall be with prejudice.

187—11.19(17A) Intervention.

11.19(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall

be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

11.19(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

11.19(3) *Grounds for intervention.* The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

11.19(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

187—11.20(17A) Hearing procedures.

11.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

11.20(2) All objections shall be timely made and stated on the record.

11.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

11.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

11.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

11.20(6) Witnesses may be sequestered during the hearing.

11.20(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

187—11.21(17A) Evidence.

11.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

11.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

11.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

11.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

11.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

11.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

187—11.22(17A) Default.

11.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

11.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

11.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final division action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 11.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

11.22(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

11.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

11.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

11.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 11.25(17A).

11.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

11.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

11.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 11.29(17A).

187—11.23(17A) Ex parte communication.

11.23(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the division or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 11.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

11.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

11.23(3) Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

11.23(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 11.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

11.23(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

11.23(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 11.23(1).

11.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 11.17(17A).

11.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

11.23(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through

ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

11.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the division. Violation of ex parte communication prohibitions by division personnel shall be reported to the superintendent for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

187—11.24(17A) Recording costs. Upon request, the division shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

187—11.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the superintendent may review an interlocutory order of the presiding officer. In determining whether to do so, the superintendent shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the division at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

187—11.26(17A) Final decision.

11.26(1) When the superintendent presides over the reception of evidence at the hearing, the superintendent's decision is a final decision.

11.26(2) When the superintendent does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the division without further proceedings unless there is an appeal to, or review on motion of, the superintendent within the time provided in rule 11.27(17A).

187—11.27(17A) Appeals and review.

11.27(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the superintendent within 30 days after issuance of the proposed decision.

11.27(2) Review. The superintendent may initiate review of a proposed decision on the superintendent's own motion at any time within 30 days following the issuance of such a decision.

11.27(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the division of banking. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

11.27(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The superintendent may remand

a case to the presiding officer for further hearing or may personally preside at the taking of additional evidence.

11.27(5) *Scheduling.* The division shall issue a schedule for consideration of the appeal.

11.27(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The superintendent may resolve the appeal on the briefs or provide an opportunity for oral argument. The superintendent may shorten or extend the briefing period as appropriate.

187—11.28(17A) Applications for rehearing.

11.28(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

11.28(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the division decision on the existing record and whether, on the basis of the grounds enumerated in subrule 11.27(4), the applicant requests an opportunity to submit additional evidence.

11.28(3) *Time of filing.* The application shall be filed with the division of banking within 20 days after issuance of the final decision.

11.28(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the division of banking shall serve copies on all parties.

11.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the division grants the application within 20 days after its filing.

187—11.29(17A) Stays of division actions.

11.29(1) *When available.*

a. Any party to a contested case proceeding may petition the division of banking for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the division. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The superintendent may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the division of banking for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

11.29(2) *When granted.* In determining whether to grant a stay, the presiding officer or superintendent shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

11.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the division or any other party.

187—11.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

187—11.31(17A) Emergency adjudicative proceedings.

11.31(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the superintendent may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the superintendent by emergency adjudicative order. Before issuing an emergency adjudicative order the superintendent shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the division is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the division is necessary to avoid the immediate danger.

11.31(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the superintendent's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the division;
- (3) Certified mail to the last address on file with the division;
- (4) First-class mail to the last address on file with the division; or
- (5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that division orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the division shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

11.31(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the division shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

11.31(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the division shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which division proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further division proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

[Filed 2/10/05, Notice 1/5/05—published 3/2/05, effective 4/6/05]

CHAPTER 12
UNIFORM WAIVER AND VARIANCE RULES

187—12.1(17A,ExecOrd11) Scope of chapter. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the superintendent in situations where no other more specifically applicable law provides for waivers. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the superintendent. This chapter shall not apply to rules that merely define the meaning of a statute or other provision of law or precedent if the division does not possess delegated authority to bind the courts to any extent with its definition. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

12.1(1) Definitions.

“*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any legal entity.

“*Superintendent*” means the superintendent of banking appointed by the governor to direct and regulate banks pursuant to Iowa Code chapter 524.

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

12.1(2) Applicability.

a. The superintendent may grant a waiver or variance from a rule adopted by the superintendent only if (1) the superintendent has jurisdiction over the rule; (2) no statute or rule otherwise controls the granting of a waiver or variance from the rule from which waiver or variance is requested; and (3) the requested waiver or variance is consistent with applicable statutes, constitutional provisions, or other provisions of law.

b. No waiver or variance may be granted from a requirement which is imposed by statute.

187—12.2(17A,ExecOrd11) Superintendent discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the superintendent upon consideration of all relevant factors. Each petition for a waiver or variance shall be evaluated by the superintendent based on the unique, individual circumstances set out in the petition.

12.2(1) Criteria for waiver or variance. The superintendent may, in response to a completed petition or on the superintendent’s own motion, grant a waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the superintendent finds all of the following:

a. The application of the rule would result in an undue hardship on the person for whom the waiver or variance is requested;

b. The waiver or variance from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

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. 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.

In determining whether a waiver or variance should be granted, the superintendent shall consider the public interest, policies and legislative intent of the statute on which the rule is based. When the rule from which a waiver or variance is sought establishes administrative deadlines, the superintendent shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

12.2(2) Special waiver or variance rules not precluded. These uniform waiver and variance rules shall not preclude the superintendent from granting waivers or variances in other contexts if a statute or other rule authorizes the superintendent to do so and the superintendent deems it appropriate to do so.

187—12.3(17A,ExecOrd11) Requester's responsibilities in filing a waiver or variance petition.

12.3(1) Application. All petitions for waiver or variance must be submitted in writing to the Banking Division, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

12.3(2) Content of petition. A petition for waiver or variance 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):

- a. A description and citation of the specific rule from which a waiver or variance is requested.
- b. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.
- c. The relevant facts that the petitioner believes would justify a waiver or variance under each of the four criteria specified in subrule 12.2(1).
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver or variance.
- e. A history of any prior contacts between the superintendent and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver or variance, including a description of each affected license, grant, loan or other financial assistance held by the requester, 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. Any information known to the requester regarding the treatment of similar cases by the superintendent.
- g. 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. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the superintendent with information relevant to the waiver or variance.

12.3(3) Burden of persuasion. When a petition is filed for a waiver or variance from a rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the superintendent should exercise the superintendent's discretion to grant the petitioner a waiver or variance.

187—12.4(17A,ExecOrd11) Notice. The superintendent shall acknowledge a petition upon receipt. The superintendent shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the superintendent may give notice to other persons. To accomplish this notice provision, the superintendent may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the superintendent attesting that notice has been provided.

187—12.5(17A,ExecOrd11) Superintendent's responsibilities regarding petition for waiver or variance.

12.5(1) Additional information. Prior to issuing an order granting or denying a waiver or variance, the superintendent may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the superintendent may, on the superintendent's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the superintendent or the superintendent's designee.

12.5(2) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver or variance of a

rule filed within a contested case; (b) when the superintendent so provides by rule or order; or (c) when a statute so requires.

12.5(3) *Ruling.* An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

12.5(4) *Conditions.* The superintendent may place any condition on a waiver or variance that the superintendent finds desirable to protect the public health, safety, and welfare.

12.5(5) *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

12.5(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the superintendent, a waiver may be renewed if the superintendent finds that grounds for a waiver continue to exist.

12.5(7) *Time for ruling.* The superintendent shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the superintendent shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

12.5(8) *When deemed denied.* Failure of the superintendent to grant or deny a petition within the required time period shall be deemed a denial of that petition by the superintendent.

12.5(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

187—12.6(17A,ExecOrd11) Public availability. All orders granting or denying waivers and variances under this chapter shall be indexed, filed and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver or variance and orders granting or denying a waiver or variance petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information that the superintendent is authorized or required to keep confidential. The superintendent may accordingly redact confidential information from petitions or orders prior to public inspection.

187—12.7(17A,ExecOrd11) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request or petition is based are not true or if material facts have been withheld. A waiver or variance issued by the superintendent pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and opportunity for hearing, the superintendent issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with any conditions contained in the order.

187—12.8(17A,ExecOrd11) Violations. Violation of conditions in the waiver or variance order is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

187—12.9(17A,ExecOrd11) Defense. After the superintendent issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

187—12.10(17A,ExecOrd11) Appeals. Granting or denying a request for waiver or variance is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the order in response to the request unless a contrary time is provided by rule or statute.

187—12.11(17A,ExecOrd11) Summary reports. Semiannually, the superintendent shall prepare a summary report identifying 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 superintendent's actions on waiver requests. If practicable, the report shall detail 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.

Exhibit A

Sample Petition (Request) for Waiver/Variance

BEFORE THE SUPERINTENDENT OF BANKING

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).	}	PETITION FOR WAIVER
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A request for waiver or variance from a rule adopted by the superintendent 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 superintendent 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 superintendent 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 or entity 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 superintendent 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 superintendent, 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 superintendent 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 Banking Division, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

These rules are intended to implement Executive Order Number 11 and Iowa Code section 17A.9A.

[Filed 9/26/01, Notice 8/22/01—published 10/17/01, effective 11/21/01]

CHAPTERS 13 and 14
Reserved

CHAPTER 15
REGULATED LOANS

[Appeared as Ch 1, 1973 IDR]

[Prior to 4/22/87, see Banking Department[140] Ch 21]

187—15.1(536) Application.

15.1(1) Form used. Printed copies of application for license shall be obtained from the Superintendent of Banking, Iowa Department of Commerce, Division of Banking, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. The printed application form shall be used by each applicant when applying for a license. All questions shall be answered in full and whenever space is inadequate a rider may be attached giving in full the information required.

15.1(2) License and investigation fee. Separate checks or money orders in payment of investigation fee and annual license fee must accompany the application. Each check or money order shall be made payable to the superintendent of banking.

This rule is intended to implement Iowa Code section 536.2.

187—15.2(536) Suspension, revocation or surrender of license. No refund of license fee, in whole or in part, shall be made wherein a license is suspended, revoked, or surrendered.

This rule is intended to implement Iowa Code section 536.9.

187—15.3(536) Records.

15.3(1) Loan register. A “loan register” or its equivalent record which shall be the book of original entry shall show for every loan: account number, date of loan, name of borrower and nature of security. The register shall be kept chronologically in the order made for two years from the date of final entry.

15.3(2) Ledger card.

a. Such account card shall show: name and address of borrower; loan number; date of loan; terms of repayment including maturity date; amount financed; total of payments; nature of security; cost of each credit insurance policy and any other insurance policy with each premium stated separately; name of each endorser, comaker or surety; and amount of recording and releasing fees.

b. All payments shall be posted on the account card as of the date received. No erasures whatsoever may be made in the payment section of any account card. In case of error, a line should be drawn in ink through the improper entry, with the correct entry made on the following line. The entries on the card shall correspond with the receipts given to the borrower.

c. If payment is made in any other way than in the ordinary course of business, it shall be so designated; for example, payment by sale of security, insurance claim or endorser. When a death claim is filed, the exact date of death is to be recorded on the ledger card.

d. The card for an interest-bearing loan shall show the amount of the loan if different from the amount financed, the amount and date of each payment received, the allocation of the payment to principal and interest, and the remaining principal balance. If a portion of the interest earned is not paid at the time payment is made, the card for an interest-bearing loan must show either the date to which interest is paid or the amount of interest then due but unpaid.

e. The card for a precomputed loan shall show the actual amount of the loan excluding the precomputed interest, the amount of the precomputed interest and the face amount of the note including interest, the amount and date of each payment applied to the note, the unpaid balance of the note after applying such payment and the type and amount of any additional charges collected or assessed. If deferment charges are collected in whole or in part, the card shall indicate any uncollected portion of the deferment charge, the particular installment deferred, the number of times deferred, plus the date of the final installment.

f. When any loan is prepaid in full, either by cash or renewal, the card must show the date of prepayment, the amount paid to discharge the loan, the amount of the interest rebate, and any deduction from the rebate for previously earned but uncollected charges, and refunds of the unearned premiums of each credit insurance policy or other insurance policy. Each insurance refund shall be separately recorded on the card.

g. Account ledger cards relating to each type of business operation must be filed in separate groups. Paid-in-full and renewed ledger cards must also be filed in a similar manner and retained from one banking division examination to the next. After the examination, these cards may be filed in a permanent file.

15.3(3) *Account ledger card control.* A record shall be maintained in the licensed office showing the total number of accounts and total amount receivable for each type of business. This record shall be posted either daily or weekly.

15.3(4) *Loan file.* A separate file shall be maintained for each borrower in the office where the loan is outstanding. Such file shall contain the note, security agreement, wage assignment and all other evidence of indebtedness or security pertaining to the loan except when the note is kept in a separate promissory note file or when said papers are in custody of a court or an agent for collection or are hypothecated. When a borrower is also a comaker, guarantor or endorser on another loan, the file of such borrower shall be cross-referenced to the other, unless such cross-referencing is included on the alphabetical record required by 15.3(5) or on the individual account card required by 15.3(2). All instruments taken in connection with a loan and signed by a borrower must bear the loan number.

15.3(5) *Index.* An alphabetical record shall be maintained and show the name of each borrower, endorser, comaker, or surety who is currently indebted to the licensee, together with sufficient information to locate the account card.

15.3(6) *Disbursement voucher.* Licensees shall use a disbursement voucher or equivalent document in conjunction with each loan showing a detailed itemization of the distribution of the loan proceeds.

15.3(7) *EDP systems.* With prior written approval from the superintendent, the licensee's use, in whole or part, of mechanical or electronic data processing equipment to maintain its loan account records, or business records, shall be permitted if it is determined that the EDP system provides the same information as is otherwise required.

This rule is intended to implement Iowa Code sections 17A.3 and 536.11.

187—15.4(536) Miscellaneous restrictions.

15.4(1) *Mail loans.* A licensee shall have authority to make and complete loans by mail from the lender's licensed office. In making such loans, the lender shall mail all the necessary papers to the borrower; and upon completion of such papers by the borrower, the check or money order representing proceeds of the loan shall be mailed from the licensee's office.

15.4(2) *Default charge.* Default charges are not to be collected if payment is made by accident and health insurance claim.

This rule is intended to implement Iowa Code section 536.12 and 1985 Iowa Acts, chapter 158.

187—15.5(536) Interest rate. Pursuant to the power granted to the state banking board under Iowa Code section 536.13, subsections (1)"b" and (2), the state banking board in action taken at a board meeting held June 12, 1985, fixed the maximum interest that may be charged beginning July 15, 1985, and until such time as a different rate is fixed by the board as 36 percent per annum on any part of the unpaid balance not exceeding \$1,000 and 24 percent per annum on any part of the unpaid balance in excess of \$1,000, but not exceeding \$2,800 and 18 percent per annum on any part of the unpaid balance in excess of \$2,800, but not exceeding \$10,000.

This rule is intended to implement Iowa Code section 536.13.

187—15.6(17A,536) Size of bond. An applicant for a regulated loan company license must file with the superintendent a bond complying with the provisions of Iowa Code section 536.3 as amended by 2009 Iowa Acts, Senate File 355, section 40. For applicants or licensees who do not make, arrange, broker, process, or underwrite any residential mortgage loans, as defined by 2009 Iowa Acts, Senate File 355, section 3, subsection 13, the bond shall be in the amount of \$25,000. For applicants or licensees who make, process, or underwrite residential mortgage loans, as defined by 2009 Iowa Acts, Senate File 355, section 3, subsection 13, the bond amount required to be filed and maintained shall be set and adjusted annually by March 31 using the following scale, based on the volume of residential mortgage loans

made, originated, arranged, brokered, processed, and underwritten, as the case may be, by the applicant or licensee during the preceding calendar year:

<u>Loans</u>	<u>Bond Amount</u>
\$0 – \$5,000,000	\$25,000
\$5,000,001 – \$20,000,000	\$50,000
\$20,000,001 – \$50,000,000	\$75,000
\$50,000,001 – \$100,000,000	\$100,000
Over \$100,000,000	\$150,000

This rule is intended to implement Iowa Code section 536.3 as amended by 2009 Iowa Acts, Senate File 355, section 40.

[ARC 8236B, IAB 10/21/09, effective 11/25/09]

187—15.7(536) Insurance. Rescinded IAB 10/9/96, effective 11/13/96.

187—15.8(536) Interest rate. Rescinded IAB 10/9/96, effective 11/13/96.

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CHAPTER 16
INDUSTRIAL LOANS

[Prior to 4/22/87, see Auditor of State[130] Ch 1]

187—16.1(536A) Licenses. The license and current license renewal card of each licensee shall be prominently displayed and available for easy reading by the public in the place of business of the licensee. No refund of a license fee, in whole or in part, shall be made wherein a license is suspended, revoked, or surrendered.

187—16.2(536A) Other business in same office. The superintendent, upon receiving a completed application from a licensee, may authorize that licensee to conduct its industrial lending business within the same office, room, suite or place of business in which any other business is conducted except that no authorization will be granted to a licensee to conduct its industrial lending business within the same office, room, suite or place of business where the sale of tangible personal property is conducted; except that the sale of repossessed property shall be allowed.

187—16.3(536A) Multiple business authorization. This regulation shall be known as the “Multiple Business Regulation.” Any authorization granted by this regulation shall be conditional upon full compliance with all parts thereof. Printed copies of the “Application for Multiple Business Authorization” shall be obtained from the office of Superintendent of Banking, Iowa Department of Commerce, Division of Banking, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. The printed application form shall be used by each licensee when applying for multiple business authorization. All information shall be supplied in full and where space is inadequate for a full answer, a rider shall be attached.

187—16.4(536A) Multiple business revocation. If the licensee or other business affiliate fails to comply with any conditions set forth in these rules, the superintendent, upon giving ten days’ advance written notice to the licensee by certified mail stating the superintendent’s contemplated action and the grounds thereof, and after granting the licensee an adequate hearing, may revoke the licensee’s authorization to conduct a multiple business operation.

187—16.5(536A) Examination of books. The superintendent or the superintendent’s duly appointed representative shall have the right to examine and investigate the books, accounts and records wherever situated of all businesses authorized or conducted by a licensee licensed pursuant to Iowa Code chapter 536A. All books, accounts and records pertaining to businesses conducted pursuant to such license shall be made readily available to the examiners who may investigate without prior notice.

187—16.6(536A) Records. Records for loans made under the Iowa industrial loan law shall be kept separate from other types of business conducted in the office of the licensee. Each licensee shall keep the following records in its place of business, except that combination forms and special office systems may be used in lieu thereof, if approved by the superintendent in writing.

16.6(1) *Loan register.*

a. The loan register shall contain the original entry and shall show for every loan the loan number, date of loan, name of borrower, nature of security, and amount of note.

b. The loan register shall be kept chronologically in the order made.

16.6(2) *Account ledger cards.*

a. An individual account ledger card shall be kept for each account and shall show at least the loan number, name and address of the borrower, date of loan, date of first payment, date of final payment, terms of repayment, amount financed, total of payments, face amount of note if different from amount financed or total of payments, cash advanced to borrower, cash advanced to pay balance of previous industrial loan, interest or discount charge, service charge, attorney fee, fee paid or to be paid to a public official for recording or filing a mortgage or for satisfying a judgment or lien on any real or personal

property securing the loan, type and cost of each credit insurance policy, and type and cost of any other insurance policy.

b. All payments shall be credited upon the account ledger card as of the same day they are received. No erasures whatsoever may be made in the payment section of any account ledger. In case of error, a line shall be drawn in ink through the improper entry with the correct entry made on the following line.

c. If payment is made through the proceeds of an insurance claim or the sale of security, it shall be so designated. When a death claim is filed, the exact date of death is to be recorded on the ledger card.

d. The account ledger card for an interest-bearing loan shall show the amount and date of each payment received, the allocation of the payment to interest and principal, and the remaining principal balance. If a portion of the interest earned is not paid at the time payment is made, the card for an interest-bearing loan must show either the date to which interest is paid or the amount of interest then due but unpaid.

e. The account ledger card for a precomputed loan shall show the amount and date of each payment received, the unpaid balance of the note after applying such payment, and the amount and description of any additional charges collected. If deferment charges are collected in whole or in part, the ledger card shall indicate any uncollected portion of the deferment charge, the number of installments deferred, plus the date of the final installment.

f. When a loan is prepaid in full, the account ledger card shall show the date of prepayment, the amount paid to discharge the loan, the amount of the interest or discount rebate, the refund of the unearned premiums of each credit insurance policy, or any other insurance policy, and any deduction from the rebate or refunds for previously earned but uncollected charges.

g. Account ledger cards relating to each type of business operation must be filed in separate groups. Paid-in-full or renewed account ledger cards must also be filed in a similar manner and must be retained as a separate group from one banking division examination to the next.

16.6(3) *Account ledger card control.* A record shall be maintained in the licensed office showing the total number of accounts and amount receivable for each type of business conducted. This record shall be posted either daily or weekly.

16.6(4) *Original paper file.*

a. A separate file, envelope or folder shall be maintained for each borrower or loan account.

b. Such file shall contain all papers relating to the borrower or the loan with the exception of the promissory note which may be kept in a separate promissory note file. Copies of the note and security agreement shall be substituted for the original documents if the loan has been sold, pledged or assigned as collateral security or if the original papers are in the custody of a court or agent for collection.

c. All instruments evidencing or securing a loan must bear the loan number.

d. No instrument or part thereof shall be left blank for completion after the borrower(s) has signed the instrument.

16.6(5) *Promissory note file.* If the promissory notes are not kept in the file of original papers and have not been sold, pledged or assigned as collateral security or placed in the custody of a court or agent for collection, then they must be kept in a promissory note file.

16.6(6) *Index.* An alphabetical index shall be maintained for each borrower, endorser, comaker, surety or other party currently indebted to the licensee or to any other business operated within the same office, room, suite or place of business. The index shall show the following information: the name of the obligor, the account number assigned to the obligor's indebtedness, the type of indebtedness (regulated loan, industrial loan, insurance, receivable, or any receivable), information showing whether the obligor is other than a borrower and sufficient information to locate all account ledger cards.

16.6(7) *Disbursement voucher.* Licensees shall use a disbursement voucher or equivalent document in conjunction with each loan showing a detailed itemization of the distribution of the loan proceeds.

16.6(8) *EDP systems.* With prior written approval from the superintendent, the licensee's use, in whole or in part, of mechanical or electronic data processing equipment to maintain its loan account records, or other business records, shall be permitted if it is determined that the EDP system provides the same information as is otherwise required.

187—16.7(536A) Record retention. Licensees shall be required to preserve their books, accounts and files for a minimum period of two years following the date of final entry recorded therein.

187—16.8(536A) Loan conversion. If any person or husband and wife together is indebted in any amount on a loan made under the provisions of the Iowa industrial loan law, no loan shall be made to said person or husband and wife together under the Iowa regulated loan law unless the proceeds of the regulated loan, after deducting insurance premiums, exceed by \$200 or more the amount necessary to pay in full the balance due on the industrial loan after the normal rebates have been made. The proceeds of the regulated loan shall, to the extent necessary, be applied to pay off the balance of the industrial loan.

187—16.9(536A) Mail loans. A licensee shall have authority to make and complete loans by mail from the lender’s licensed office. In making such loans, the lender shall mail all the necessary papers to the borrower; and upon completion of such papers by the borrower, the check or money order representing proceeds of the loan shall be mailed from the licensee’s office.

187—16.10(536A) Real estate loan reporting and disclosure. Each licensee which is a reporting financial institution shall file with the Iowa finance authority and the superintendent a report showing mortgage loans made in Iowa, by census tract, in form and substance as required by the Federal Home Mortgage Act and regulations promulgated under that Act.

This rule is intended to implement Iowa Code sections 535A.1 and 535A.4.

187—16.11(536A) Thrift certificates. A licensee shall notify the superintendent in writing before issuing thrift certificates or similar evidences of indebtedness to the general public.

16.11(1) Acknowledgment. When a new customer purchases a thrift certificate or similar evidence of indebtedness that is not insured by a federal deposit insurance agency, the customer shall sign an acknowledgment. The acknowledgment shall be a separate form and in duplicate. The original copy shall be given to the customer and the duplicate retained by the licensee. The acknowledgment shall be in substantially the following form:

ACKNOWLEDGMENT

THRIFT CERTIFICATES, OR SIMILAR EVIDENCES OF INDEBTEDNESS, ISSUED BY THIS CORPORATION:

- 1) ARE NOT INSURED OR GUARANTEED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) OR ANY OTHER FEDERAL AGENCY, AND
- 2) ARE NOT INSURED OR GUARANTEED BY THE STATE OF IOWA OR ANY OF ITS AGENCIES.
- 3) ARE INVESTMENTS AND SUBJECT TO INVESTMENT RISKS, INCLUDING THE POSSIBLE LOSS OF THE PRINCIPAL AMOUNT INVESTED.

You are entitled to a copy of the firm’s Disclosure Document and a copy of the firm’s most current audited financial statements.

Your signature(s) below indicate(s) you have read and received a copy of this document.

Date: _____
 Signature: _____
 Signature: _____
 Signature: _____
 Signature: _____

16.11(2) Disclosure. A licensee shall, before issuing thrift certificates or similar evidences of indebtedness that are not insured by a federal deposit insurance agency, have available for distribution a disclosure document. The disclosure document and any changes to the disclosure document shall be approved by the superintendent. The disclosure document shall contain all material facts necessary to make an informed investment decision with respect to the purchase of a thrift certificate or similar evidence of indebtedness. The disclosure document will provide, at a minimum, the following:

- a. A synopsis of the licensee’s primary business.
- b. A synopsis of management’s experience and expertise.
- c. A statement that thrift certificates have substantial restrictions on their transferability.

d. A statement that thrift certificates or similar evidences of indebtedness are not registered under the Iowa Securities Act nor are they registered with the Securities and Exchange Commission.

e. A statement that thrift certificates or similar evidences of indebtedness may be sold only to residents of the state of Iowa.

f. A statement regarding the licensee's policy regarding early redemption and penalties, if any, for early redemption.

g. A statement that thrift certificates or similar evidences of indebtedness are unsecured and purchasers rank as general creditors of the company and have rights prior to subordinated debt, debentures, capital notes and stockholders of the company.

h. Audited financial statements setting forth in comparative form corresponding figures for the previous two fiscal or calendar year ends.

This rule is intended to implement Iowa Code section 536A.22.

187—16.12(536A) Real estate loans. A licensee may, subject to Iowa Code chapter 536A and these rules, extend credit secured by real estate; or discount, purchase, or finance vendors' or vendees' interest in real estate contracts.

16.12(1) If the licensee issues thrift certificates or similar evidences of indebtedness that are not insured by a federal deposit insurance agency, the following documentation shall be obtained and retained for the aforementioned loans or contracts secured by real estate. These documentation requirements do not apply to loans in which a lien or an interest in real estate is taken as additional collateral through an abundance of caution. The required documentation is as follows:

a. Loan application or similar document disclosing the name of the applicant(s), the purpose of the loan, and the proposed security.

b. A signed and dated financial statement from the borrower(s).

c. Credit report detailing the borrower's history of repaying debt.

d. Written verification that the licensee's interest in the security is properly insured.

e. Legal opinion or similar assurance affirming the validity of the licensee's lien or claim on the security.

f. Signed and dated appraisal, completed by a qualified person after inspecting the property, which indicates the market value of the property.

g. Legal documents including the note, security agreement, and mortgage or similar instrument constituting a lien or claim upon real estate.

h. Copies of all documents required to be disclosed to the borrower pursuant to state or federal laws.

16.12(2) Reserved.

This rule is intended to implement Iowa Code sections 536A.20 and 536A.22.

187—16.13(17A,536A) Size of bond. An applicant for an industrial loan company license must file with the superintendent a bond complying with the provisions of Iowa Code section 536A.7A as amended by 2009 Iowa Acts, Senate File 355, section 44. For applicants or licensees who do not make, process, or underwrite any residential mortgage loans, as defined by 2009 Iowa Acts, Senate File 355, section 3, subsection 13, the bond shall be in the amount of \$25,000. For applicants or licensees who make, arrange, broker, process, or underwrite residential mortgage loans, as defined by 2009 Iowa Acts, Senate File 355, section 3, subsection 13, the bond amount required to be filed and maintained shall be set and adjusted annually by March 31 using the following scale, based on the volume of residential mortgage loans made, originated, arranged, brokered, processed, and underwritten, as the case may be, by the applicant or licensee during the preceding calendar year:

<u>Loans</u>	<u>Bond Amount</u>
\$0 – \$5,000,000	\$25,000
\$5,000,001 – \$20,000,000	\$50,000
\$20,000,001 – \$50,000,000	\$75,000
\$50,000,001 – \$100,000,000	\$100,000
Over \$100,000,000	\$150,000

This rule is intended to implement Iowa Code section 536A.7A as amended by 2009 Iowa Acts, Senate File 355, section 44.
[ARC 8237B, IAB 10/21/09, effective 11/25/09]

187—16.14(536A) Loan record. Rescinded IAB 10/9/96, effective 11/13/96.

187—16.15(536A) Exceptions. Rescinded IAB 10/9/96, effective 11/13/96.

187—16.16(536A) Insurance premium refunds. Rescinded IAB 10/9/96, effective 11/13/96.

187—16.17(536A) Single premium insurance refund. Rescinded IAB 8/17/94, effective 9/21/94.

187—16.18(536A) Property insurance refunds. Rescinded IAB 8/17/94, effective 9/21/94.

187—16.19(536A) Refund exception. Rescinded IAB 8/17/94, effective 9/21/94.

187—16.20(536A) Fees. Rescinded IAB 10/9/96, effective 11/13/96.

187—16.21(536A) Appraisal fees. Rescinded IAB 8/17/94, effective 9/21/94.

187—16.22(536A) Rescinded, effective 12/22/76.

187—16.23(536A) Real estate loan charges. Rescinded IAB 8/17/94, effective 9/21/94.

187—16.24(536A) Prepayment. Rescinded IAB 8/17/94, effective 9/21/94.

187—16.25(536A) Restrictions. Rescinded IAB 10/9/96, effective 11/13/96.

187—16.26(536A) Penalty. Rescinded IAB 8/17/94, effective 9/21/94.

187—16.27(536A) Real estate loan reporting and disclosure. Rescinded IAB 10/9/96, effective 11/13/96.

187—16.28(536A) Thrift certificates. Rescinded IAB 10/9/96, effective 11/13/96.

187—16.29(536A) Disclosure for subordinated debt. Rescinded IAB 8/17/94, effective 9/21/94.

187—16.30(536A) Real estate loans. Rescinded IAB 10/9/96, effective 11/13/96.

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CHAPTER 17
Reserved

CHAPTER 18
MORTGAGE BANKERS AND MORTGAGE BROKERS

187—18.1(17A,535B) Definitions. For the purposes of this chapter, the definitions in Iowa Code chapter 535B 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.

“*License application*” means 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:

1. Any communication, regardless of form, from a licensee to a borrower requesting information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower; or

2. Any communication, regardless of form, from a borrower to a licensee for an offer or responding to a solicitation for an offer of residential mortgage loan terms or providing information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower.

“*Mortgage loan originator*” means a natural person who is licensed under 2009 Iowa Acts, Senate File 355, and 187—Chapter 19.

“*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.

“*Services 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.

[ARC 8238B, IAB 10/21/09, effective 1/1/10]

187—18.2(17A,535B) Application for license.

18.2(1) Application for a license to operate as a mortgage banker or mortgage broker shall be submitted to the administrator through the NMLS&R, and all requested information shall be provided on or with the application form. The administrator may consider an application or registration 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.

18.2(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. The applicant shall also pay any additional fees required by the NMLS&R including but not limited to the following: system processing fees, background check fees, and credit background check fees.

18.2(3) If any information changes after the filing of the initial application, the applicant shall provide updated information to the administrator in writing within 10 calendar days of the change. Failure to provide updated information when a change has occurred may result in denial of the application.

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 mortgage loan originators who are employed by, under contract with, or exclusive agents of the person have successfully completed the licensing requirements of 2009 Iowa Acts, Senate File 355.

18.2(5) An applicant must file with the administrator a bond complying with the provisions of Iowa Code section 535B.9 as amended by 2009 Iowa Acts, Senate File 355, section 32. The bond amount required to be filed and maintained by the applicant shall be set and adjusted as necessary annually in accordance with the following scale, based on the volume of residential mortgage loans made, originated, arranged, brokered, processed, and underwritten, as the case may be, by the applicant or licensee during the preceding calendar year:

<u>Loans</u>	<u>Bond Amount</u>
\$0 – \$100,000,000	\$100,000
Over \$100,000,000	\$150,000

18.2(6) Licenses expire on the next December 31 after issuance. However, licenses granted on or after November 1 but before January 1 will not expire until December 31 of the following year. For example, a license granted on November 17, 2008, would not expire until December 31, 2009.
[ARC 8238B, IAB 10/21/09, effective 1/1/10]

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

18.3(1) To remain authorized to act as a mortgage banker or mortgage broker, a licensee must renew a license before the expiration date of the license. A licensee who fails to renew a license before expiration is not authorized to act as a mortgage banker or mortgage broker in Iowa after the expiration date.

18.3(2) Application to renew a license shall be submitted to the administrator before December 1 of the year of expiration through the NMLS&R. All requested information shall be provided to the administrator 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 December 1.

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

- a. The administrator receives the application by December 1, accompanied by the appropriate renewal fee, or the administrator receives the application after December 1 but before 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(4) A renewal application received by the administrator after 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.

187—18.4(17A,535B) Individual registration requirements. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.5(17A,535B) Renewal of individual registration. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.6(17A,535B) Unattached status of individual registrant. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.7(17A,535B) Notice of significant events. A licensee shall notify the administrator immediately and in writing within five business days of the occurrence of any of the following events.

18.7(1) The licensee or any of the licensee's officers, directors, principal stockholders, or affiliates file for bankruptcy protection.

18.7(2) A prosecuting authority files criminal charges against the licensee or any of a licensee's officers, directors, principal stockholders, or affiliates.

18.7(3) Another state or jurisdiction institutes license denial, cease and desist, suspension or revocation procedures, or other formal or informal regulatory action against the licensee or any of the licensee's officers, directors, principal stockholders, or affiliates.

18.7(4) The attorney general of Iowa, the Federal Trade Commission, or the enforcer of the consumer protection laws of any other jurisdiction initiates an action to enforce consumer protection laws against the licensee or any of the licensee's officers, directors, principal stockholders, mortgage loan originators, employees, or affiliates.

18.7(5) The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Government National Mortgage Association suspends or terminates the licensee's status as an approved seller or seller/servicer.

[ARC 8238B, IAB 10/21/09, effective 1/1/10]

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

18.8(1) No licensee shall conduct the residential mortgage lending activities authorized in Iowa Code chapter 535B under any name other than that stated on the license.

18.8(2) A licensee shall notify the administrator in writing of a change in the location, the addition, or the closing of any office prior to the change, addition, or closure.

18.8(3) A licensee shall maintain on file with the administrator, through the NMLS&R, a list of all mortgage loan originators who are employed by, under contract with, or exclusive agents of the licensee. The licensee shall pay any fees assessed by the NMLS&R to add a mortgage loan originator to the licensee's list in the NMLS&R.

18.8(4) When a mortgage loan originator ceases to be employed by, under contract with, or an exclusive agent of a licensee, the licensee shall notify the administrator, through the NMLS&R, within five business days. The notification shall include the reasons for the termination of the mortgage loan originator's employment, contract, or agency.

18.8(5) A licensee shall notify the administrator in writing of the addition of any mortgage loan originator, owner, officer, partner, or director within five business days of addition.

18.8(6) Failure to notify the administrator within the prescribed time as required by this rule may subject the licensee to disciplinary action.

18.8(7) NMLS&R system processing fees. In addition to the fees set forth in this chapter, the applicant or licensee shall pay any fee assessed by the NMLS&R attributed to the licensee's record in the NMLS&R system including but not limited to the initial set-up fee, an annual processing fee, and a loan sponsorship transfer fee.

[ARC 8238B, IAB 10/21/09, effective 1/1/10]

187—18.9(17A,535B) Administrative fees.

18.9(1) *Examination and investigation late fees.* A licensee shall pay the administrator the total charge for an examination or investigation within 30 days after the administrator has requested payment. If a licensee fails to pay an examination or investigation fee by the due date, the administrator may assess an additional penalty of 5 percent of the amount of the fee for each day after the due date.

18.9(2) *Late fees for failing to respond.* In the process of administering this chapter, the administrator may require a person to provide responses to formal orders, examinations, or complaint inquiries. If a person fails to respond within 30 days of the request, the administrator may assess a penalty of \$10 per day after the initial 30 days.

18.9(3) *License determination letters.* A person who requests written confirmation from the administrator that a license is not required shall submit a fee of \$100 with the written request.

18.9(4) *Required financial statements.* A licensee who fails to file with the administrator the financial statements required under Iowa Code section 535B.10(1) within 120 days after the end of a licensee's fiscal year shall be subject to a late penalty of \$100 for each day the financial statements are delinquent, but in no event shall the aggregate of late penalties exceed \$5,000. The administrator may relieve any licensee from the payment of any penalty, in whole or in part, for good cause.

18.9(5) *Duplicate license.* The licensee shall pay a fee of \$25 for each duplicate of an original license issued.

187—18.10(17A,535B) Continuing education. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.11(17A,535B) Administrative requirements for courses. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.12(17A,535B) Standards for approval of courses of instruction. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.13(17A,535B) Standards for approval of live classroom courses. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.14(17A,535B) Standards for approval of distance education courses. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.15(17A,535B) Standards for approval of paper home-study courses. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.16(17A,535B) Licensee records.

18.16(1) General record requirements. A licensee must keep records that allow the administrator to determine the licensee's compliance with relevant statutes and regulations.

- a. The licensee may keep the records as a hard copy or in an electronic equivalent.
- b. The licensee shall keep records for at least 25 months from the date of the final transaction with the borrower.
- c. The licensee shall maintain all books and records in good order and shall produce books and records for the administrator upon request. Failure to produce such books and records within 30 days of the administrator's request may be grounds for disciplinary action against the licensee.
- d. The obligation to maintain records continues even after the licensee ceases business operations in Iowa and turns in or surrenders its license. The owners and directors of the licensee are responsible for ensuring this requirement is met.

18.16(2) Required records.

- a. A mortgage broker shall keep an index, application log, and application files.
- b. A mortgage banker shall keep an index, application log, application files, loan register, and loan files. If the mortgage banker also services loans, the mortgage banker must also keep account ledgers.
- c. A mortgage banker who only services loans needs to keep only an index, a loan register, loan files, and account ledgers.

18.16(3) Index. All records shall be accessible by the borrower's name (including the name of any endorser, comaker, or surety who is indebted to the lender) and account number.

18.16(4) Application log. The application log is a chronological list of applications received. The application log shall include the name of the applicant, date the application was completed, the loan originator, notes for action taken on applications (such as "approved," "denied," or "withdrawn"), and date of action. For approved applications, the application log shall show the date the loan closed and the name of the lender. For purposes of these rules, information from an applicant becomes an application when the licensee obtains the name and social security number of the applicant.

18.16(5) Loan register. The loan register shall include the following information for every loan that is made: the date of the transaction, name of the borrower, the loan originator, name of the lender, and amount financed. The register shall be kept chronologically in the order the loans closed. The loan register may be combined with the application log.

18.16(6) Application file. A licensee shall maintain an application file for each application received. The application file shall contain copies of the application and any required disclosures. A copy of any adverse action taken on the application shall also be placed in the application file.

18.16(7) Loan file. A licensee shall maintain a loan file for each loan made. The loan file consists of the application file and documents from the loan closing. These documents include: note, mortgage,

all truth-in-lending disclosures, and all real estate settlement procedures Act disclosures. The loan file shall include documentation of how the loan proceeds were distributed.

18.16(8) Account ledger. A licensee shall maintain an account ledger for each loan that is serviced.

a. The account ledger shall include the following information: the name and address of the borrower, loan number, loan date, payment terms, maturity date, principal amount of loan, amount financed, total of payments, property listed as security, and distribution of the loan proceeds.

b. The account ledger shall include a transaction history. Payments shall be posted to the account ledger effective the date payments were received. Payment entries will show the date payment was received, the total amount of the payment, and a description of how the payment was applied to the borrower's account (amount applied to principal, interest, escrow, late fees, or additional written description). Other transactions shall be fully described. Corrections to the transaction history shall be made by corrective entry and not by erasure.

c. The account ledger shall show remaining balances due from the borrower, including principal, escrow, late fees, and other charges.

d. The account ledger shall show any change to the interest rate and the effective date of that change.

e. The account ledger shall include full descriptions of payments made outside the normal course of business, for example, payments made by the sale of security, insurance claim, or endorser. For any payments made by death claims on credit insurance, the date of death shall be noted in the account ledger.

f. When a loan is prepaid in full, the account ledger shall show the dates and amounts of any rebates made to the borrower including escrow rebates and the refunds of unearned insurance premiums.

18.16(9) General business records. A licensee must keep the following general business records for at least 36 months:

a. All checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and canceled checks (or copies thereof) relating to the mortgage business of the licensee.

b. Complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of each mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant.

c. Copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all employees, independent contractors, and others compensated by a licensee in connection with the conduct of the mortgage lending business.

d. All correspondence and other records relating to the maintenance of any surety bond required by Iowa Code chapter 535B.

e. Copies of all contractual arrangements or understandings with third parties in any way relating to the provision of mortgage lending services (including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, any investor contracts, any employment agreements, and any noncompete agreements).

f. Copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar functions performed by any third party, including but not limited to the administrator or any other regulatory or supervisory authority.

g. Copies of all advertisements and solicitations concerning mortgage business directed at Iowa residents, including advertisements and solicitations on the Internet or by other electronic means, in the format (e.g., recorded sound, video, print) in which the advertisements and solicitations were published or distributed.

18.16(10) Disposal of records. If the licensee or former licensee disposes of records at the end of the retention period, the licensee or former licensee shall dispose of the records in a reasonable manner that safeguards any identification information, as defined in Iowa Code section 715A.8(1) "a." The owners and directors of licensees and former licensees are responsible for ensuring this requirement is met.

[ARC 8238B, IAB 10/21/09, effective 1/1/10]

187—18.17(17A,535B) Annual report. On or before March 31 each year, a licensee shall file with the administrator an annual report for the preceding calendar year on forms prescribed by the administrator.

For every day after March 31 that the report is not received, the administrator may assess late fees of \$10 per day.

[ARC 8238B, IAB 10/21/09, effective 1/1/10]

187—18.18(17A,535B) Advertising and representations to potential borrowers.

18.18(1) Any advertisement of mortgage loans which are offered by or through a licensee shall conform to the following requirements:

a. An advertisement shall be in compliance with Truth-in-Lending, Regulation Z, and any other applicable state and federal laws and regulations.

b. An advertisement shall be made only for such products and terms as are actually available and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations.

c. An advertisement shall not make any statement or fail to make any statement the result of which shall present a misleading or deceptive impression to consumers.

18.18(2) A licensee receiving a verbal or written inquiry about the licensee's services shall respond accurately to any questions about the scope and nature of such services and any costs.

[ARC 8238B, IAB 10/21/09, effective 1/1/10]

187—18.19(17A,535B) Complaints and investigations.

18.19(1) The administrator may, at any time and as often as the administrator deems necessary, investigate a business and examine the books, accounts, records, and files used by a licensee.

18.19(2) The administrator may investigate complaints or alleged violations about any licensee.

18.19(3) The following shall constitute a complaint or alleged violation:

a. A written complaint received from a consumer, member of the public, employee business affiliate, or other governmental agency.

b. Notice to the administrator from any source that the licensee has been the subject of disciplinary proceedings in another jurisdiction.

c. Notice to the administrator from any source that the licensee has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, or other 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.

[ARC 8238B, IAB 10/21/09, effective 1/1/10]

187—18.20(17A,535B) Disciplinary action.

18.20(1) The administrator has authority pursuant to Iowa Code chapters 535B and 17A to impose discipline for violations of Iowa Code chapter 535B and the rules promulgated thereunder.

18.20(2) Grounds for discipline. The administrator may impose any of the disciplinary sanctions set out in Iowa Code section 535B.7 when the administrator finds any of the following:

a. The licensee has violated a provision of Iowa Code chapter 535B or a rule adopted under Iowa Code chapter 535B or any other state or federal law applicable to the conduct of mortgage banking or mortgage brokering, including but not limited to Iowa Code chapters 535 and 535A.

b. A fact or condition exists which, had it existed at the time of the original application for the license, would have warranted the administrator to refuse to issue the original license.

c. The licensee is found upon investigation to be insolvent, in which case the license shall be revoked immediately.

d. The licensee has violated an order of the administrator.

e. The licensee fails to fully cooperate with an examination or investigation, including failure to respond to an administrator inquiry within 30 calendar days of the date of mailing a written communication directed to the licensee's last-known address on file with the administrator.

f. The licensee has engaged in any conduct that subverts or attempts to subvert an examination or investigation by the administrator.

g. The licensee continues to operate as a mortgage banker or mortgage broker without an active and current license.

h. and *i.* Reserved.

j. The licensee fails to notify the administrator within five days of the occurrence of one of the significant events set forth in rule 187—18.7(17A,535B).

k. Another state or jurisdiction has denied, suspended, revoked, or refused to renew the licensee's license, registration, or authorization to act as a mortgage banker or mortgage broker under the other state's or jurisdiction's law.

l. The licensee fails to create and maintain complete and accurate records as required by state or federal law, regulation, or rule.

18.20(3) A licensee may surrender a license by delivering to the administrator a written notice of surrender.

18.20(4) The administrator may issue a cease and desist order ordering a person to cease and desist from violating any provision of Iowa Code chapter 535B or rules adopted thereunder. The process for issuing a cease and desist order is described in Iowa Code section 535B.13.

[ARC 8238B, IAB 10/21/09, effective 1/1/10]

Rules 187—18.1(17A,535B) to 187—18.20(17A,535B) are intended to implement Iowa Code chapter 535B.

187—18.21(252J) Nonpayment of child support. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.22(261) Nonpayment of student loan. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.23(82GA,SF2428) Nonpayment of state debt. Rescinded IAB 10/21/09, effective 1/1/10.

[Filed 5/3/06, Notice 3/29/06—published 5/24/06, effective 7/1/06]

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CHAPTER 19
MORTGAGE LOAN ORIGINATORS

187—19.1(17A,83GA,SF355) Definitions. For the purposes of this chapter, the definitions in 2009 Iowa Acts, Senate File 355, shall apply. In addition, unless the context otherwise requires, the following definitions shall apply to this chapter and to 2009 Iowa Acts, Senate File 355:

“*Licensee*” means a person who has a license to operate as a mortgage loan originator in accordance with the provisions of 2009 Iowa Acts, Senate File 355, section 4.

“*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.

“*SAFE mortgage loan originator test*” means the licensing test approved by the NMLS&R in accordance with the provisions of 2009 Iowa Acts, Senate File 355, section 9.

“*Servicer*” means a person that collects or receives payments, including principal, interest and trust items such as hazard insurance, property taxes and other amounts due, on behalf of a note holder or investor in accordance with the terms of a residential mortgage loan.

“*Superintendent*” means the superintendent of banking appointed pursuant to Iowa Code section 524.201.

“*Takes a residential mortgage loan application,*” with respect to 2009 Iowa Acts, Senate File 355, section 3, subsection 8, means:

1. Any communication, regardless of form, from a mortgage loan originator to a borrower soliciting a loan application or requesting information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower; or

2. Any communication, regardless of form, from a borrower to a mortgage loan originator for an offer or responding to a solicitation for an offer of residential mortgage loan terms or providing information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower.

[ARC 8239B, IAB 10/21/09, effective 11/25/09]

187—19.2(17A,83GA,SF355) Mortgage loan originator requirements.

19.2(1) A natural person who applies for a license pursuant to 2009 Iowa Acts, Senate File 355, section 4, to act as a mortgage loan originator in this state shall apply with the superintendent through the NMLS&R. The superintendent may consider an application withdrawn if it does not contain all of the information required and the information is not submitted to the superintendent within 30 days after the superintendent requests the information.

19.2(2) Prior to applying for a mortgage loan originator license, the applicant must complete the preclicensing education requirements pursuant to 2009 Iowa Acts, Senate File 355, section 8.

19.2(3) Prior to applying for a mortgage loan originator license, the applicant must pass the SAFE mortgage loan originator test, which is comprised of two components: a national component and a state component. Applicants must pass each component with a score of 75 percent or higher. Mortgage loan originators who passed the Iowa loan originator test as part of the registration process under 2009 Iowa Acts, Senate File 355, section 5, are not required to take the Iowa state component of the SAFE mortgage loan originator test. The superintendent will develop a process by which to certify to NMLS&R that the applicant has completed the state component. Such applicants are still required to pass the national component of the SAFE mortgage loan originator test.

19.2(4) The fee for an initial mortgage loan originator application is \$50. This fee is nonrefundable. This fee is in addition to any fees established and charged by the NMLS&R, any approved education course provider, any approved education testing provider, any law enforcement agency for fingerprints and background checks, or by any credit reporting agency used by the NMLS&R.

19.2(5) An applicant must authorize a fingerprint background check through NMLS&R for the purpose of conducting a national criminal history background check through the Federal Bureau of

Investigation. This requirement applies to all individuals, regardless of whether the applicant was previously registered under Iowa Code chapter 535B or if the applicant has previously submitted fingerprint cards for licensure. Until the NMLS&R completes the implementation of the electronic fingerprint capture program, the applicant must submit to a criminal background check by providing a fingerprint card and waiver in a manner as required by the superintendent.

19.2(6) Each applicant must provide authorization to obtain a credit report through NMLS&R.

19.2(7) To engage in activities requiring a license, a mortgage loan originator must be covered under a surety bond that reflects the dollar amount of loans originated, processed, or underwritten, as the case may be, on an annual basis. The bond must be on a form provided by the superintendent. Satisfaction of this requirement shall be met by one of the following:

a. A mortgage loan originator who is an employee or exclusive agent of a company subject to Iowa Code chapter 535B, 536, or 536A may be covered by the company's bond.

b. A mortgage loan originator who is not covered by a company bond pursuant to paragraph 19.2(7) "a" must provide an individual surety bond meeting the requirements of paragraph 19.2(7) "c."

c. The surety bond amount required to be filed and maintained by or on behalf of a mortgage loan originator who is not an employee or exclusive agent of a company subject to Iowa Code chapter 535B, 536, or 536A shall be set and adjusted annually as necessary in accordance with the following scale, based on the volume of residential mortgage loans originated, processed, and underwritten, as the case may be, by the licensee during the preceding calendar year:

<u>Loans</u>	<u>Bond Amount</u>
\$0 – \$5,000,000	\$25,000
\$5,000,001 – \$20,000,000	\$50,000
\$20,000,001 – \$50,000,000	\$75,000
\$50,000,001 – \$100,000,000	\$100,000
Over \$100,000,000	\$150,000

19.2(8) To engage in activities requiring a license, a mortgage loan originator must be employed by, under contract with, or an exclusive agent of a licensed company or a company that is exempt from licensing requirements. However, the superintendent may consider an application for mortgage loan originator from a person not currently employed by, under contract with, or an exclusive agent of a licensee. If the superintendent determines that the applicant is otherwise eligible for a mortgage loan originator license, the superintendent shall approve the license in "active-inactive" status or similar status type indicating that the applicant has met the individual requirements for licensure but is not authorized to conduct business.

19.2(9) A mortgage loan originator license expires on the next December 31 after issuance; however, mortgage loan originator licenses issued on or after November 1 but before January 1 will not expire until December 31 of the following year. For example, a mortgage loan originator license issued on November 17, 2009, would not expire until December 31, 2010.

[ARC 8239B, IAB 10/21/09, effective 11/25/09]

187—19.3(17A,83GA,SF355) Grounds for denial of license.

19.3(1) The superintendent shall deny an application for a mortgage loan originator license if the applicant does not meet the qualifications outlined in 2009 Iowa Acts, Senate File 355, section 7. For the purpose of applying 2009 Iowa Acts, Senate File 355, section 7, subsection 2, "dishonesty or breach of trust" includes, but is not limited to, forgery, embezzlement, obtaining money under false pretenses, theft, extortion, fraud, conspiracy to defraud, tax evasion, or another similar offense.

19.3(2) The superintendent may deny an application for a mortgage loan originator license for any of the following reasons:

a. This state or another state or jurisdiction has denied, suspended, or refused to renew the applicant's license to act as a mortgage loan originator or has denied, suspended, 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 loan originator shall be considered a denial of that person's license to act as a mortgage loan originator in that state.

b. The applicant has been barred, removed, or prohibited from serving in any capacity in a financial institution by any state or federal regulatory agency, including but not limited to the Office of Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System, or the U.S. Department of Housing and Urban Development.

c. The applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, tax evasion, 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, "convicted of" includes a guilty plea, deferred judgment, deferred sentence, or other similar finding of guilt by a court of competent jurisdiction.

d. 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. The applicant is under 18 years of age.

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

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

h. 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.

i. 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.

j. 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 Iowa Code chapter 272D.

[ARC 8239B, IAB 10/21/09, effective 11/25/09]

187—19.4(17A,83GA,SF355) Renewal of mortgage loan originator license.

19.4(1) A mortgage loan originator license must be renewed before expiration. An individual who fails to renew a mortgage loan originator license before expiration is not authorized to act as a mortgage loan originator in Iowa after the expiration date.

19.4(2) Before December 1 of the year of expiration, a mortgage loan originator license shall be renewed through the NMLS&R, with all requested information provided as directed by the NMLS&R, and must be accompanied by a fee of \$50. This fee is nonrefundable. This fee is in addition to any fees established and charged by the NMLS&R, any approved education course provider, any approved education testing provider, any law enforcement agency for fingerprints and background checks, or by any credit reporting agency used by the NMLS&R. The superintendent may assess a late fee of \$5 per day not to exceed \$100 for a mortgage loan originator license renewal accepted for processing after December 1.

19.4(3) The superintendent may reject a mortgage loan originator license renewal if the license renewal is not complete or if all required fees, including late fees, are not remitted.

19.4(4) The superintendent shall grant an application to renew a mortgage loan originator license if the licensee meets the standards for renewal in 2009 Iowa Acts, Senate File 355, section 10, and:

a. The superintendent receives the renewal application by December 1, accompanied by the \$50 renewal fee, or the superintendent receives the license renewal after December 1 but before January 1 and it is accompanied by the renewal fee and the appropriate late fee;

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

c. The renewal application does not reveal grounds to deny the mortgage loan originator license.
[ARC 8239B, IAB 10/21/09, effective 11/25/09]

187—19.5(17A,83GA,SF355) Reinstatement of license.

19.5(1) The license of a mortgage loan originator that expires for failure to satisfy the minimum standards for renewal may be reinstated if the licensee meets the following requirements:

a. The application for reinstatement is submitted between January 1 and February 28 of the year immediately following the year the license expired.

b. All continuing education courses and any other minimum requirements for license renewal for the year in which the license expired are completed prior to submission of the application for reinstatement.

c. The licensee pays a reinstatement fee of \$50, in addition to the renewal fee, and any late charges.

19.5(2) A mortgage loan originator whose license has expired and who fails to meet the requirements for reinstatement specified in this rule must apply for a new license and meet the requirements in effect at that time.

[ARC 8239B, IAB 10/21/09, effective 11/25/09]

187—19.6(17A,83GA,SF355) Notice of significant events. A licensee shall notify the superintendent either directly in writing or through the NMLS&R within five business days of the occurrence of any of the following events.

19.6(1) The licensee files for bankruptcy protection.

19.6(2) A prosecuting authority files criminal charges against the licensee.

19.6(3) Another state or jurisdiction institutes license denial, cease and desist, suspension or revocation procedures, or other formal or informal regulatory action against the licensee.

19.6(4) The attorney general of Iowa, the Federal Trade Commission, or the enforcer of the consumer protection laws of any other jurisdiction initiates an action to enforce consumer protection laws against the licensee.

19.6(5) The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Government National Mortgage Association suspends or terminates the licensee's status as an approved loan originator.

19.6(6) The licensee ceases engaging in activities requiring a license and wishes to surrender the licensee's license. Although the licensee has surrendered the licensee's license, the superintendent retains jurisdiction over the licensee's activities during the time the individual was licensed.

19.6(7) A change is made in the licensee's name.

[ARC 8239B, IAB 10/21/09, effective 11/25/09]

187—19.7(17A,83GA,SF355) Annual report. On or before March 31 of each year, each mortgage loan originator who as of the preceding December 31 was not employed by or an exclusive agent of a company licensed under Iowa Code chapter 535B, 536, or 536A shall file an annual report with the superintendent stating the amount of residential mortgage loans originated, processed, or underwritten, as the case may be, during the preceding calendar year.

[ARC 8239B, IAB 10/21/09, effective 11/25/09]

187—19.8(17A,83GA,SF355) Administrative fees.

19.8(1) Investigation or examination fees. A licensee shall pay an investigation or examination fee as determined by the superintendent based on the actual cost of the operation of the finance bureau of the banking division as described in 2009 Iowa Acts, Senate File 355, section 12, subsection 2.

19.8(2) Investigation or examination late fees. A licensee shall pay the superintendent the total charge for an investigation or examination within 30 days after the superintendent has requested payment. If a licensee fails to pay an investigation or examination fee by the due date, the superintendent may assess an additional penalty of 5 percent of the amount of the fee for each day after the due date.

19.8(3) Late fees for failing to respond. In the process of administering this chapter, the superintendent may require a person to provide responses to formal orders, examinations, or complaint

inquiries. If a person fails to respond within 30 days of the request, the superintendent may assess a penalty of \$10 per day after the initial 30 days.

19.8(4) *Required annual report.* A licensee who fails to file with the superintendent the annual report required under rule 187—19.7(17A,83GA,SF355) by March 31 of each year shall be subject to a late penalty of \$10 for each day the annual report is delinquent, but in no event shall the aggregate of late penalties exceed \$300. The superintendent may relieve any licensee from the payment of any penalty, in whole or in part, for good cause.

19.8(5) *NMLS&R system processing fees.* In addition to the fees set forth in this chapter, the applicant or licensee shall pay any fee assessed by the NMLS&R attributed to the licensee's record in the NMLS&R system, including but not limited to the initial set-up fee, an annual processing fee, and a loan sponsorship transfer fee.

[ARC 8239B, IAB 10/21/09, effective 11/25/09]

187—19.9(17A,83GA,SF355) Continuing education.

19.9(1) A licensee applying to renew a mortgage loan originator license shall, during the license term preceding renewal, complete at least eight hours of continuing education or preclicensing education.

19.9(2) Each continuing education course shall first be approved by the NMLS&R before the superintendent grants continuing education credit.

19.9(3) Continuing education courses shall focus on issues of the mortgage business or related industry topics.

19.9(4) The entity providing the continuing education course shall submit to the NMLS&R evidence of the licensee's satisfactory completion of approved continuing education.

19.9(5) Continuing education hours shall not be carried forward from one year to the next.

19.9(6) Each mortgage loan originator shall ultimately be responsible for maintaining verification records in the form of completion certificates or other documents providing evidence of satisfactory completion of approved continuing education courses. The mortgage loan originator shall retain documentation for a period of three years after the effective date of the mortgage loan originator license renewal. The superintendent may conduct random audits to verify the continuing education submitted to the NMLS&R.

19.9(7) Failure to provide requested evidence of completion of claimed continuing education within 30 days of the written notice from the superintendent shall result in the mortgage loan originator license being placed in inactive status. Prior to the superintendent's activating a mortgage loan originator license that has been placed on inactive status pursuant to this rule, the mortgage loan originator must submit to the superintendent satisfactory evidence that all required continuing education has been completed.

19.9(8) The requirement for completion of continuing education may be waived or the deadline for completion may be extended by the superintendent under either of the following circumstances:

a. The mortgage loan originator is called to active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in any continuing education year.

b. The mortgage loan originator experiences physical disability, illness, or any extenuating circumstances that prevent successful completion of continuing education.

[ARC 8239B, IAB 10/21/09, effective 11/25/09]

187—19.10(17A,83GA,SF355) Independent contractor—loan processor or underwriter.

19.10(1) For the purpose of 2009 Iowa Acts, Senate File 355, section 4, "a loan processor or underwriter who is an independent contractor" means any person who processes or underwrites residential mortgage loans and is not a W-2 employee of a company licensed under Iowa Code chapter 535B, 536, or 536A.

19.10(2) An independent contractor must meet all the licensure requirements found in rule 187—19.2(17A,83GA,SF355) with the exception of subrule 19.2(8).

19.10(3) An independent contractor must meet the surety bond requirements found in subrule 19.2(7) prior to the issuance of a license.

[ARC 8239B, IAB 10/21/09, effective 11/25/09]

187—19.11(17A,83GA,SF355) NMLS&R information challenge process. A mortgage loan originator may challenge information entered into the NMLS&R by the superintendent by filing a dispute with the superintendent outlining the grounds for the dispute. The grounds for the dispute shall be limited to a review of the factual accuracy of the information regarding the mortgage loan originator's own license record submitted to the NMLS&R by the superintendent. A mortgage loan originator may not file a dispute in order to protest a disciplinary action taken by the superintendent or to appeal the underlying reasons for the disciplinary action. The superintendent shall conduct a paper review of the dispute and determine whether the information submitted to the NMLS&R was factually correct. The superintendent shall notify the mortgage loan originator of the determination within 60 days of the receipt of the dispute. If the superintendent determines the information submitted to the NMLS&R is factually incorrect, the superintendent shall take prompt steps to correct the information submitted.

[ARC 8239B, IAB 10/21/09, effective 11/25/09]

187—19.12(17A,83GA,SF355) Disciplinary action.

19.12(1) The superintendent has authority, pursuant to 2009 Iowa Acts, Senate File 355, and Iowa Code chapter 17A, to impose discipline for violations of 2009 Iowa Acts, Senate File 355, and the rules promulgated thereunder.

19.12(2) Grounds for discipline. The superintendent may impose any of the disciplinary sanctions set out in 2009 Iowa Acts, Senate File 355, section 14, when the superintendent finds any of the following:

a. The licensee has violated a provision of 2009 Iowa Acts, Senate File 355, or a rule adopted under 2009 Iowa Acts, Senate File 355, or any other state or federal law applicable to the conduct of mortgage loan originators, including but not limited to Iowa Code chapters 535 and 535A.

b. A fact or condition exists which, had it existed at the time of the original application for the license, would have warranted the superintendent to refuse to issue the original license.

c. The licensee fails at any time to meet the requirements of 2009 Iowa Acts, Senate File 355, section 7 or 10, or withholds information or makes a material misstatement in an application for a license or the renewal of a license.

d. The licensee has violated an order of the superintendent.

e. The licensee fails to fully cooperate with an examination or investigation, including failure to respond to a superintendent inquiry within 30 calendar days of the date of mailing a written communication directed to the licensee's last-known address on file with the superintendent.

f. The licensee has engaged in any conduct that subverts or attempts to subvert an examination or investigation by the superintendent.

g. The licensee continues to operate as a mortgage loan originator without an active and current license.

h. The licensee continues to act as a mortgage loan originator without first satisfying the required continuing education, absent an express waiver granted by the superintendent.

i. The licensee has submitted a false report of continuing education.

j. The licensee fails to notify the superintendent within five days of the occurrence of one of the significant events set forth in rule 187—19.6(17A,83GA,SF355).

k. Another state or jurisdiction has denied, suspended, revoked, or refused to renew the licensee's license, registration, or authorization to act as a mortgage loan originator under the other state's or jurisdiction's law.

l. The licensee fails to create and maintain complete and accurate records as required by state or federal law, regulation, or rule.

19.12(3) A licensee may surrender a license by delivering to the superintendent a written notice of surrender.

[ARC 8239B, IAB 10/21/09, effective 11/25/09]

Rules 187—19.1(17A,83GA,SF355) to 187—19.12(17A,83GA,SF355) are intended to implement 2009 Iowa Acts, Senate File 355.

187—19.13(17A,252J) Nonpayment of child support. The superintendent shall deny the issuance or renewal of a mortgage loan originator license upon the receipt of 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. In addition to the procedures set forth in Iowa Code chapter 252J, this rule shall apply.

19.13(1) The notice required by Iowa Code section 252J.8 shall be served upon the mortgage loan originator or applicant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the mortgage loan originator or applicant may accept service personally or through authorized counsel.

19.13(2) The effective date of the denial of the issuance or renewal of a mortgage loan originator license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the mortgage loan originator or applicant.

19.13(3) The superintendent is authorized to prepare and serve the notice required by Iowa Code section 252J.8 upon the mortgage loan originator or applicant.

19.13(4) Mortgage loan originators and applicants shall keep the superintendent informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the superintendent copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

19.13(5) All superintendent fees for application or license renewal or reinstatement must be paid by mortgage loan originators or applicants, and all continuing education requirements must be met before a mortgage loan originator license will be issued, renewed or reinstated after the superintendent has denied the issuance or renewal of a mortgage loan originator license pursuant to Iowa Code chapter 252J.

19.13(6) In the event an applicant or a mortgage loan originator timely files a district court action following service of a superintendent notice pursuant to Iowa Code sections 252J.8 and 252J.9, the superintendent shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the superintendent to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a mortgage loan originator license, the superintendent shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

19.13(7) The superintendent shall notify the mortgage loan originator or applicant in writing through regular first-class mail, or such other means as the superintendent deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a mortgage loan originator license, and shall similarly notify the mortgage loan originator or applicant when the license is issued or renewed following the superintendent's receipt of a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code chapters 252J and 17A.
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187—19.14(17A,261) Nonpayment of student loan. The superintendent shall deny the issuance or renewal of a mortgage loan originator license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code chapter 261. In addition to those procedures, this rule shall apply.

19.14(1) The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or mortgage loan originator may accept service personally or through authorized counsel.

19.14(2) The effective date of the denial of the issuance or renewal of a mortgage loan originator license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the applicant or mortgage loan originator.

19.14(3) The superintendent is authorized to prepare and serve the notice required by Iowa Code section 261.126 upon the applicant or mortgage loan originator.

19.14(4) Applicants and mortgage loan originators shall keep the superintendent informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the superintendent copies, within seven days of filing or issuance,

of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

19.14(5) All superintendent fees required for application or license renewal or reinstatement must be paid by applicants or mortgage loan originators, and all continuing education requirements must be met before a mortgage loan originator license will be issued, renewed, or reinstated after the superintendent has denied the issuance or renewal of a mortgage loan originator license pursuant to Iowa Code chapter 261.

19.14(6) In the event an applicant or mortgage loan originator timely files a district court action following service of a superintendent notice pursuant to Iowa Code sections 261.126 and 261.127, the superintendent shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the superintendent to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a mortgage loan originator license, the superintendent shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

19.14(7) The superintendent shall notify the applicant or mortgage loan originator in writing through regular first-class mail, or such other means as the superintendent deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a mortgage loan originator license, and shall similarly notify the applicant or mortgage loan originator when the license is issued or renewed following the superintendent's receipt of a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code sections 261.126 and 261.127 and chapter 17A.
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187—19.15(17A,272D) Nonpayment of state debt. The superintendent shall deny the issuance or renewal of a mortgage loan originator license upon the receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in Iowa Code chapter 272D. In addition to the procedures set forth in Iowa Code chapter 272D, this rule shall apply.

19.15(1) The notice required by Iowa Code section 272D.8 shall be served on the mortgage loan originator or applicant by restricted certified mail, return receipt requested, or personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the mortgage loan originator or applicant may accept service personally or through authorized counsel.

19.15(2) The effective date of the denial of issuance or renewal of a license, as specified in the notice required by Iowa Code section 272D.8, shall be 60 days following service of the notice upon the mortgage loan originator or applicant.

19.15(3) The superintendent is authorized to prepare and serve the notice required by Iowa Code section 272D.8 upon the mortgage loan originator or applicant.

19.15(4) Mortgage loan originators and applicants shall keep the superintendent informed of all court actions and all centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the superintendent copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

19.15(5) All fees for applications, license renewals or reinstatements must be paid by mortgage loan originators or applicants, and all continuing education requirements must be met before a mortgage loan originator license will be issued, renewed or reinstated after the superintendent has denied the issuance or renewal of a mortgage loan originator license pursuant to Iowa Code chapter 272D.

This rule is intended to implement Iowa Code chapters 272D and 17A.
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