

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.

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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]

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