

BANKING DIVISION[187]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 533D.3(7), the Iowa Division of Banking (IDOB) hereby gives Notice of Intended Action to adopt new Chapter 17, “Delayed Deposit Services,” Iowa Administrative Code.

The proposed chapter establishes the procedures for an application for a delayed deposit services license; renewal of an existing delayed deposit services license; submission of required notices regarding changes in name, location, or control of a licensee; record-keeping requirements for licensees; and procedures for complaints, investigations, and disciplinary actions. The proposed chapter specifically instructs licensees and applicants regarding the requirements to use the nationwide multistate licensing system to apply for and maintain delayed deposit services licenses. The nationwide multistate licensing system makes the licensing process faster, easier, and more uniform for both licensees and the licensing staff who process applications and other submissions. In the interest of making state government more efficient and transparent, the structure of these rules is very similar to the structure of other rules applicable to nondepository financial institutions.

Any interested person may make written or oral suggestions or comments on the proposed chapter on or before April 19, 2017. Comments should be directed to Zachary Hingst, Legal Counsel, Iowa Division of Banking, 200 E. Grand Avenue, Suite 300, Des Moines, Iowa 50309; by telephone at (515)281-4014; or by e-mail to zak.hingst@idob.state.ia.us.

A public hearing will be held at 9 a.m. on April 19, 2017, at the offices of the Iowa Division of Banking, 200 E. Grand Avenue, Suite 300, Des Moines, Iowa. At the hearing, persons who wish to speak will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed chapter.

Any person who plans to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact the IDOB to discuss specific needs.

No existing fees are being altered and no new fees are being added; therefore, the IDOB has concluded that the proposed rules will have no fiscal impact.

These rules are subject to waiver or variance pursuant to 187—Chapter 12.

No existing authorized activities are being restricted, no new activities are being authorized, no existing fees are being increased, and no new fees are being added. The IDOB has therefore concluded that the proposed rules should not have an impact on jobs in Iowa.

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

The following amendment is proposed.

Adopt the following new 187—Chapter 17:

CHAPTER 17
DELAYED DEPOSIT SERVICES

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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