

BANKING DIVISION[187]

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Note: Iowa Code chapter 453 renumbered as chapter 12C in 1993 Iowa Code.

CHAPTER 1

DESCRIPTION OF ORGANIZATION

- | | |
|--------------|-----------------------|
| 1.1(17A,524) | Definitions |
| 1.2(17A,524) | Scope and application |
| 1.3(17A,524) | Division of banking |

CHAPTER 2

APPLICATION PROCEDURES

- | | |
|---------------|--|
| 2.1(17A,524) | Organization of a state-chartered bank |
| 2.2(17A,524) | Conversion of national bank into state bank |
| 2.3(17A,524) | Merger or purchase and assumption |
| 2.4(17A,524) | Establishment of a bank office |
| 2.5(17A,524) | Change of location of principal place of business or bank office |
| 2.6(17A,524) | Change of control |
| 2.7(17A,524) | Renewal, amendment or restatement of articles of incorporation |
| 2.8 to 2.11 | Reserved |
| 2.12(17A,524) | Supplemental application procedures |
| 2.13 | Reserved |
| 2.14(524) | Investment in a bank service corporation or other subsidiary |
| 2.15(524) | Securities activities |
| 2.16(524) | Contracts |
| 2.17(17A,524) | Mobile offices, courier services, and convenience offices |
| 2.18(17A,524) | New or innovative electronic activities |
| 2.19(17A,524) | Required fees |

CHAPTER 3

Reserved

CHAPTER 4

STATE BANKING COUNCIL

- | | |
|----------|--|
| 4.1(524) | Composition of council |
| 4.2(524) | Term of office |
| 4.3(524) | Function of the council |
| 4.4(524) | Meetings and method of contacting members of the council |

CHAPTERS 5 and 6

Reserved

CHAPTER 7

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

(Uniform Rules)

- | | |
|--------------|---|
| 7.1(17A,22) | Definitions |
| 7.3 to 7.13 | Reserved |
| 7.14(17A,22) | Personally identifiable information |
| 7.15(17A,22) | Other groups of records routinely available for public inspection |

CHAPTER 8

GENERAL BANKING POWERS

- | | |
|------------|----------------------------|
| 8.1 to 8.7 | Reserved |
| 8.8(12B) | Approved rating services |
| 8.9(524) | General definition of bank |
| 8.10(524) | Courier services |

CHAPTER 9 INVESTMENT AND LENDING POWERS

9.1	Reserved
9.2(17A,524)	Real estate lending
9.3(17A,524)	Leasing

CHAPTER 10 ELECTRONIC TRANSFER OF FUNDS

10.1(527)	Scope
10.2(527)	Terms defined
10.3(527)	Applications to operate a central routing unit
10.4(527)	Compliance examinations of a central routing unit
10.5(527)	Applications to establish a satellite terminal
10.6(527)	Customer instruction in the use of a satellite terminal

CHAPTERS 11 to 14 Reserved

CHAPTER 15 REGULATED LOANS

15.1(17A,536)	Definitions
15.2(17A,536)	Utilization of NMLS
15.3(17A,536)	Application for license
15.4(17A,536)	Grounds for approval or denial
15.5(17A,536)	Renewal of license
15.6(17A,536)	Changes in the licensee's name, location, or control; fees
15.7(17A,536)	Notice of significant events
15.8(17A,536)	Administrative fees
15.9(17A,536)	Licensee records
15.10(17A,536)	Complaints and investigations
15.11(17A,536)	Disciplinary action
15.12(17A,536)	Annual report
15.13(17A,536)	Restrictions on making regulated loans

CHAPTER 16 INDUSTRIAL LOANS

16.1(17A,536A)	Definitions
16.2(17A,536A)	Utilization of NMLS
16.3(17A,536A)	Application for license
16.4(17A,536A)	Grounds for approval or denial
16.5(17A,536A)	Renewal of license
16.6(17A,536A)	Changes in the licensee's name, location, or control
16.7(17A,536A)	Notice of significant events
16.8(17A,536A)	Administrative fees
16.9(17A,536A)	Licensee records
16.10(17A,536A)	Complaints and investigations
16.11(17A,536A)	Disciplinary action
16.12(17A,536A)	Other requirements
16.13(17A,536A)	Restrictions on making industrial loans

CHAPTER 17 DELAYED DEPOSIT SERVICES

17.1(17A,533D)	Definitions
17.2(17A,533D)	Utilization of NMLS
17.3(17A,533D)	Application for license
17.4(17A,533D)	Grounds for approval or denial
17.5(17A,533D)	Renewal of license
17.6(17A,533D)	Changes in the licensee's name, location, or control
17.7	Reserved

17.8(17A,533D)	Administrative fees
17.9(17A,533D)	Licensee records
17.10(17A,533D)	Complaints and investigations
17.11(17A,533D)	Disciplinary action
17.12(17A,533D)	Annual report
17.13(17A,533D)	Restrictions on making delayed deposit transactions

CHAPTER 18

MORTGAGE BANKERS, MORTGAGE BROKERS, AND REAL ESTATE CLOSING AGENTS

18.1(17A,535B)	Definitions
18.2(17A,535B)	Application for license
18.3(17A,535B)	Renewal of license
18.4(17A,535B)	Grounds for approval or denial
18.5 and 18.6	Reserved
18.7(17A,535B)	Notice of significant events
18.8(17A,535B)	Changes in the licensee's business; fees
18.9(17A,535B)	Administrative fees
18.10 to 18.15	Reserved
18.16(17A,535B)	Licensee records
18.17(17A,535B)	Mortgage call reports
18.18(17A,535B)	Advertising and representations to potential borrowers
18.19(17A,535B)	Complaints and investigations
18.20(17A,535B)	Disciplinary action
18.21(17A,535B)	Trust fund accounting and internal controls
18.22(17A,535B)	Closing standards
18.23(17A,535B)	Employees of closing agents
18.24(17A,535B)	Reporting obligation
18.25(17A,535B)	Real estate brokers

CHAPTER 19

MORTGAGE LOAN ORIGINATORS

19.1(17A,535D)	Definitions
19.2(17A,535D)	Mortgage loan originator requirements
19.3(17A,535D)	Grounds for denial of license
19.4(17A,535D)	Renewal of mortgage loan originator license
19.5(17A,535D)	Reinstatement of license
19.6(17A,535D)	Notice of significant events
19.7(17A,535D)	Annual report
19.8(17A,535D)	Administrative fees
19.9(17A,535D)	Continuing education
19.10(17A,535D)	Independent contractor—loan processor or underwriter
19.11(17A,535D)	NMLS information challenge process
19.12(17A,535D)	Disciplinary action
19.13(17A,252J)	Nonpayment of child support
19.14	Reserved
19.15(17A,272D)	Nonpayment of state debt

CHAPTER 20

DEBT MANAGEMENT

20.1(17A,533A)	Definitions
20.2(17A,533A)	Utilization of the NMLS
20.3(17A,533A)	Application for license
20.4(17A,533A)	Grounds for approval or denial
20.5(17A,533A)	Renewal of license
20.6(17A,533A)	Changes in the licensee's name, location, or control
20.7(17A,533A)	Notice of significant events
20.8(17A,533A)	Administrative fees
20.9(17A,533A)	Licensee records
20.10(17A,533A)	Complaints and investigations

20.11(17A,533A)	Disciplinary action
20.12	Reserved
20.13(17A,533A)	Restrictions on operating a debt management business

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

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

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 identifies the established place at which, the employees from whom, and the methods whereby the public may obtain information from, make requests of, or obtain decisions from the superintendent on matters within the authority of the superintendent.

[ARC 6795C, IAB 1/11/23, effective 2/15/23]

187—1.3(17A,524) Division of banking.

1.3(1) Organization—division. 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 three separate bureaus: the bank bureau, the finance bureau, and the professional licensing and regulation bureau. 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 appraisal management companies, closing agents, debt management businesses, delayed deposit services businesses, industrial loan companies, money services businesses, mortgage bankers, mortgage brokers, mortgage loan originators, real estate appraisers, and regulated loan companies. The professional licensing and regulation bureau has primary responsibilities relating to the regulation and licensing of specified professions by providing administrative support to and coordinating the activities of the following licensing boards: the Iowa accountancy examining board, the architectural examining board, the engineering and land surveying examining board, the interior design examining board, the landscape architectural examining board, and the real estate commission.

1.3(2) 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.

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 appraisal management companies, closing agents, debt management businesses, delayed deposit services businesses, industrial loan companies, money services businesses, mortgage bankers, mortgage brokers, mortgage loan originators, real estate appraisers, and regulated loan companies.

d. Chief operating officer. The chief operating officer performs duties prescribed by the superintendent, including management of the administrative functions, information technology needs, and fiscal affairs of the division of banking. The chief operating officer is also responsible for administration of personnel policies, work rules, payrolls, and employee benefits for all employees of the division.

e. 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 an area within the jurisdiction of the superintendent. Bank examinations are performed by examining personnel situated in examination regions throughout the state. Each region is headed by a regional manager who is assisted by a staff of examiners.

f. Professional licensing and regulation bureau chief. The professional licensing and regulation bureau chief performs such duties as the superintendent prescribes, including budgetary and personnel matters related to the licensing and regulation of several professions, by providing administrative support to and coordinating the activities of the following licensing boards: the Iowa accountancy examining board created pursuant to Iowa Code chapter 542, the engineering and land surveying board created pursuant to Iowa Code chapter 542B, the real estate commission created pursuant to Iowa Code chapter 543B, the architectural examining board created pursuant to Iowa Code chapter 544A, the landscape architectural examining board created pursuant to Iowa Code chapter 544B, and the interior design examining board created pursuant to Iowa Code chapter 544C.

[ARC 4054C, IAB 10/10/18, effective 11/14/18; ARC 6795C, IAB 1/11/23, effective 2/15/23]

These rules are intended to implement Iowa Code sections 17A.3 and 524.208.

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[Filed ARC 6795C (Notice ARC 6602C, IAB 10/19/22), IAB 1/11/23, effective 2/15/23]

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

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

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 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 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 bank will be issued to be effective on the date of conversion.

2.2(6) *Resulting state 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.

[ARC 6796C, IAB 1/11/23, effective 2/15/23]

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 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 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.

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

[ARC 4055C, IAB 10/10/18, effective 11/14/18; ARC 6796C, IAB 1/11/23, effective 2/15/23]

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 Relocate the Principal Place of Business” or “Application to Relocate a Bank Office,” which are available on the division’s website or 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 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 superintendent shall issue the appropriate authorizations for the conduct of business at the new location.

This rule is intended to implement Iowa Code section 524.312.

[ARC 4055C, IAB 10/10/18, effective 11/14/18; ARC 6796C, IAB 1/11/23, effective 2/15/23]

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. Rescinded IAB 10/10/18, effective 11/14/18.

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.

[ARC 4055C, IAB 10/10/18, effective 11/14/18; ARC 6796C, IAB 1/11/23, effective 2/15/23]

187—2.8 Reserved.

187—2.9(17A) Licensing of a debt management company. Rescinded ARC 4055C, IAB 10/10/18, effective 11/14/18.

187—2.10 and 2.11 Reserved.

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

2.12(1) Scope. This rule contains procedures by which the superintendent may reach informed decisions with respect to those applications for 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) 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. The person submitting the application may not request that the entire application be deemed confidential.

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

2.12(5) 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, to the applicant and to other interested persons who have sent written comments to the superintendent.

2.12(6) 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(5) of the person's intention to attend and shall submit the number and names of witnesses to be presented.

2.12(7) 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(8) 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 positions. 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 person or persons requesting the opportunity to be heard, 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(2) shall automatically be deemed a part of the record of these proceedings, as well as all evidence submitted and the transcript described in paragraph 2.12(8) "d."

2.12(9) *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(10) *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(11) *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.

[ARC 4055C, IAB 10/10/18, effective 11/14/18]

187—2.13 Reserved.

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 investment 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.

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.

[ARC 4055C, IAB 10/10/18, effective 11/14/18]

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. Rescinded IAB 10/10/18, effective 11/14/18.

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.

[ARC 4055C, IAB 10/10/18, effective 11/14/18]

187—2.18(17A,524) New or innovative electronic activities.

2.18(1) Scope. Iowa Code section 524.802A as enacted by 2022 Iowa Acts, Senate File 586, authorizes a state bank to engage in new or innovative electronic activities that are part of the business of banking. When considering a proposal to engage in new or innovative electronic activities, the superintendent will consider whether the activity is expressly authorized for state banks under Iowa Code chapter 524, whether the activity is the functional equivalent or a logical extension of any activity authorized for state banks, whether the state bank has the expertise necessary to understand and manage the activity and the associated risks, and whether the activity presents similar risks to those state banks already assume.

2.18(2) Board responsibilities. The board of directors of a state bank considering engaging in a new or innovative electronic activity shall first evaluate the risks associated with the proposed new or innovative electronic activity and ensure that the state bank conducts the proposed new or innovative electronic activities in compliance with Iowa Code section 524.802A(3) as enacted by 2022 Iowa Acts, Senate File 586.

2.18(3) Application. A state bank desiring to engage in new or innovative electronic activities should first meet with the superintendent to discuss the proposed electronic activities. After meeting with the superintendent, a state bank proposing to engage in new or innovative electronic activities shall submit a formal proposal to the superintendent that shall, at a minimum, contain the following information:

- a. A description of the proposed new or innovative electronic activities, including how the proposed electronic activities align with the strategy and business objectives of the state bank.
- b. A description of any state or federal laws and regulations expected to apply to the proposed electronic activities. Examples: compliance (terms, conditions, disclosures), Bank Secrecy Act, federal securities laws.
- c. A description of the state bank's corporate governance process that will oversee the proposed electronic activities, including ongoing monitoring to identify and handle any problems or incidents that may arise.
- d. A description of the resources and management information systems necessary to oversee the electronic activities.
- e. Due diligence materials, including risk assessments (e.g., operational risk, liquidity risk, strategic risk, compliance risk) and information on third-party relationships.
- f. A description of any other licenses or approvals required from any regulatory authority to engage in the proposed new or innovative electronic activities.
- g. A description of the capital position of the state bank in relation to the risks associated with the proposed new or innovative electronic activities.
- h. A description of the state bank's exit strategy for the proposed new or innovative electronic activity if the activity proves unsuccessful.

2.18(4) Investigation. The superintendent may investigate as deemed necessary.

2.18(5) Decision. The superintendent shall approve or deny the application, and the decision by the superintendent shall be conveyed in writing to the applicant.

2.18(6) Other relevant factors. The following provisions apply to a state bank seeking approval to engage in new or innovative electronic activities pursuant to Iowa Code section 524.802A as enacted by 2022 Iowa Acts, Senate File 586:

- a. The state bank shall contact its primary federal regulator to determine any federal legal requirements that may apply to the proposed activity and the permissibility of the activity under applicable federal law.
- b. Upon approval to engage in a new or electronic activity, a state bank that shares any electronic space, including a co-branded website, with a bank subsidiary, affiliate, or any other third party, must take reasonable steps to clearly, conspicuously, and understandably distinguish between the products and services offered by the state bank and those offered by the state bank's subsidiary, affiliate, or any other third party.

This rule is intended to implement Iowa Code section 524.802A as enacted by 2022 Iowa Acts, Senate File 586.

[ARC 6796C, IAB 1/11/23, effective 2/15/23]

187—2.19(17A,524) Required fees. The following is a schedule of the fees for corporate applications filed by state banks adopted by the superintendent:

Establish a bank office:	\$2,000
Establish a mobile bank office, courier service, or convenience office:	\$2,000
Relocate principal place of business:	\$1,050
Relocate a bank office:	\$1,000
Conversion to a state bank:	\$5,050 + examination fee
Merger:	
Two banks:	\$3,050
More than two banks (for each additional bank):	\$1,500
Bank holding company into state bank:	\$1,550
Voluntary dissolution:	\$5,550
Purchase and assumption of assets and liabilities:	\$3,000
New (de novo) state bank:	\$15,050
Reverse stock split:	\$2,050
Change in bank control:	\$1,000
Failure resolutions:	
Acquisition by de novo group:	\$5,500
Acquisition by existing bank, bank holding company, or experienced group:	\$3,000
Amendment or restatement of articles of incorporation:	
Review and file documents with secretary of state not in conjunction with a pending application (example: amendments):	\$550
Review and file documents with secretary of state in conjunction with a conversion to or merger with a national bank or thrift:	\$550
State bank merger into out-of-state bank or national bank:	\$505
Certificate of Good Standing or Proof of Official Records:	\$25

This rule is intended to implement Iowa Code sections 524.213, 524.303, 524.305, 524.312, 524.544, 524.802A, 524.1201, 524.1303, 524.1309, 524.1401, 524.1402, 524.1403, 524.1404, 524.1405, 524.1410, 524.1413, 524.1415, 524.1505, 524.1508 and 524.1509.

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[Filed ARC 6796C (Notice ARC 6603C, IAB 10/19/22), IAB 1/11/23, effective 2/15/23]

[Filed ARC 7916C (Notice ARC 7576C, IAB 2/7/24), IAB 5/1/24, effective 6/5/24]

CHAPTER 3
EXAMINATIONS

Rescinded **ARC 0210C**, IAB 7/11/12, effective 8/29/12

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

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

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.

[Filed 11/22/77, Notice 5/4/77—published 12/14/77, effective 1/18/78]

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[Filed 9/17/96, Notice 7/17/96—published 10/9/96, effective 11/13/96]

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

CHAPTER 5
PETITIONS FOR RULE MAKING

[Prior to 4/22/87, see Banking Department[140] Ch 3]

Rescinded by 2026 Iowa Acts, Senate File 2463, section 4, effective July 1, 2026. See Uniform Rules on Agency Procedure at 7—Chapters 2500 through 2506 and any corresponding rules adopted by this agency.

CHAPTER 6
DECLARATORY ORDERS

[Prior to 4/22/87, see Banking Department[140] Ch 3]

Rescinded by 2026 Iowa Acts, Senate File 2463, section 4, effective July 1, 2026. See Uniform Rules on Agency Procedure at 7—Chapters 2500 through 2506 and any corresponding rules adopted by this agency.

CHAPTER 7
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

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. Rescinded by 2026 Iowa Acts, Senate File 2463, section 4, effective July 1, 2026.

187—7.9(17A,22) Disclosures without the consent of the subject. Rescinded by 2026 Iowa Acts, Senate File 2463, section 4, effective July 1, 2026.

187—7.10(17A,22) Routine use. Rescinded by 2026 Iowa Acts, Senate File 2463, section 4, effective July 1, 2026.

187—7.11(17A,22) Consensual disclosure of confidential records. Rescinded by 2026 Iowa Acts, Senate File 2463, section 4, effective July 1, 2026.

187—7.12(17A,22) Release to subject. Rescinded by 2026 Iowa Acts, Senate File 2463, section 4, effective July 1, 2026.

187—7.13(17A,22) Availability of records. Rescinded by 2026 Iowa Acts, Senate File 2463, section 4, effective July 1, 2026.

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 187—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 187—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. 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.

[ARC 4056C, IAB 10/10/18, effective 11/14/18]

187—7.16(17A,22) Applicability. Rescinded by 2026 Iowa Acts, Senate File 2463, section 4, effective July 1, 2026.

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]

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

187—8.1 to 8.7 Reserved.

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 and Standard & Poor's.

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

[ARC 4057C, IAB 10/10/18, effective 11/14/18]

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 means a corporation organized under Iowa Code chapter 524, a corporation organized under 12 U.S.C. §21, a corporation organized under 12 U.S.C. §1464, or an out-of-state bank as defined in Iowa Code section 524.103. The general definition of "bank" as set forth in Iowa Code section 524.103 does not include a state credit union or federal credit union.

This rule is intended to implement Iowa Code section 524.103.

[ARC 4057C, IAB 10/10/18, effective 11/14/18; ARC 6797C, IAB 1/11/23, effective 2/15/23]

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 rule 187—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]

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

187—9.1 Reserved.

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) *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, one of the following:

- 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. An Iowa title guaranty certificate issued by the Iowa title guaranty division of the Iowa finance authority satisfies this requirement.
- 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(5) *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(6) *Exempted transactions.* In addition to the exemptions set forth in subrule 9.2(5), 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.

[ARC 4058C, IAB 10/10/18, effective 11/14/18]

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 the instructions for preparation of the consolidated reports of condition and income.

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 15 percent of aggregate capital of the state bank.

b. 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.

[ARC 4058C, IAB 10/10/18, effective 11/14/18; ARC 6798C, IAB 1/11/23, effective 2/15/23]

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CHAPTER 10 ELECTRONIC TRANSFER OF FUNDS

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

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).

[Filed 2/12/93, Notice 1/6/93—published 3/3/93, effective 4/7/93]

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CHAPTER 11
CONTESTED CASES

Rescinded by 2026 Iowa Acts, Senate File 2463, section 4, effective July 1, 2026. See Uniform Rules on Agency Procedure at 7—Chapters 2500 through 2506 and any corresponding rules adopted by this agency.

CHAPTER 12
UNIFORM WAIVER RULES

Rescinded by 2026 Iowa Acts, Senate File 2463, section 4, effective July 1, 2026. See Uniform Rules on Agency Procedure at 7—Chapters 2500 through 2506 and any corresponding rules adopted by this agency.

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]

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

187—15.1(17A,536) Definitions. For the purposes of this chapter, the definitions in Iowa Code chapter 536 shall apply. In addition, unless the context otherwise requires:

“*Business of making regulated loans*” means making ten or more loans of money or other forms of credit in a calendar year for which a license is required under Iowa Code section 536.1, advertising the availability of such loans, or directly undertaking the collection of payments due on such loans or otherwise enforcing rights against borrowers who have entered into regulated loans.

“*Nationwide multistate licensing system*” or “*NMLS*” means a multistate 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 nondepository financial institutions.

“*Regulated loan*” means a loan made by a licensee acting under the terms of the Iowa regulated loan Act. A regulated loan qualifies as a consumer loan subject to the Iowa Consumer Credit Code if the borrower is a person other than an organization; the debt is incurred for personal, family, or household use; and the amount financed is below the statutory threshold.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—15.2(17A,536) Utilization of NMLS.

15.2(1) All application and licensing information shall be submitted through the NMLS including but not limited to the following: original application information; changes in application information; license renewal information; changes in name, location, and control; and notices of significant events.

15.2(2) The applicant or licensee shall pay any fees required by NMLS including but not limited to the following: initial set-up fee and annual processing fees, background check fees, and credit background check fees.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—15.3(17A,536) Application for license.

15.3(1) An application for a license to operate a regulated loan business in Iowa shall be submitted to the superintendent, on the form provided and with the information requested, through the NMLS. The superintendent may consider an application withdrawn if it does not contain all of the information required and the missing information is not submitted to the superintendent within 30 days after the superintendent requests the missing information. The applicant may also request that the application be withdrawn at any time before the superintendent has decided to grant or deny the application.

15.3(2) Each officer, director, and individual who has control of an applicant must provide fingerprints, authorize a fingerprint background check through NMLS, and pay the appropriate fees for the purpose of conducting a national criminal history background check through the Federal Bureau of Investigation.

15.3(3) The applicant must submit the application fee and the initial license fee specified in Iowa Code section 536.2. The superintendent shall refund the initial license fee if the application is denied, but the application fee is not subject to refund. The applicant shall also pay any additional fees required by the NMLS including but not limited to the following: system processing fees, background check fees, and credit background check fees.

15.3(4) If any information material to the application changes after the applicant files the initial application, the applicant shall provide updated information to the superintendent within 10 days of the change. When such a material change in information has occurred, the superintendent may deny an application if the applicant fails to provide updated information within the prescribed time frame.

15.3(5) 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. For applicants or licensees who do not make,

arrange, broker, process, or underwrite any residential mortgage loans, as defined in Iowa Code section 535D.3(13), the bond shall be in the amount of \$25,000. For applicants or licensees who make, broker, process, or underwrite residential mortgage loans, as defined in Iowa Code section 535D.3(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

15.3(6) Licenses expire on the next December 31 after they are issued, but 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, 2017, would not expire until December 31, 2018.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—15.4(17A,536) Grounds for approval or denial.

15.4(1) The superintendent shall approve or deny a license application in accordance with the provisions of Iowa Code section 536.4.

15.4(2) The following may be considered evidence that the business of the applicant may not be operated lawfully and honestly within the purposes of Iowa Code chapter 536 and may therefore be considered grounds for denial of an application:

- a. An applicant, or an officer, director, or individual who has control of an applicant, has had a mortgage loan originator license or any lending license revoked in any governmental jurisdiction.
- b. An applicant, or an officer, director, or individual who has control of an applicant, has been convicted of, or has pleaded guilty or no contest to, a felony in a domestic, foreign, or military court if such felony involved an act of fraud, dishonesty, or breach of trust, or money laundering.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—15.5(17A,536) Renewal of license.

15.5(1) A licensee must renew a license before the expiration date of the license. A licensee who fails to renew a license before the expiration date is not authorized to make regulated loans in Iowa after the expiration date.

15.5(2) An application to renew a license shall be submitted to the superintendent, on the form provided and with the information requested, through the NMLS by December 1 of the year of expiration. For example, for a license that will expire on December 31, 2017, an application for renewal shall be submitted by December 1, 2017. All requested information, including any material change to information contained in the original application, shall be provided to the superintendent.

15.5(3) The superintendent shall grant an application to renew a license if:

- a. The licensee submits the application and the appropriate renewal fee by December 1 or the licensee submits the application after December 1 but before January 1 and pays the appropriate renewal fee and the appropriate late fee;
- b. The application is fully completed and includes all necessary information; and
- c. The application does not reveal grounds to deny a license.

15.5(4) It is within the discretion of the superintendent to reject for processing a renewal application submitted after December 31 or to treat such an application as an application for a new license. A licensee who fails to renew a license before the expiration date is not authorized to make regulated loans in Iowa after the expiration date.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—15.6(17A,536) Changes in the licensee's name, location, or control; fees.

15.6(1) A licensee wishing to change the name or location of a regulated loan business shall notify the superintendent through the NMLS at least 30 days prior to the effective date of the requested change. The notice shall include proof that the licensee has either obtained a new bond or amended the existing mandatory bond to reflect the new name or location. The licensee shall submit the appropriate fee in conjunction with the notice.

15.6(2) When a change of control of a licensee is proposed, the party that will assume control of the licensee shall give notice to the superintendent through the NMLS, at least 60 days before the proposed change will take effect. Change of control is defined in Iowa Code section 536.7A. The party that will assume control of the licensee shall furnish the superintendent through the NMLS with the same information required of initial applicants for a license, along with the appropriate fee. The party that will assume control may be required to provide fingerprints, authorize a fingerprint background check through NMLS, and pay the appropriate fees for the purpose of conducting a national criminal history background check through the Federal Bureau of Investigation. The superintendent shall approve or deny the request in accordance with the provisions of Iowa Code section 536.4 and rule 187—15.4(17A,536).

15.6(3) Failure to notify the administrator within the prescribed time as required by this rule may subject the licensee to disciplinary action.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—15.7(17A,536) Notice of significant events. A licensee shall notify the administrator immediately and in writing within 10 days of the occurrence of any of the following events.

15.7(1) The licensee or any of the licensee's officers, directors, principal stockholders, or affiliates file for bankruptcy protection or commence reorganization proceedings.

15.7(2) A prosecuting authority files criminal charges against the licensee or any of a licensee's officers, directors, principal stockholders, or affiliates.

15.7(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.

15.7(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 the consumer protection laws against the licensee or any of the licensee's officers, directors, principal stockholders, or affiliates.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—15.8(17A,536) Administrative fees.

15.8(1) *Examination or investigation 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 Iowa Code section 536.10(3).

15.8(2) *Late fees for failing to respond.* In the process of administering Iowa Code chapter 536, 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.

15.8(3) *NMLS 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 attributed to the licensee's record in the NMLS including but not limited to the initial set-up fee, an annual processing fee, and a loan sponsorship transfer fee.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—15.9(17A,536) Licensee records.

15.9(1) *General records requirements.* A licensee must keep records that allow the superintendent 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 all records for at least 24 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 superintendent upon request. Failure to produce such books and records within 30 days of the superintendent'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 that this requirement is met.

15.9(2) *Required records.* A licensee shall keep, at its principal place of business, a loan register, an account ledger, an account ledger control, a loan file, an index, and a disbursement voucher.

15.9(3) *Loan register.* The loan register shall include the following information for every loan that is made: the account number, the date of the transaction, the name of the borrower, and the amount financed. The register shall be kept chronologically in the order the loans closed.

15.9(4) *Account ledger.*

a. An individual account ledger 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 including maturity date, amount financed, total of payments, face amount of note if different from amount financed or total payments, cash advanced to borrower, cash advanced to pay balance of previous regulated 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, nature of security, type and cost of each credit insurance policy and any other insurance policy with each premium stated separately, and name of each endorser, comaker or surety.

b. All payments shall be posted on the account ledger as of the date received. No erasures whatsoever may be made in the payment section of any account ledger. In case of error, corrections to the transaction history in the account ledger shall be made by corrective entry and not by erasure. The entries on the account ledger shall correspond with the receipts given to the borrower.

c. If payment is made in any way other than in the ordinary course of business, the method of payment shall be so designated on the account ledger; 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 account ledger.

d. The account ledger 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 account ledger 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 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 application of such payment and the type and amount of any additional charges collected or assessed. If a deferment charge is collected in whole or in part, the account ledger 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 account ledger 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 account ledger.

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

15.9(5) *Account ledger control.* A record showing the total number of accounts and total amount receivable for each type of business shall be maintained in the licensed office. This record shall be posted either daily or weekly.

15.9(6) *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 subrule 15.9(7) or on the individual account ledger required by subrule 15.9(4). All instruments taken in connection with a loan and signed by a borrower must bear the loan number.

15.9(7) *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 ledger.

15.9(8) *Disbursement voucher.* Licensees shall use, in conjunction with each loan, a disbursement voucher or equivalent document showing a detailed itemization of the distribution of the loan proceeds.

15.9(9) *Denial file.* For each application the licensee denies, the licensee shall retain a copy of the application and a copy of the adverse action notice. The licensee may maintain this information in one file in either alphabetical or chronological order.

15.9(10) *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 regulated loan business of the licensee.

b. Complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of each loan applicant, including a record of the date and amount of all such payments actually made by each loan 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 regulated loan business.

d. All correspondence and other records relating to the maintenance of any surety bond required by Iowa Code chapter 536.

e. 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 superintendent or any other regulatory or supervisory authority.

f. Copies of all advertisements and solicitations concerning regulated loans 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. An advertisement shall clearly show the licensee's unique NMLS identification number.

15.9(11) *Disposal of records.* If a 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 that this requirement is met.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—15.10(17A,536) Complaints and investigations.

15.10(1) The superintendent may, at any time and as often as the superintendent deems necessary, investigate a licensee and examine the licensee's books, accounts, records, and files.

15.10(2) The superintendent may investigate complaints about, or alleged violations by, any licensee.

15.10(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 superintendent from any source that the licensee has been the subject of disciplinary proceedings in another jurisdiction.

c. Notice to the superintendent from any source that an individual with control of 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 3078C, IAB 5/24/17, effective 7/1/17]

187—15.11(17A,536) Disciplinary action.

15.11(1) The superintendent has authority pursuant to Iowa Code chapters 536 and 17A to impose discipline for violations of Iowa Code chapter 536 and the rules promulgated thereunder.

15.11(2) Grounds for discipline. The superintendent may impose any of the disciplinary sanctions set out in Iowa Code section 536.9(2) when the superintendent makes any of the findings in Iowa Code section 536.9(1) or when the superintendent finds any of the following:

- a. The licensee has abandoned its place of business for 60 or more days.
- b. The licensee fails to fully cooperate with an examination or investigation, including failing to respond to an inquiry from the superintendent within 30 days of the date the superintendent mails a written communication directed to the licensee's last-known address on file with the superintendent.
- c. The licensee has engaged in any conduct that subverts or attempts to subvert an examination or investigation by the superintendent.
- d. The licensee continues to operate a regulated loan business without an active and current license.
- e. The licensee fails to notify the superintendent within 10 days of the occurrence of one of the significant events set forth in rule 187—15.7(17A,536).
- f. The licensee fails to notify the superintendent of a change in control, name, or principal place of business.
- g. The licensee operates a regulated loan business in the same location as another business without the superintendent's written approval.
- h. Another state or jurisdiction has denied, suspended, revoked, or refused to renew the licensee's license, registration, or authorization to engage in the business of making loans under the other state's or jurisdiction's law.
- i. The licensee fails to create and maintain complete and accurate records as required by state or federal law, regulation, or rule.

15.11(3) The superintendent shall not refund the license fee, in whole or in part, of a license that has been suspended, revoked, or surrendered.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—15.12(17A,536) Annual report. Licensees must file with the superintendent an annual report, on forms prescribed by the superintendent, on or before April 15. The information contained in the annual report shall be confidential, and the superintendent may publish the information only in composite form. The superintendent may assess a late fee of \$10 for each day the annual report is delinquent.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—15.13(17A,536) Restrictions on making regulated loans. A licensee shall adhere to the following restrictions related to making regulated loans.

15.13(1) Jurisdiction. A licensee shall have authority to make and complete loans by mail, or by comparable electronic means, from the lender's licensed office. However, all loans made to Iowa residents pursuant to Iowa Code chapters 536 and 537 must comply with all applicable Iowa laws.

15.13(2) Default charge. Default charges are not to be collected if payment is made by a credit accident and health insurance claim.

15.13(3) Interest rate. Pursuant to the power granted to the superintendent under Iowa Code sections 536.13(1)“b” and 536.13(2), the maximum rate of interest that may be charged beginning September 1, 2020, and until such time as a different rate is fixed by the superintendent, is 36 percent per annum on any part of the unpaid balance not exceeding \$3,000 and 24 percent per annum on any part of the unpaid balance in excess of \$3,000, but not exceeding \$8,400 and 18 percent per annum on any part of the unpaid balance in excess of \$8,400, but not exceeding \$30,000.

15.13(4) Branch locations. Licensees may not establish branch locations outside of the United States.

[ARC 3078C, IAB 5/24/17, effective 7/1/17; ARC 5090C, IAB 7/15/20, effective 9/1/20]

These rules are intended to implement Iowa Code chapters 17A and 536.

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CHAPTER 16 INDUSTRIAL LOANS

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

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

187—16.1(17A,536A) Definitions. For the purposes of this chapter, the definitions in Iowa Code chapter 536A shall apply. In addition, unless the context otherwise requires:

“Business of making industrial loans” means making ten or more loans of money or other forms of credit in a calendar year for which a license is required under Iowa Code section 536A.3, advertising the availability of such loans, or directly undertaking the collection of payments due on such loans or otherwise enforcing rights against borrowers who have entered into industrial loans.

“Industrial loan” means a loan made by a person who is a licensee acting under the terms of the Iowa industrial loan law. An industrial loan qualifies as a consumer loan subject to the Iowa Consumer Credit Code if the borrower is a person other than an organization; the debt is incurred for personal, family, or household use; and the amount financed is below the statutory threshold.

“Industrial loan business” means the business of operating an industrial loan company as defined in Iowa Code section 536A.2(1).

“Nationwide multistate licensing system” or *“NMLS”* means a multistate 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 nondepository financial institutions.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—16.2(17A,536A) Utilization of NMLS.

16.2(1) All application and licensing information shall be submitted through the NMLS including but not limited to the following: original application information; changes in application information; license renewal information; changes in name, location, and control; and notices of significant events.

16.2(2) The applicant or licensee shall pay any fees required by NMLS including but not limited to the following: initial set-up fee and annual processing fees, background check fees, and credit background check fees.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—16.3(17A,536A) Application for license.

16.3(1) An application for a license to engage in the business of operating an industrial loan company in Iowa shall be submitted to the superintendent, on the form provided and with the information requested, through NMLS. The superintendent may consider an application withdrawn if it does not contain all of the information required and the missing information is not submitted to the superintendent within 30 days after the superintendent requests the missing information. The applicant may also request that the application be withdrawn at any time before the superintendent has decided to grant or deny the application.

16.3(2) Each officer, director, and individual who has control of an applicant must provide fingerprints, authorize a fingerprint background check through NMLS, and pay the appropriate fees for the purpose of conducting a national criminal history background check through the Federal Bureau of Investigation.

16.3(3) The applicant must submit the application fee and the initial license fee specified in Iowa Code section 536A.7(2). The superintendent shall refund the initial license fee if the application is denied, but the application fee is not subject to refund.

16.3(4) If any information material to the application changes after the applicant files the initial application, the applicant shall provide updated information to the superintendent in writing within 10 days of the change. When such a material change in information has occurred, the superintendent may deny an application if the applicant fails to provide updated information within the prescribed time frame.

16.3(5) 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. For applicants or licensees who do not

make, arrange, broker, process, or underwrite any residential mortgage loans, as defined in Iowa Code section 535D.3(13), the bond shall be in the amount of \$25,000. For applicants or licensees who make, broker, process, or underwrite residential mortgage loans, as defined in Iowa Code section 535D.3(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

16.3(6) Licenses expire on the next December 31 after they are issued, but 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, 2017, would not expire until December 31, 2018.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—16.4(17A,536A) Grounds for approval or denial.

16.4(1) The superintendent shall approve or deny a license application in accordance with the provisions of Iowa Code sections 536A.10 and 536A.11.

16.4(2) The following may be considered evidence that the business of the applicant may not be operated lawfully and honestly within the purposes of Iowa Code chapter 536A and may therefore be considered grounds for denial of an application:

a. An applicant, or an officer, director, or individual who has control of an applicant, has had a mortgage loan originator license or any lending license revoked in any governmental jurisdiction.

b. An applicant, or an officer, director, or individual who has control of an applicant, has been convicted of, or has pleaded guilty or no contest to, a felony in a domestic, foreign, or military court if such felony involved an act of fraud, dishonesty, or breach of trust, or money laundering.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—16.5(17A,536A) Renewal of license.

16.5(1) To remain authorized to operate an industrial loan company, a licensee must renew a license before the expiration date of the license. A licensee who fails to renew a license before the expiration date is not authorized to make industrial loans in Iowa after the expiration date.

16.5(2) An application to renew a license shall be submitted to the superintendent, on the form provided and with the information requested, through the NMLS by December 1 of the year of expiration. For example, for a license that will expire on December 31, 2017, an application for renewal shall be submitted by December 1, 2017. All requested information, including any material change to information contained in the original application, shall be provided to the superintendent.

16.5(3) The superintendent shall grant an application to renew a license if:

a. The licensee submits the application and the appropriate renewal fee by December 1 or the licensee submits the application after December 1 but before January 1 and pays the appropriate renewal fee and the appropriate late fee;

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

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

16.5(4) It is within the discretion of the superintendent to reject for processing a renewal application submitted after December 31, or to treat such an application as an application for a new license. A licensee who fails to renew a license before the expiration date is not authorized to engage in the business of making industrial loans in Iowa after the expiration date.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—16.6(17A,536A) Changes in the licensee's name, location, or control.

16.6(1) A licensee wishing to change the name or location of an industrial loan business shall notify the superintendent through the NMLS at least 30 days prior to the effective date of the change. The notice shall include proof that the licensee has either obtained a new bond or amended the existing mandatory bond to reflect the new name or location. The licensee shall submit the appropriate fee in conjunction with the notice.

16.6(2) When a change of control of a licensee is proposed, the party that will assume control of the licensee shall submit an application for certificate of approval of the proposed change of control to the superintendent, on the form provided and with the information requested, through the NMLS at least 60 days before the proposed change will take effect. Change of control is defined in Iowa Code section 536A.12(4). The party that will assume control of the licensee shall furnish the superintendent with the same information required of initial applicants for a license, along with the appropriate fee. The party that will assume control may be required to provide fingerprints, authorize a fingerprint background check through the NMLS, and pay the appropriate fees for the purpose of conducting a national criminal history background check through the Federal Bureau of Investigation. The superintendent shall approve or deny the request in accordance with the provisions of Iowa Code sections 536A.10 and 536A.11 and rule 187—16.4(17A,536A).

16.6(3) Failure to notify the administrator within the prescribed time as required by this rule may subject the licensee to disciplinary action.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—16.7(17A,536A) Notice of significant events. A licensee shall notify the administrator immediately and in writing within 10 days of the occurrence of any of the following events.

16.7(1) The licensee or any of the licensee's officers, directors, principal stockholders, or affiliates file for bankruptcy protection.

16.7(2) A prosecuting authority files criminal charges against the licensee or any of a licensee's officers, directors, principal stockholders, or affiliates.

16.7(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.

16.7(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 the consumer protection laws against the licensee or any of the licensee's officers, directors, principal stockholders, or affiliates.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—16.8(17A,536A) Administrative fees.

16.8(1) *Examination or investigation 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 Iowa Code section 536A.15(4).

16.8(2) *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.

16.8(3) *NMLS 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 attributed to the licensee's record in the NMLS including but not limited to the initial set-up fee, an annual processing fee, and a loan sponsorship transfer fee.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—16.9(17A,536A) Licensee records.

16.9(1) *General records requirements.* A licensee must keep records that allow the superintendent 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 24 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 superintendent upon request. 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 licenses shall be made readily available to the examiners who may investigate without prior notice. Failure to produce such books and records within 30 days of the superintendent'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 that this requirement is met.

16.9(2) Required records. A licensee shall keep, at its principal place of business, a loan register, account ledgers, an account ledger control, a loan file, an index, and a disbursement voucher.

16.9(3) 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 the loans are made.

16.9(4) Account ledger.

a. An individual account ledger 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 including maturity date, 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, nature of security, 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 as of the date they are received. No erasures whatsoever may be made in the payment section of any account ledger. In case of error, corrections to the transaction history in the account ledger shall be made by corrective entry and not by erasure. The entries on the account ledger shall correspond with the receipts given to the borrower.

c. If payment is made in any way other than in the ordinary course of business, the method of payment shall be so designated on the account ledger; for example, 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 account ledger.

d. The account ledger 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 account ledger 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 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 application of such payment and the type and amount of any additional charges collected or assessed. If a deferment charge is collected in whole or in part, the account ledger 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 account ledger 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 account ledger.

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

16.9(5) *Account ledger control.* A record showing the total number of accounts and amount receivable for each type of business conducted shall be maintained in the licensed office. This record shall be posted either daily or weekly.

16.9(6) *Loan file.* A separate file shall be maintained for each borrower or loan account. Such file shall contain the promissory note, security agreement, wage assignment, and all other evidence of indebtedness or security pertaining to the loan except when the promissory note is 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. 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. 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 subrule 16.9(7) or the individual account ledger required by subrule 16.9(4). All instruments taken in connection with a loan and signed by a borrower must bear the loan number. No instrument or part thereof shall be left blank for completion after the borrower(s) has signed the instrument.

16.9(7) *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, or any receivable), information showing whether the obligor is other than a borrower and sufficient information to locate all account ledgers.

16.9(8) *Disbursement voucher.* Licensees shall use, in conjunction with each loan, a disbursement voucher or equivalent document showing a detailed itemization of the distribution of the loan proceeds.

16.9(9) *Denial file.* For each application the licensee denies, the licensee shall retain a copy of the application and a copy of the adverse action notice. The licensee may maintain this information in one file in either alphabetical or chronological order.

16.9(10) *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 industrial loan business of the licensee.

b. Complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of each loan applicant, including a record of the date and amount of all such payments actually made by each loan 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 industrial loan business.

d. All correspondence and other records relating to the maintenance of any surety bond required by Iowa Code chapter 536A.

e. 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 superintendent or any other regulatory or supervisory authority.

f. Copies of all advertisements and solicitations concerning industrial loan services 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.

16.9(11) *Disposal of records.* If a 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 that this requirement is met.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—16.10(17A,536A) Complaints and investigations.

16.10(1) The superintendent may, at any time and as often as the superintendent deems necessary, investigate a licensee and examine the licensee’s books, accounts, records, and files.

16.10(2) The superintendent may investigate complaints about, or alleged violations by, any licensee.

16.10(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 superintendent from any source that the licensee has been the subject of disciplinary proceedings in another jurisdiction.

c. Notice to the superintendent from any source that an individual with control of 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 3078C, IAB 5/24/17, effective 7/1/17]

187—16.11(17A,536A) Disciplinary action.

16.11(1) The superintendent has authority pursuant to Iowa Code chapters 536A and 17A to impose discipline for violations of Iowa Code chapter 536A and the rules promulgated thereunder.

16.11(2) Grounds for discipline. The superintendent may impose any of the disciplinary sanctions set out in Iowa Code section 536A.18(2) when the superintendent finds any of the following:

a. The licensee has abandoned its place of business for 60 or more days.

b. The licensee fails to fully cooperate with an examination or investigation, including failing to respond to an inquiry from the superintendent within 30 days of the date the superintendent mails a written communication directed to the licensee’s last-known address on file with the superintendent.

c. The licensee has engaged in any conduct that subverts or attempts to subvert an examination or investigation by the superintendent.

d. The licensee continues to operate an industrial loan business without an active and current license.

e. The licensee fails to notify the superintendent within 10 days of the occurrence of one of the significant events set forth in rule 187—16.7(17A,536A).

f. The licensee fails to notify the superintendent of a change in control, name, or principal place of business.

g. The licensee operates an industrial loan business in the same location as another business without the superintendent’s written approval.

h. Another state or jurisdiction has denied, suspended, revoked, or refused to renew the licensee’s license, registration, or authorization to engage in the business of making loans under the other state’s or jurisdiction’s law.

i. The licensee fails to create and maintain complete and accurate records as required by state or federal law, regulation, or rule.

16.11(3) The superintendent shall not refund the license fee, in whole or in part, of a license that has been suspended, revoked, or surrendered.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—16.12(17A,536A) Other requirements.

16.12(1) Annual report. Licensees must file with the superintendent an annual report, on forms prescribed by the superintendent, on or before April 15. The information contained in the annual report shall be confidential, and the superintendent may publish the information only in composite form. The superintendent may assess a late fee of \$10 for each day the annual report is delinquent.

16.12(2) Reserved.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

187—16.13(17A,536A) Restrictions on making industrial loans. A licensee shall adhere to the following restrictions related to making industrial loans.

16.13(1) *Jurisdiction.* A licensee shall have authority to make and complete loans by mail, or by comparable electronic means, from the lender's licensed office. However, all loans made to Iowa residents pursuant to Iowa Code chapters 536A and 537 must comply with all applicable Iowa laws.

16.13(2) *Default charge.* Default charges are not to be collected from a borrower if payment is made by a credit accident and health insurance claim.

16.13(3) *Branch locations.* Licensees may not establish branch locations outside of the United States.
[ARC 3078C, IAB 5/24/17, effective 7/1/17]

These rules are intended to implement Iowa Code chapters 17A and 536A.

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CHAPTER 17
DELAYED DEPOSIT SERVICES

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

187—17.1(17A,533D) Definitions. For the purposes of this chapter, the definitions in Iowa Code chapter 533D shall apply. In addition, unless the context otherwise requires:

“*Delayed deposit transactions*” means the activities of a “delayed deposit services business” as defined in Iowa Code section 533D.2(2). These transactions qualify as consumer loans subject to the Iowa Consumer Credit Code, Iowa Code chapter 537, if the borrower is a person other than an organization and the debt is incurred for personal, family, or household use.

“*License application*” means an application submitted to the superintendent for a license to operate as a delayed deposit services business in accordance with the provisions of Iowa Code chapter 533D.

“*Maker*” means a person who issues a check in order to enter into a delayed deposit transaction.

“*Nationwide multistate licensing system*” or “*NMLS*” means a multistate licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and regulation of nondepository financial institutions.

[ARC 3079C, IAB 5/24/17, effective 7/1/17]

187—17.2(17A,533D) Utilization of NMLS. All application and licensing information shall be submitted through the NMLS including but not limited to the following: original application information; changes in application information; license renewal information; changes in name, location, and control; and notices of significant events. The applicant or licensee shall pay any fees required by NMLS including but not limited to the following: system processing fees, background check fees, and credit background check fees.

[ARC 3079C, IAB 5/24/17, effective 7/1/17]

187—17.3(17A,533D) Application for license.

17.3(1) An application for a license to operate a delayed deposit services business in Iowa shall be submitted to the superintendent on the form provided and with the information requested through the NMLS. The superintendent may consider an application withdrawn if it does not contain all of the information required and the missing information is not submitted to the superintendent within 30 days after the superintendent requests the missing information. The applicant may also request that the application be withdrawn at any time before the superintendent has decided to grant or deny the application.

17.3(2) Each officer, director and individual who has control of an applicant must provide fingerprints, authorize a fingerprint background check through NMLS, and pay the appropriate fees for the purpose of conducting a national criminal history background check through the Federal Bureau of Investigation.

17.3(3) The applicant shall submit with the application an application fee of \$100 and an initial license fee of \$250. The superintendent shall refund the initial license fee if the application is denied, but the application fee is not subject to refund.

17.3(4) If any information material to the application changes after the applicant files the initial application, the applicant shall provide updated information to the superintendent within 10 days of the change. When such a material change in information has occurred, the superintendent may deny an application if the applicant fails to provide updated information within the prescribed time frame.

17.3(5) An applicant for a license to enter into delayed deposit transactions must file with the superintendent a \$25,000 surety bond in compliance with the provisions of Iowa Code section 533D.3(3) “b.”

17.3(6) Licenses expire on the next December 31 after they are issued, but 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, 2017, would not expire until December 31, 2018.

[ARC 3079C, IAB 5/24/17, effective 7/1/17]

187—17.4(17A,533D) Grounds for approval or denial.

17.4(1) The superintendent shall approve or deny a license application in accordance with the provisions of Iowa Code section 533D.3.

17.4(2) The following may be considered evidence that the business of the applicant may not be operated lawfully and honestly consistent with the purposes of Iowa Code chapter 533D and may therefore be considered grounds for denial of an application:

a. An applicant, or an officer, director, or individual who has control of an applicant, has had a mortgage loan originator license or any lending license revoked in any governmental jurisdiction.

b. An applicant, or an officer, director, or individual who has control of an applicant, has been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court if such felony involved an act of fraud, dishonesty, or breach of trust, or money laundering.

[ARC 3079C, IAB 5/24/17, effective 7/1/17]

187—17.5(17A,533D) Renewal of license.

17.5(1) To remain authorized to enter into delayed deposit transactions in Iowa, a licensee must renew a license before the expiration date of the license. A licensee who fails to renew a license before the expiration date is not authorized to enter into delayed deposit transactions after the expiration date.

17.5(2) An application to renew a license shall be submitted to the superintendent on the form provided and with the information requested through the NMLS by December 1 of the year of expiration. For example, for a license that will expire on December 31, 2017, an application for renewal shall be submitted by December 1, 2017. All requested information, including any material change to information contained in the original application, shall be provided to the superintendent.

17.5(3) The superintendent shall grant an application to renew a license if:

a. The licensee submits the application and the appropriate renewal fee by December 1, or the licensee submits the application after December 1 but before January 1 and pays the appropriate renewal fee and the appropriate late fee;

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

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

17.5(4) It is within the discretion of the superintendent to reject for processing a renewal application submitted after December 31 or to treat such an application as an application for a new license. A licensee who fails to renew a license before the expiration date is not authorized to enter into delayed deposit transactions in Iowa after the expiration date.

[ARC 3079C, IAB 5/24/17, effective 7/1/17]

187—17.6(17A,533D) Changes in the licensee's name, location, or control.

17.6(1) A licensee wishing to change the name or location of a delayed deposit services business shall notify the superintendent at least 30 days prior to the requested change. The request shall include proof that the licensee has either obtained a new bond or amended the existing bond to reflect the new name or location. The licensee shall submit a \$25 fee per license in conjunction with the request. A licensee may not enter into delayed deposit transactions under a different name without providing such notice and submitting the required fee.

17.6(2) A licensee wishing to establish a branch office must submit the application to the superintendent on the form provided and with the information requested through the NMLS, along with a fee of \$250. Licenses issued to branch offices are treated as independent licenses and are subject to the renewal requirements, fees, and procedures specified in rule 187—17.5(17A,533D).

17.6(3) When change of control of a licensee is proposed, the party that will assume control of the licensee shall give notice to the superintendent at least 60 days before the proposed change will take effect. Change of control is defined in Iowa Code section 533D.6. The party that will assume control of the licensee shall furnish the superintendent with the same information required of initial applicants for a license, along with a fee of \$100. The party that will assume control may be required to provide fingerprints, authorize a fingerprint background check through NMLS, and pay the appropriate fees for the purpose of conducting a national criminal history background check through the Federal Bureau of

Investigation. The superintendent shall approve or deny the request in accordance with the provisions of Iowa Code section 533D.3.

17.6(4) Failure to notify the administrator within the prescribed time as required by this rule may subject the licensee to disciplinary action.

[ARC 3079C, IAB 5/24/17, effective 7/1/17]

187—17.7 Reserved.

187—17.8(17A,533D) Administrative fees.

17.8(1) *Examination or investigation 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 Iowa Code section 533D.11(3).

17.8(2) *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.

17.8(3) *NMLS 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 attributed to the licensee's record in the NMLS including but not limited to the initial set-up fee and annual processing fee.

[ARC 3079C, IAB 5/24/17, effective 7/1/17]

187—17.9(17A,533D) Licensee records.

17.9(1) *General record requirements.* A licensee must keep records that allow the superintendent 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 24 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 superintendent upon request. Failure to produce such books and records within 30 days of the superintendent'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 that this requirement is met.

17.9(2) *Required records.* A licensee making or servicing delayed deposit transactions shall keep, at its principal place of business, a loan register, an account ledger, a loan file, an index, an application log, a denial file, and a disbursement voucher.

17.9(3) *Loan register.* The loan register shall include the following information for every loan that is made: the account number, the date of the transaction, the name of the borrower, the amount financed, and the amount of the borrower's check. The register shall be kept chronologically in the order the loans closed. A licensee may combine the loan register with the application log.

17.9(4) *Account ledger.* A delayed deposit services licensee shall maintain an account ledger for each borrower, which shall show:

- a. The name and address of the borrower, the loan number, the loan date, the maturity date, the payment terms, the amount financed, and the total of payments.
- b. A transaction history that lists all transactions with the borrower. Payments shall be posted to the account ledger effective the date payments were received. Payment entries shall 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. Other transactions shall be fully described. Corrections to the transaction history shall be made by corrective entry and not by erasure.

17.9(5) *Loan file.* The loan file consists of the application, the loan agreement, notice pursuant to Iowa Code section 533D.9(2), and all required truth-in-lending disclosures for each loan.

17.9(6) *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 ledger.

17.9(7) *Application log.* The application log is a chronological list of applications received. The application log shall include the name of the applicant, the date when the application was received, whether the loan was made or denied, and the date when the loan was made or denied if that date differs from the date when the licensee received the application. For approved applications, the application log shall show the date when the loan closed and the name of the borrower. For record-keeping purposes, an application is a prospective borrower's oral or written request for a licensee to extend credit that is made in accordance with the procedures established by the licensee for the type of credit requested.

17.9(8) *Denial file.* For each application the licensee denies, the licensee shall retain a copy of the application and a copy of the adverse action notice. The licensee may maintain this information in one file in either alphabetical or chronological order.

17.9(9) *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.

17.9(10) *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 delayed deposit services business of the licensee.

b. Complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of each loan applicant, including a record of the date and amount of all such payments actually made by each loan 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 delayed deposit services business.

d. All correspondence and other records relating to the maintenance of any surety bond required by Iowa Code chapter 533D.

e. 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 superintendent or any other regulatory or supervisory authority.

f. Copies of all advertisements and solicitations concerning delayed deposit services 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.

17.9(11) *Disposal of records.* If a 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 that this requirement is met.

[ARC 3079C, IAB 5/24/17, effective 7/1/17]

187—17.10(17A,533D) Complaints and investigations.

17.10(1) The superintendent may, at any time and as often as the superintendent deems necessary, investigate a licensee and examine the licensee's books, accounts, records, and files.

17.10(2) The superintendent may investigate complaints about, or alleged violations by, any licensee.

17.10(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 superintendent from any source that the licensee has been the subject of disciplinary proceedings in another jurisdiction.

c. Notice to the superintendent from any source that an individual with control of 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 3079C, IAB 5/24/17, effective 7/1/17]

187—17.11(17A,533D) Disciplinary action.

17.11(1) The superintendent has authority pursuant to Iowa Code chapters 533D and 17A to impose discipline for violations of Iowa Code chapter 533D and the rules promulgated thereunder.

17.11(2) Grounds for discipline. The superintendent may impose any of the disciplinary sanctions set out in Iowa Code section 533D.12(2) when the superintendent finds any of the following:

- a. The licensee has violated a provision of Iowa Code chapter 533D or a rule adopted under Iowa Code chapter 533D or any other state or federal law applicable to the conduct of the licensee's business.
- b. A fact or condition exists which, had it existed at the time of the licensee's original application for a license, would have warranted the superintendent 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 superintendent.
- e. The licensee fails to fully cooperate with an examination or investigation, including failing to respond to an inquiry from the superintendent within 30 days of the date the superintendent mails 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 a delayed deposit services business without an active and current license.
- h. The licensee operates a delayed deposit services business in the same location as another business without the superintendent's written approval.
- i. The licensee has abandoned its place of business for 60 or more days.
- j. The licensee fails to notify the superintendent within 30 days of the occurrence of one of the significant events set forth in Iowa Code section 533D.5.
- k. Another state or jurisdiction has denied, suspended, revoked, or refused to renew the licensee's license, registration, or authorization to operate a delayed deposit services business or enter into delayed deposit transactions 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.
- m. The licensee fails to notify the superintendent of a change in control, name, or principal place of business.
- n. The licensee fails to pay a license fee required by Iowa Code chapter 533D or to maintain a bond required by Iowa Code chapter 533D.

17.11(3) The superintendent shall not refund a license fee, in whole or in part, of a license that has been suspended, revoked, or surrendered.

[ARC 3079C, IAB 5/24/17, effective 7/1/17]

187—17.12(17A,533D) Annual report. Licensees must file with the superintendent an annual report, on forms prescribed by the superintendent, on or before April 15. The information contained in the annual report shall be confidential, and the superintendent may publish the information only in composite form. The superintendent may assess a late fee of \$10 for each day the annual report is delinquent.

[ARC 3079C, IAB 5/24/17, effective 7/1/17]

187—17.13(17A,533D) Restrictions on making delayed deposit transactions. A licensee shall adhere to the following restrictions related to making delayed deposit transactions.

17.13(1) A licensee shall not engage in any of the acts prohibited by Iowa Code section 533D.10.

17.13(2) A licensee shall not enter into a new delayed deposit transaction with a maker on the same day the maker pays an existing delayed deposit transaction with the licensee unless:

- a. The aggregate amount of the check(s) the maker is paying and the new check the maker is writing does not exceed the statutory maximum of \$500; and

b. The licensee does not hold more than two outstanding checks in the maker's name, including the check(s) being paid and the new check being issued.

[ARC 3079C, IAB 5/24/17, effective 7/1/17]

These rules are intended to implement Iowa Code chapters 17A and 533D.

[Filed ARC 3079C (Notice ARC 2992C, IAB 3/29/17), IAB 5/24/17, effective 7/1/17]

CHAPTER 18
MORTGAGE BANKERS, MORTGAGE BROKERS, AND REAL ESTATE CLOSING AGENTS

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

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 or registration submitted to the administrator for a license to operate as a mortgage banker, mortgage broker, or closing agent 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, mortgage broker, or closing agent 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 Iowa Code chapter 535D and 187—Chapter 19.

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

“*Servicing a loan*” or “*servicing a loan*” means undertaking the direct collection of payments on a loan from the borrower or holding the right to undertake direct collection of payments on a loan from the borrower. Undertaking the direct collection of payments means receiving any scheduled periodic payments from a borrower pursuant to the terms of any federally related mortgage loan. Holding the right to undertake direct collection of payments means holding the right to service a loan, including where the holder of this right contracts with or otherwise arranges for another person to service the loan.

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11; ARC 3080C, IAB 5/24/17, effective 7/1/17]

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

18.2(1) Application for a license to operate as a mortgage banker, mortgage broker, or closing agent shall be submitted to the administrator through the NMLS, and all requested information shall be provided on or with the application form. The administrator may consider an application or registration withdrawn if the application or registration 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) Each officer, director, and individual who has control of an applicant must provide fingerprints, authorize a fingerprint background check through NMLS, and pay the appropriate fees for the purpose of conducting a national criminal history background check through the Federal Bureau of Investigation.

18.2(3) 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 including but not limited to the following: system processing fees, background check fees, and credit background check fees.

18.2(4) If any information changes after the filing of the initial application, the applicant shall provide updated information to the administrator in writing within 10 days of the change. Failure to provide updated information when a change has occurred may result in denial of the application.

18.2(5) 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 as a mortgage banker or mortgage broker 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 Iowa Code chapter 535D.

18.2(6) An applicant for a mortgage banker or mortgage broker license must file with the administrator a bond complying with the provisions of Iowa Code section 535B.9. 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, underwritten, and serviced, 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(7) An applicant for a closing agent license must file with the administrator a bond in the amount of \$25,000 which complies with the provisions of Iowa Code section 535B.9.

18.2(8) 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; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11; ARC 3080C, IAB 5/24/17, effective 7/1/17]

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

18.3(1) To remain authorized to act as a mortgage banker, mortgage broker, or closing agent, 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, mortgage broker, or closing agent in Iowa after the expiration date.

18.3(2) Application to renew a license shall be submitted to the administrator by December 1 of the year of expiration through the NMLS. All requested information shall be provided to the administrator as directed by the NMLS. Applications for renewal of a license to transact business solely as a mortgage broker or closing agent 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 mortgage banker or mortgage broker 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, mortgage broker, or closing agent in Iowa after the expiration date.

[ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11; ARC 3080C, IAB 5/24/17, effective 7/1/17]

187—18.4(17A,535B) Grounds for approval or denial.

18.4(1) The superintendent shall approve or deny a license application in accordance with the provisions of Iowa Code section 535B.5.

18.4(2) The following may be considered evidence that the business of the applicant may not be operated honestly in the public interest consistent with the purposes of Iowa Code chapter 535B and may therefore be considered grounds for denial of an application:

a. An applicant, or an officer, director, or individual who has control of an applicant, has had a mortgage loan originator license or any lending license revoked in any governmental jurisdiction.

b. An applicant, or an officer, director, or individual who has control of an applicant, has been convicted of, or has pleaded guilty or no contest to, a felony in a domestic, foreign, or military court if such felony involved an act of fraud, dishonesty, or breach of trust, or money laundering. A pardon of a conviction shall not constitute a conviction for purposes of this subrule.

[ARC 3080C, IAB 5/24/17, effective 7/1/17]

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 within 10 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; ARC 3080C, IAB 5/24/17, effective 7/1/17]

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

18.8(1) No mortgage banker or mortgage broker 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 through the NMLS 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 mortgage banker or mortgage broker licensee shall maintain on file with the administrator, through the NMLS, 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 to add a mortgage loan originator to the licensee's list in the NMLS.

18.8(4) When a mortgage loan originator ceases to be employed by, under contract with, or an exclusive agent of a mortgage banker or mortgage broker licensee, the licensee shall notify the administrator, through the NMLS, within 10 days. The notification shall include the reasons for the termination of the mortgage loan originator's employment, contract, or agency.

18.8(5) A mortgage banker or mortgage broker licensee shall notify the administrator through the NMLS of the addition of any mortgage loan originator, owner, officer, partner, or director within 10 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 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 attributed to the licensee's record in the NMLS including but not limited to the initial set-up fee, an annual processing fee, and a loan sponsorship transfer fee.

18.8(8) When a change of control of a licensee is proposed, the party that will assume control of the licensee shall give notice to the superintendent through the NMLS at least 60 days before the proposed change will take effect. Control is defined in Iowa Code section 535B.6A. The party that will assume control of the licensee shall furnish the superintendent through the NMLS with the same information required of initial applicants for a license, along with the appropriate fee. The party that will assume control may be required to provide fingerprints, authorize a fingerprint background check through NMLS, and pay the appropriate fees for the purpose of conducting a national criminal history background check through the Federal Bureau of Investigation. The superintendent shall approve or deny the request in accordance with the provisions of Iowa Code section 535B.5 and rule 187—18.4(17A,535B).

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11; ARC 3080C, IAB 5/24/17, effective 7/1/17]

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 36 months from the date of the final transaction with the borrower or a party in a real estate transaction.
- 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.
- e. Effective January 1, 2012, mortgage bankers and mortgage brokers shall have the capability to provide information on the characteristics of loan originations as described in subrule 18.16(11) in an electronic format prescribed by the administrator within 30 days of:

(1) The end of each calendar quarter or some other regular interval determined by the administrator;
or

(2) Notice from the administrator in the case of an examination.

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.
- d. A closing agent shall keep the general business records outlined in subrule 18.16(9). The general business records are records relating to the closing agent's general business and do not include records relating to individual customer files. A closing agent shall also keep the following records relating to individual files:

(1) A closing register containing the information outlined in subrule 18.22(5); and

(2) A closing file containing the information outlined in subrule 18.22(6).

18.16(3) Index. All mortgage banker and mortgage broker 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. A mortgage banker or mortgage broker licensee shall maintain an 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; name of the broker, the lender, and the mortgage loan originator, as applicable, including the unique NMLS identification number assigned to each; 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. A mortgage banker or mortgage broker licensee shall maintain a loan register. The loan register shall include the following information for every loan that is made: the date of the transaction; the name of the borrower; the name of the broker, the lender, the mortgage loan originator, and the closing agent, as applicable, including the unique NMLS identification number assigned to each; and the 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 mortgage banker or mortgage broker 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, including any documentation supporting that action such as an appraisal report or credit report, shall also be placed in the

application file. The application file shall also contain the name of the broker, the lender, and the mortgage loan originator, as applicable, including the unique NMLS identification number assigned to each.

18.16(7) *Loan file.* A mortgage banker or mortgage broker licensee shall maintain a loan file for each loan made. The loan file consists of the application file, the appraisal report, underwriting verifications, the closing file described in subrule 18.22(6) including other supporting documentation, 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 also contain the name of the broker, the lender, the mortgage loan originator, and the closing agent, as applicable, including the unique NMLS identification number assigned to each.

18.16(8) *Account ledger.* A mortgage banker licensee shall maintain an account ledger for each loan that is serviced, which shall include the following information:

a. 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 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 remaining balances due from the borrower, including principal, escrow, late fees, and other charges.

d. Any change to the interest rate and the effective date of that change.

e. 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 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 or real estate closing 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 or real estate closing 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 or real estate closing 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.

18.16(11) *Loan records required to be maintained electronically.*

a. Effective January 1, 2012, mortgage bankers and mortgage brokers shall maintain the following records electronically in a format prescribed by the administrator:

(1) Information sufficient to identify the mortgage loan and the unique identifier of the mortgage loan originator, the mortgage broker (if applicable), and the lender for the loan.

(2) Information sufficient to enable a computation of key items in the federal truth-in-lending disclosures, including the annual percentage rate, the finance charge, and a schedule of payments, and any deviations between the final disclosures and the most recent disclosures issued prior to the final disclosures.

(3) Information included in the initial disclosure required under the federal Real Estate Settlement Procedures Act, including the rate, the date of any interest rate lock, and an itemization of settlement charges and all broker compensation.

(4) Information included in the final closing disclosure.

(5) Information related to the terms of each loan, including adjustable rate loan features (including timing of adjustments, indices used in setting rates, maximum and minimum adjustments, floors and ceilings of adjustments), the undiscounted interest rate (if maintained by the lender in an electronic format), penalties for late payments, and penalties for prepayment (including computation of the penalty amount, the duration of prepayment penalty, and the maximum amount of penalty).

(6) Information typically used in underwriting, including the appraised value of the property, the sales price of the property (if a purchase loan), each borrower's income, the monthly payment amount, the housing debt-to-income ratio, the total debt-to-income ratio, and the credit score of each borrower.

(7) Information included in a Loan Application Register for mortgage lenders required to submit information pursuant to the federal Home Mortgage Disclosure Act.

b. Mortgage brokers shall provide information identified in paragraph 18.16(11)“a” unless such information is not prepared or known by the mortgage broker and the mortgage broker does not reasonably have access to the information in an electronic format.

c. The administrator shall permit mortgage bankers and mortgage brokers to utilize compatible third-party software to provide information required under this subrule.

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11; ARC 3080C, IAB 5/24/17, effective 7/1/17]

187—18.17(17A,535B) Mortgage call reports. Each mortgage banker and mortgage broker licensee shall submit to the NMLS reports of condition, which shall be in such form and shall contain such information as the NMLS shall require. For each day after the NMLS-established due date 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; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11; ARC 3080C, IAB 5/24/17, effective 7/1/17]

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 mortgage banker or mortgage broker 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.

d. An advertisement shall clearly show the licensee's unique NMLS identification number.

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; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11; ARC 3080C, IAB 5/24/17, effective 7/1/17]

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 licensee and examine the licensee's books, accounts, records, and files.

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; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

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 the licensee's business, 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, mortgage broker, or closing agent without an active and current license.

h. and i. Reserved.

j. The licensee fails to notify the administrator within 10 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, mortgage broker, or closing agent 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; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11; ARC 3080C, IAB 5/24/17, effective 7/1/17]

187—18.21(17A,535B) Trust fund accounting and internal controls.

18.21(1) A closing agent shall establish and maintain a separate subsidiary ledger for each real estate transaction for which the closing agent performs real estate closing services.

18.21(2) A closing agent shall prepare a trial balance for each trust account and each subsidiary ledger at least once each calendar month.

18.21(3) A closing agent shall perform a three-way reconciliation of bank balance, book balance, and trust account trial balance for each bank trust account at least once each calendar month. A member of the closing agent's management team shall review and approve the reconciliation at least once each calendar month.

18.21(4) A closing agent shall design accounting processes with the appropriate level of internal controls and management oversight. The process shall include an appropriate segregation of duties. It is recommended that trust account reconciliations be prepared by a person other than a person who records receipts or makes deposits to the trust account. A closing agent may use an outside accountant to perform reconciliations.

[ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

187—18.22(17A,535B) Closing standards.

18.22(1) A closing agent shall read and comply with all closing instructions from the parties to the transaction.

18.22(2) A closing agent shall disburse or deliver funds only in accordance with closing instructions from the lender, the attorney's title opinion or title commitment, and the real estate purchase agreement, when applicable. All disbursements shall agree with the final signed closing disclosure.

18.22(3) A closing agent shall obtain written payoff statements for any loan being paid off as part of the real estate transaction and shall make all loan payoffs as soon after the closing as is practical, but in no event more than two business days after the closing, or within one business day after the rescission period ends in the case of a refinance transaction. For the purposes of this rule, placing the loan payoffs with a delivery service for overnight delivery shall meet the requirements of this subrule.

18.22(4) A closing agent shall be responsible for ensuring that all documents for the real estate transaction that require recording are recorded with the appropriate county recorder's office in a timely manner, but in no event more than five business days after the date of the transaction.

18.22(5) A closing agent shall maintain a closing register and a closing index. A closing register is a chronological list of real estate closings. The closing register shall include for each closing the date of the transaction, the name of the buyer or borrower, the name of the seller, the name of the lender and the mortgage loan originator, and the property address, as applicable. A closing index shall be maintained so that all records are accessible by the names of the parties to the transaction (including the name of the buyer or borrower, the name of the seller, and the name of the mortgage loan originator) and file number. A searchable database containing the information required by this subrule satisfies the requirements of this subrule.

18.22(6) A closing agent shall maintain a closing file for each real estate transaction for which the closing agent performed real estate closing services. The closing file shall include, at a minimum, the following records:

a. An accounting ledger or disbursement sheet that details all receipts and disbursements with date, transaction type, check number, payee, amount, and the file's ending balance. All ledger or disbursement sheets shall balance zero after the transaction is completed. If any balance remains, the date, the reason for the balance, and to whom the balance belongs shall be clearly documented in the file.

b. A signed closing disclosure that totals properly and is supported by written instructions for all amounts (such as closing instructions, invoices, or written payoffs). If the closing disclosure requires changes, a copy of the new closing disclosure with changes clearly documented shall be maintained in the file.

c. A copy of the closing instructions from the lender and other parties to the transaction.

d. A copy of the signed real estate contract, if applicable.

e. Detailed records of the individuals present at each closing and specifying where and when each closing is held.

f. Properly executed affidavits, where required.

g. Evidence that the real estate transaction documents were filed with the county recorder.

[ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11; ARC 3080C, IAB 5/24/17, effective 7/1/17]

187—18.23(17A,535B) Employees of closing agents.

18.23(1) A closing agent shall exercise diligence in hiring practices, including policies regarding background investigations. A closing agent shall conduct a background investigation and credit check for each employee responsible for handling funds.

18.23(2) A closing agent shall provide appropriate training to employees on real estate closing matters, including trust account administration, real estate closing procedures, and fraud prevention.

[ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

187—18.24(17A,535B) Reporting obligation. If a closing agent detects defalcation regarding the closing agent's trust account funds, the closing agent must file the following notice with the division of banking within three days of discovering the defalcation. "We have detected circumstances regarding our trust account funds that may warrant an investigation by the banking division. The amount of funds involved is believed to be \$ _____."

[ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

187—18.25(17A,535B) Real estate brokers. For the purposes of applying the exemption in Iowa Code section 535B.2(6), a real estate broker performing real estate closing services shall be deemed to be engaged in practice as a real estate broker only when performing real estate closing services on a transaction in which the broker's brokerage represents one of the parties to the transaction and the closing is being administered through an account regulated by the real estate commission pursuant to Iowa Code chapter 543B.

[ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

These rules are intended to implement Iowa Code chapters 17A and 535B.

[Filed 5/3/06, Notice 3/29/06—published 5/24/06, effective 7/1/06]

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[Filed ARC 3080C (Notice ARC 2993C, IAB 3/29/17), IAB 5/24/17, effective 7/1/17]

CHAPTER 19 MORTGAGE LOAN ORIGINATORS

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

187—19.1(17A,535D) Definitions. For the purposes of this chapter, the definitions in Iowa Code section 535D.3 shall apply. In addition, unless the context otherwise requires, the following definitions shall apply to this chapter and to Iowa Code chapter 535D:

“*Licensee*” means a person who has a license to operate as a mortgage loan originator in accordance with the provisions of Iowa Code section 535D.4.

“*Nationwide multistate licensing system*” or “*NMLS*” means a multistate 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 in accordance with the provisions of Iowa Code section 535D.8.

“*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 Iowa Code section 535D.3(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; ARC 3081C, IAB 5/24/17, effective 7/1/17]

187—19.2(17A,535D) Mortgage loan originator requirements.

19.2(1) A natural person who applies for a license pursuant to Iowa Code section 535D.4 to act as a mortgage loan originator in this state shall apply with the superintendent through the NMLS. 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 prelicensing education requirements pursuant to Iowa Code section 535D.7.

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.

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, 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.

19.2(5) An applicant must provide fingerprints, authorize a fingerprint background check through NMLS, and pay the appropriate fees 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.

19.2(6) Each applicant must provide authorization to obtain a credit report through NMLS.

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.

19.2(10) An individual who has completed 20 hours of prelicensure education pursuant to 12 U.S.C. 5104(c) must retake 20 hours of prelicensure education in order to be eligible for mortgage loan originator licensure if the individual:

a. Fails to acquire a valid state license or federal registration as a mortgage loan originator within three years from the date of federal compliance with 12 U.S.C. 5104(c); or

b. Fails to acquire a valid state license or federal registration as a mortgage loan originator within three years from the last date of licensure or registration as a mortgage loan originator.

[ARC 8239B, IAB 10/21/09, effective 11/25/09; ARC 3081C, IAB 5/24/17, effective 7/1/17]

187—19.3(17A,535D) 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 Iowa Code section 535D.6. For the purpose of applying Iowa Code section 535D.6(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 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 chapters 535B and 535D.

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 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; ARC 3081C, IAB 5/24/17, effective 7/1/17; ARC 5091C, IAB 7/15/20, effective 8/19/20]

187—19.4(17A,535D) 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) By December 1 of the year of expiration, a mortgage loan originator license shall be renewed through the NMLS, with all requested information provided as directed by the NMLS, 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, 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. 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 Iowa Code section 535D.9 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; ARC 3081C, IAB 5/24/17, effective 7/1/17]

187—19.5(17A,535D) 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; ARC 3081C, IAB 5/24/17, effective 7/1/17]

187—19.6(17A,535D) Notice of significant events. A licensee shall notify the superintendent through the NMLS within ten 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; ARC 3081C, IAB 5/24/17, effective 7/1/17]

187—19.7(17A,535D) 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; ARC 3081C, IAB 5/24/17, effective 7/1/17]

187—19.8(17A,535D) 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 Iowa Code section 535D.11(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,535D) 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 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 attributed to the licensee's record in the NMLS, 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; ARC 3081C, IAB 5/24/17, effective 7/1/17]

187—19.9(17A,535D) 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 prelicensing education.

19.9(2) Each continuing education course shall first be approved by the NMLS 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 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.

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; ARC 3081C, IAB 5/24/17, effective 7/1/17]

187—19.10(17A,535D) Independent contractor—loan processor or underwriter.

19.10(1) For the purpose of Iowa Code section 535D.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,535D) 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; ARC 3081C, IAB 5/24/17, effective 7/1/17]

187—19.11(17A,535D) NMLS information challenge process. A mortgage loan originator may challenge information entered into the NMLS 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 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 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 is factually incorrect, the superintendent shall take prompt steps to correct the information submitted.

[ARC 8239B, IAB 10/21/09, effective 11/25/09; ARC 3081C, IAB 5/24/17, effective 7/1/17]

187—19.12(17A,535D) Disciplinary action.

19.12(1) The superintendent has authority, pursuant to Iowa Code chapters 535D and 17A, to impose discipline for violations of Iowa Code chapter 535D and the rules promulgated thereunder.

19.12(2) Grounds for discipline. The superintendent may impose any of the disciplinary sanctions set out in Iowa Code section 535D.13 when the superintendent finds any of the following:

a. The licensee has violated a provision of Iowa Code chapter 535D or a rule adopted thereunder 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 Iowa Code section 535D.6 or 535D.9 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 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 ten days of the occurrence of one of the significant events set forth in rule 187—19.6(17A,535D).

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; ARC 3081C, IAB 5/24/17, effective 7/1/17]

Rules 187—19.1(17A,535D) to 187—19.12(17A,535D) are intended to implement Iowa Code chapters 17A and 535D.

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.

[ARC 8239B, IAB 10/21/09, effective 11/25/09]

187—19.14(17A,261) Nonpayment of student loan. Rescinded **ARC 5091C**, IAB 7/15/20, effective 8/19/20.

[ARC 8239B, IAB 10/21/09, effective 11/25/09]

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.

[**ARC 8239B**, IAB 10/21/09, effective 11/25/09]

[Filed ARC 8239B (Notice ARC 8065B, IAB 8/26/09), IAB 10/21/09, effective 11/25/09]

[Filed ARC 3081C (Notice ARC 2991C, IAB 3/29/17), IAB 5/24/17, effective 7/1/17]

[Filed ARC 5091C (Notice ARC 4941C, IAB 2/26/20), IAB 7/15/20, effective 8/19/20]

CHAPTER 20 DEBT MANAGEMENT

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

187—20.1(17A,533A) Definitions. For the purposes of this chapter, the definitions in Iowa Code chapter 533A shall apply. In addition, unless the context otherwise requires:

“*Debt management business*” means a person that performs debt management as defined in Iowa Code section 533A.1(2) or debt settlement as defined in Iowa Code section 533A.1(3).

“*Nationwide multistate licensing system*” or “*NMLS*” means a multistate 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 nondepository financial institutions.

“*Upon completion of a settlement of a debtor’s debt*” means when all of the payments necessary to completely satisfy a debtor’s debt have been remitted to the creditor.

[ARC 4061C, IAB 10/10/18, effective 11/14/18]

187—20.2(17A,533A) Utilization of the NMLS. All application and licensing information shall be submitted through the NMLS including but not limited to the following: original application information; changes in application information; license renewal information; changes in name, location, and control; and notices of significant events. The applicant or licensee shall pay any fees required by the NMLS including but not limited to the following: system processing fees, background check fees, and credit background check fees.

[ARC 4061C, IAB 10/10/18, effective 11/14/18]

187—20.3(17A,533A) Application for license.

20.3(1) An application for a license to operate a debt management business in Iowa shall be submitted to the superintendent, on the form provided and with the information requested, through the NMLS. The superintendent may consider an application withdrawn if it does not contain all of the information required and the missing information is not submitted to the superintendent within 30 days after the superintendent requests the missing information. The applicant may also request that the application be withdrawn at any time before the superintendent has decided to grant or deny the application.

20.3(2) Each officer, director, and individual who has control of an applicant must provide fingerprints, authorize a fingerprint background check through the NMLS, and pay the appropriate fees for the purpose of conducting a national criminal history background check through the Federal Bureau of Investigation.

20.3(3) The applicant shall submit with the application an application fee of \$100 and an initial license fee of \$250. The superintendent shall refund the initial license fee if the application is denied, but the application fee is not subject to refund.

20.3(4) If any information material to the application changes after the applicant files the initial application, the applicant shall provide updated information to the superintendent within ten days of the change. When such a material change in information has occurred, the superintendent may deny an application if the applicant fails to provide updated information within the prescribed time frame.

20.3(5) An applicant for a license to operate a debt management business must file with the superintendent a \$25,000 surety bond in compliance with the provisions of Iowa Code section 533A.2(4).

20.3(6) Licenses expire on the next December 31 after they are issued, but 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, 2017, would not expire until December 31, 2018.

[ARC 4061C, IAB 10/10/18, effective 11/14/18]

187—20.4(17A,533A) Grounds for approval or denial.

20.4(1) The superintendent shall approve or deny a license application in accordance with the provisions of Iowa Code section 533A.3.

20.4(2) The following may be considered evidence that the business of the applicant may not be operated lawfully and honestly consistent with the purposes of Iowa Code chapter 533A and may therefore be considered grounds for denial of an application:

a. An applicant, or an officer, director, or individual who has control of an applicant, has had a mortgage loan originator license or any lending license revoked in any governmental jurisdiction.

b. An applicant, or an officer, director, or individual who has control of an applicant, has been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court if such felony involved an act of fraud, dishonesty, or breach of trust, or money laundering.

[ARC 4061C, IAB 10/10/18, effective 11/14/18]

187—20.5(17A,533A) Renewal of license.

20.5(1) To remain authorized to operate a debt management business, a licensee must renew a license before the expiration date of the license. A licensee who fails to renew a license before the expiration date is not authorized to operate a debt management business in Iowa after the expiration date.

20.5(2) An application to renew a license shall be submitted to the superintendent, on the form provided and with the information requested, through the NMLS by December 1 of the year of expiration. For example, for a license that will expire on December 31, 2017, an application for renewal shall be submitted by December 1, 2017. All requested information, including any material change to information contained in the original application, shall be provided to the superintendent. The superintendent may assess late fees of up to \$10 per day for applications submitted and accepted for processing after December 1.

20.5(3) The superintendent shall grant an application to renew a license if:

a. The licensee submits the application and the appropriate renewal fee by December 1 or the licensee submits the application after December 1 but before January 1 and pays the appropriate renewal fee and the appropriate late fee;

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

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

20.5(4) It is within the discretion of the superintendent to reject for processing a renewal application submitted after December 31 or to treat such an application as an application for a new license. A licensee who fails to renew a license before the expiration date is not authorized to operate a debt management business in Iowa after the expiration date.

[ARC 4061C, IAB 10/10/18, effective 11/14/18]

187—20.6(17A,533A) Changes in the licensee's name, location, or control.

20.6(1) A licensee wishing to change the name or location of a debt management business shall notify the superintendent at least 30 days prior to the requested change. The request shall include proof that the licensee has either obtained a new bond or amended the existing bond to reflect the new name or location. The licensee shall submit a \$25 fee per license in conjunction with the request. A licensee may not operate a debt management business under a different name without providing such notice and submitting the required fee.

20.6(2) A licensee wishing to establish a branch office must submit the application to the superintendent, on the form provided and with the information requested, through the NMLS, along with a fee of \$250. Licenses issued to branch offices are treated as independent licenses and are subject to the renewal requirements, fees, and procedures specified in rule 187—20.5(17A,533A).

20.6(3) When change in control of a licensee is proposed, the party that will assume control of the licensee shall give notice to the superintendent at least 60 days before the proposed change will take effect. Change in control is defined in Iowa Code section 533A.5A. The party that will assume control of the licensee shall furnish the superintendent with the same information required of initial applicants for a license, along with a fee of \$100. The party that will assume control may be required to provide fingerprints, authorize a fingerprint background check through the NMLS, and pay the appropriate fees for the purpose of conducting a national criminal history background check through the Federal Bureau of Investigation. The superintendent shall approve or deny the request in accordance with the provisions of Iowa Code section 533A.3.

20.6(4) Failure to notify the superintendent within the prescribed time as required by this rule may subject the licensee to disciplinary action.

[ARC 4061C, IAB 10/10/18, effective 11/14/18]

187—20.7(17A,533A) Notice of significant events. A licensee shall notify the superintendent immediately and in writing within ten days of the occurrence of any of the following events.

20.7(1) The licensee or any of the licensee's officers, directors, principal stockholders, or affiliates file for bankruptcy protection or commence reorganization proceedings.

20.7(2) A prosecuting authority files criminal charges against the licensee or any of the licensee's officers, directors, principal stockholders, or affiliates.

20.7(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.

20.7(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 the consumer protection laws against the licensee or any of the licensee's officers, directors, principal stockholders, or affiliates.

[ARC 4061C, IAB 10/10/18, effective 11/14/18]

187—20.8(17A,533A) Administrative fees.

20.8(1) *Examination or investigation 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 Iowa Code section 533A.10(1).

20.8(2) *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.

20.8(3) *NMLS 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 attributed to the licensee's record in the NMLS including but not limited to the initial set-up fee and annual processing fee.

[ARC 4061C, IAB 10/10/18, effective 11/14/18]

187—20.9(17A,533A) Licensee records.

20.9(1) *General record requirements.* A licensee must keep records that allow the superintendent 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 36 months from the date of the final transaction with the debtor.

c. The licensee shall maintain all books and records in good order and shall produce books and records for the superintendent upon request. Failure to produce such books and records within 30 days of the superintendent'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 that this requirement is met.

20.9(2) *Required records.* A licensee operating a debt management business shall keep, at its principal place of business, an index, a client log, an account file, and an account ledger.

20.9(3) *Index.* All records kept by a debt management business shall be accessible by the debtor's name and account number.

20.9(4) *Client log.* The client log is a chronological list of active and inactive clients. The client log shall include the name of the client, the account number, the date the account was opened, the date the account was closed, and the expiration date of the account.

20.9(5) *Account file.* The account file consists of the application, the licensee's comprehensive review of the debtor's debts and monthly budget as required by Iowa Code section 533A.8(2), a copy of the debt management contract, and all disclosures to the debtor required by Iowa Code section 533A.8(3).

20.9(6) *Account ledger.* A licensed debt management business whose debt management program is based on a model which requires the licensee or any licensee to receive money or evidences thereof from the debtor to distribute to the debtor's creditors shall maintain an account ledger for each debtor, which shall show:

a. The name and address of the debtor, the account number, the amount of the debtor's outstanding debts, and the total of payments the debtor has made to the licensee.

b. A transaction history that lists all transactions with the debtor and the debtor's creditors. Payments from the debtor shall be posted to the account ledger, effective the date the payments were received, and shall show the date payment was received and the total amount of the payment. Payments to the debtor's creditors made from the debtor's account shall be posted to the account ledger effective the date the payments were made. The account ledger shall show the date the payment was made, the total amount of the payment, and a description of how the payment was applied to the debtor's account. Fees that the licensee deducts from the debtor's account shall be posted to the account ledger effective the date the fees were collected, and the account ledger shall show the date the fees were collected and the total amount of fees collected. Other transactions shall be fully described. Corrections to the transaction history shall be made by corrective entry and not by erasure.

20.9(7) *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 debt management business of the licensee.

b. Complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of each applicant for debt management or debt settlement, including a record of the date and amount of all such payments actually made by each 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 debt management business.

d. All correspondence and other records relating to the maintenance of any surety bond required by Iowa Code chapter 533A.

e. 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 superintendent or any other regulatory or supervisory authority.

f. Copies of all advertisements and solicitations concerning debt management or debt settlement 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.

20.9(8) *Disposal of records.* If a 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 that this requirement is met.

[ARC 4061C, IAB 10/10/18, effective 11/14/18]

187—20.10(17A,533A) Complaints and investigations.

20.10(1) The superintendent may, at any time and as often as the superintendent deems necessary, investigate a licensee and examine the licensee's books, accounts, records, and files.

20.10(2) The superintendent may investigate complaints about, or alleged violations by, any licensee.

20.10(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 governmental agency.

b. Notice to the superintendent from any source that the licensee has been the subject of disciplinary proceedings in another jurisdiction.

c. Notice to the superintendent 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 4061C, IAB 10/10/18, effective 11/14/18]

187—20.11(17A,533A) Disciplinary action.

20.11(1) The superintendent has authority pursuant to Iowa Code chapters 533A and 17A to impose discipline for violations of Iowa Code chapter 533A and the rules promulgated thereunder.

20.11(2) Grounds for discipline. The superintendent may impose any of the disciplinary sanctions set out in Iowa Code section 533A.7(2) when the superintendent finds any of the following:

a. The licensee has violated a provision of Iowa Code chapter 533A or a rule adopted under Iowa Code chapter 533A or any other state or federal law applicable to the conduct of the licensee's business.

b. A fact or condition exists which, had it existed at the time of the licensee's original application for a license, would have warranted the superintendent 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 superintendent.

e. The licensee fails to fully cooperate with an examination or investigation, including failing to respond to an inquiry from the superintendent within 30 days of the date the superintendent mails 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 a debt management business without an active and current license.

h. The licensee operates a debt management business in the same location as another business without the superintendent's written approval.

i. The licensee has abandoned its place of business for 60 or more days.

j. The licensee fails to notify the superintendent within ten days of the occurrence of one of the significant events set forth in rule 187—20.7(17A,533A).

k. Another state or jurisdiction has denied, suspended, revoked, or refused to renew the licensee's license, registration, or authorization to operate a debt management business 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.

m. The licensee fails to notify the superintendent of a change in ownership, name, or principal place of business.

n. The licensee fails to pay a license fee required by Iowa Code chapter 533A or to maintain a bond required by Iowa Code chapter 533A.

20.11(3) The superintendent shall not refund a license fee, in whole or in part, for a license that has been suspended, revoked, or surrendered.

[ARC 4061C, IAB 10/10/18, effective 11/14/18]

187—20.12 Reserved.

187—20.13(17A,533A) Restrictions on operating a debt management business. A licensee shall adhere to the following restrictions related to operating a debt management business.

20.13(1) Licensees shall not engage in any of the acts prohibited by Iowa Code section 533A.11.

20.13(2) Licensees may not establish branch locations outside the United States.

[ARC 4061C, IAB 10/10/18, effective 11/14/18]

These rules are intended to implement Iowa Code chapter 533A.

[Filed ARC 4061C (Notice ARC 3954C, IAB 8/15/18), IAB 10/10/18, effective 11/14/18]

CHAPTERS 21 to 24
Reserved

CHAPTER 25
APPRAISAL MANAGEMENT COMPANIES
Transferred to 481—Chapter 2050, IAC Supplement 1/22/25