

SAVINGS AND LOAN DIVISION[197]

Created within the Department of Commerce by 1986 Iowa Acts, chapter 1245, section 702.
Prior to 3/25/87, see Auditor of State[130] Chs 2 to 13.

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CHAPTER 1
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

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

197—1.1(17A,22) Definitions. As used in this chapter:

“Agency” means savings and loan division.

197—1.3(17A,22) Requests for access to records.

1.3(1) Location of record. In lieu of the words “(insert agency head)”, insert “superintendent”. In lieu of the words “(insert agency name and address)”, insert “Savings and Loan Division, 200 East Grand Avenue, Suite 390, Des Moines, Iowa 50309”.

1.3(2) Office hours. In lieu of the words “(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)”, insert “8 a.m. to 4:30 p.m., Monday through Friday”.

1.3(7) Fees.

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of 15 minutes. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function. However, in those instances where a higher level of supervision, oversight, or assistance is required, the hourly fee may reflect the actual cost to the agency.

197—1.9(17A,22) Disclosures without the consent of the subject.

1.9(1) Open records are routinely disclosed without the consent of the subject.

1.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 1.10(17A,22) or in any notice given for a particular record system.

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

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

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

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

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

197—1.10(17A,22) Routine use.

1.10(1) “Routine use” means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

1.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosures to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

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

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

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

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

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

197—1.11(17A,22) Consensual disclosure of confidential records.

1.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 1.7(17A,22).

1.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

197—1.12(17A,22) Release to subject.

1.12(1) The subject of a confidential record may file a written request to review confidential records about that person as permitted in rule 1.6(17A,22). However, the agency need not release the following records to the subject:

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

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

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

d. As otherwise authorized by law.

1.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

197—1.13(17A,22) Availability of records.

1.13(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

1.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids (Iowa Code section 72.3).

b. Tax records made available to the agency (Iowa Code sections 422.20, 422.72).

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

d. Minutes of closed meetings of a government body (Iowa Code section 21.5(4)).

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

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

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

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

h. All records relating to the examination of a savings and loan association which show in detail all matters connected with the association's conduct of business, its financial standing and matters touching its solvency, plan of business and integrity. This shall include all exam-related correspondence, all records of personal and telephonic meetings relating to such examinations, all interim examination monitoring reports, and all applications, reports, materials, documents, and other information obtained from the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, or their agents pursuant to any formal agreement authorizing the privileged, confidential exchange of such information (Iowa Code section 534.403(3)).

i. Any information relative to the names of the members of any association or the amounts invested by them, except as allowed by law (Iowa Code section 534.403(3)).

j. Any other information made confidential by law or rule.

1.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 1.4(17A,22). If the agency initially determines that it will release such records, the agency may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 1.4(3).

197—1.14(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 1.1(17A,22). The savings and loan division 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 which may contain personally identifiable information are personnel files which contain information about employees, families and dependents, and applications for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

197—1.15(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 1.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 1.13(17A,22). In addition, the records listed may contain information about individuals.

1.15(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 in an automated data processing system.

1.15(2) Publications. News releases, annual reports, project reports, agency newsletters, etc., are available from the office of the Iowa savings and loan division.

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.

1.15(3) Orders issued by the superintendent. All findings of fact, conclusions of law and order issued by the superintendent of savings and loans subsequent to a public hearing under the provisions of Iowa Code chapter 17A. These records may contain information about individuals making written or oral comments at the public hearing.

1.15(4) 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.

1.15(5) All other records that are not exempted from disclosure by law.

197—1.16(17A,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

2. Make available to the general public records or federal records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of or access to, records or federal records in the possession of the agency which are governed by the regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

These rules are intended to implement Iowa Code section 22.11.

[Filed emergency 8/19/88 after Notice of 5/18/88—published 9/7/88, effective 8/19/88]

CHAPTER 2
BRANCH OFFICES

[Prior to 3/25/87, Auditor of State[130] Ch 2]

197—2.1(534) Board resolution to file application. Prior to an association amending its articles of incorporation and the bylaws for the purpose of establishing a branch office, the board of directors of the association will, by resolution, authorize the filing of an application for permission to establish a branch office along with the supporting information required by such application. The prescribed form of application and an outline of information required in support thereof may be obtained by request from the Superintendent of Savings and Loan Associations, Suite 390, 200 East Grand Avenue, Des Moines, Iowa 50309.

197—2.2(534) Eligibility. No application will be considered if at the date on which it is filed:

2.2(1) The association has not been in operation for at least one year;

2.2(2) The association has on file any other application for permission to establish a branch office with respect to which action by the superintendent is pending;

2.2(3) The association does not submit assurance that the proposed branch office will open within 18 months of the date of final approval.

197—2.3(534) Application and supporting data. In support of the requirements of the Iowa Code, the association will supply such data as are outlined in the “Application for Permission to Establish a Branch Office.” Particular emphasis is placed on trend data concerning the proposed branch service area. Appropriate to this are economic surveys of the area, whether compiled primarily for the applicant or for other local groups. Also required are an estimate of the annual income and expenses of the proposed branch office, the annual business to be transacted by it, and a statement of the functions to be performed at such office and of the personnel and office facilities to be provided for the operation of the office.

197—2.4(534) Annual budget. The application for permission to branch must be accompanied by a proposed annual budget of the association. The budget is for the confidential use of the superintendent and is not to be open to inspection by the public.

197—2.5(534) Evaluation of applications. A certified copy of the association’s board of directors’ resolution authorizing application, the completed “Application for Permission to Establish a Branch Office” and the proposed annual budget will be submitted by the association to the savings and loan division. The superintendent is charged with the preliminary evaluation of the application and supporting data and may request further information as may be desirable in particular cases. The superintendent will have 30 days from date of receipt of all required or requested information in which to evaluate the application.

197—2.6(534) Amendment of articles and bylaws. If, upon evaluation of the information presented, the superintendent gives preliminary approval to the application, the superintendent will give written notice to the association to proceed with amendment of the articles of incorporation and bylaws of the association. The articles are to be amended by resolution of the members and the bylaws by resolution of the board of directors. Both amendments are subject to approval of the superintendent as to general form and must be approved by the attorney general as to legal form. The amendments must indicate the location for the specific branch office intended. An amendment cannot be made giving the association broad powers to branch.

Upon approval of the members of the amendment to the articles of incorporation and upon approval of the amendment to the bylaws by the board of directors, four certified copies of each of the amendments shall be filed with the superintendent.

197—2.7(534) Published notice of branch. If the application is approved the supervisor shall give the association written notification to publish the following notice:

NOTICE OF FILING APPLICATION FOR THE PURPOSE
OF ESTABLISHING A BRANCH OFFICE

Notice is hereby given that theSavings and Loan Association,
., Iowa, has filed with the Savings and Loan Division, 200 East
Grand, Suite 390, Des Moines, Iowa, an “Application for Permission to Establish a Branch Office”. Said
application provides for the office to be located in the immediate vicinity of
., Iowa. Any person may file communications in favor or in protest of said branch office
at the Savings and Loan Division within twenty days after the date of this publication. The application,
together with all communications received in favor or in protest thereof, are available for inspection by
interested persons at the aforesaid office.

. Savings and Loan Association
., Iowa

The association shall publish the notice in a newspaper of general circulation in the community in
which the branch office is to be located within 15 days of the superintendent’s notification to do so. A
copy of the notice accompanied by a publisher’s affidavit will be furnished the superintendent by the
association immediately after publication.

197—2.8(534) Public comment—final approval. Following receipt of all documentation from the
association, and after the 20-day period for communications allowed in the notice, a final review of
the branch application and the public comments received will be made by the superintendent. The
superintendent shall disapprove the application based upon any of the following:

- 2.8(1) The application is inconsistent with applicable statutes or rules;
- 2.8(2) The application does not contain all required or requested information;
- 2.8(3) The plan is inequitable to a class of members or shareholders;
- 2.8(4) The establishment of the proposed branch office would cause undue injury to existing local
thrift and home financing institutions;
- 2.8(5) The establishment of the proposed branch will not provide a benefit to the market area to be
served.

If the application is approved by the superintendent, the superintendent shall issue a certification
indicating the approval. If any person requests an oral hearing on the matter, that person should notify
the superintendent in writing within the 20-day communication period. The oral presentations will be
heard by the superintendent or the superintendent’s designee. A final decision shall be issued within 30
days following the hearing.

[Filed 9/15/66; amended 1/14/75]
[Filed 11/5/82, Notice 9/29/82—published 11/24/82, effective 12/29/82]
[Filed emergency 3/10/87—published 3/25/87, effective 3/10/87]

CHAPTER 3
SAVINGS LIABILITY

[Prior to 3/25/87, Auditor of State[130] Ch 3]

197—3.1(534) Classes of savings. An association may, if its bylaws permit and by resolution of its board of directors, classify savings according to the character, amount or duration thereof, or regularity of additions thereto. For this purpose, the classifications are defined.

3.1(1) Bonus accounts. Under the bonus arrangement, the association may agree, by issuance of a bonus security certificate, to pay an extra dividend or extra interest at a specified rate in addition to the regular dividend rate paid on those accounts.

Bonus accounts may be:

Fixed balance accounts with the minimum balance, minimum additions and minimum and maximum term agreed upon by the saver and the association, or

Accounts on a monthly payment basis, such monthly payments to be set forth in a bonus agreement, for a period agreed upon between the saver and the association.

a. Regular dividends or interest shall be distributed or paid as of the normal distribution dates and the bonus amount upon completion of the agreed-upon maturity. In the event that the account is withdrawn prior to the maturity date specified, no bonus may be paid nor may a penalty be assessed. The association shall, on each regular dividend or interest payment date, make appropriate debits and credits to a "Reserve for Bonus" which shall be maintained as long as bonus accounts are outstanding.

b. The bonus security form to be used shall be submitted to the superintendent for approval prior to initiation of any bonus plan.

c. Bonus certificates, issued under any plan prior to the effective date of this rule, must be redeemed upon their date of maturity, which date shall, in no event, be later than July 1, 1968. The certificates may be replaced by a regular savings share account or a plan conforming to one of the classes of savings set forth in this rule.

3.1(2) Variable accounts. An association may offer savings accounts which pay variable rates of interest. Full disclosure shall be made to the saver describing how the interest rate will be periodically determined.

3.1(3) Ninety-day notice accounts. The term "notice account" means any form of withdrawable account evidenced by an account book or certificate containing a requirement that the holder of the account give the association written notice of at least 90 days prior to making any withdrawal from the account, except as provided in this rule. An association may provide that the notice prior to withdrawal will not be required at the end of a dividend or interest period or within 10 days thereafter in connection with the withdrawal of funds which have remained in the association for at least 90 days. In the event of any other withdrawal from the account prior to the expiration of the notice period, the holder of the account shall not be entitled to receive accrued and unpaid earnings on the amount withdrawn for the period of time such funds remained in the association since the last date on which the association regularly distributed earnings on notice accounts.

3.1(4) Fixed rate, fixed term savings accounts described in rule 197—4.2(534).

3.1(5) Regular savings (passbook) accounts.

3.1(6) Savings accounts which are directly equivalent to and competitive with money market mutual funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940. The limitations for this type of account shall be those which are imposed by the Federal Savings and Loan Insurance Corporation upon insured associations.

3.1(7) Other accounts. An association may offer other types of savings accounts not described in this rule, which are authorized by the Federal Savings and Loan Insurance Corporation for insured associations.

3.1(8) Disclosure. In addition to any disclosure requirements outlined above, a savings account must meet the disclosure requirements of 197—subrule 4.2(3).

3.1(9) *Withdrawal penalty.* Unless a penalty for early withdrawal is otherwise specified in this rule, except for a passbook or other day-in or day-out account, an association shall provide for a penalty described in 197—subrule 4.2(4).

This rule is intended to implement Iowa Code sections 534.307(1) and 534.308.

[Filed 9/14/67; amended 6/28/68, 7/9/68, 5/13/69, 10/12/72]

[Filed emergency after Notice 11/5/82, Notice 9/29/82—published 11/24/82, effective 11/5/82]

[Filed emergency 3/10/87—published 3/25/87, effective 3/10/87]

CHAPTER 4
MUTUAL DEPOSITS

[Prior to 3/25/87, Auditor of State[130] Ch 4]

197—4.1(534) Mutual deposit association.

4.1(1) *General approval.* A state-chartered association may elect to operate in a manner similar to federally chartered savings and loan associations as a “mutual deposit” association or institution. Such an election shall enable such institution or association to avail itself of the various terminology and powers authorized for “mutual deposit” savings associations or institutions as authorized by federal law and limited by rules and regulations of the Federal Home Loan Bank System or the Federal Savings and Loan Insurance Corporation from time to time, and as implemented and approved by the rules of the superintendent of savings and loan associations.

4.1(2) *Procedure to elect.* In order to elect to become a “mutual deposit association or institution,” a state-chartered association shall by action of its members at a regular annual meeting or a specially called meeting for that purpose amend its articles of incorporation so as to convert to a mutual deposit type institution or association by adopting articles of incorporation which are substantially similar to those which are available in the office of the superintendent of savings and loan associations. The associations shall obtain the formal approval of the restated articles of incorporation and bylaws of the superintendent.

4.1(3) *Rights are not affected.* Such associations as elect to become mutual deposit type associations or institutions shall also continue to have the rights and powers and be generally regulated and limited by the provisions of Iowa Code chapter 534 as amended from time to time, as though they had not converted, excepting where federal regulations or rules of this office specifically adopted for “mutual deposit” type associations may limit same.

197—4.2(534) Fixed-rate, fixed-term savings deposit accounts.

4.2(1) *General approval.* A state-chartered association which in accordance with state law may accept accounts bearing a definite rate of return for fixed periods of time (hereinafter referred to as “fixed-rate, fixed-term accounts”) and whose board of directors has adopted a resolution providing for the issuance of such fixed-rate, fixed-term accounts may, subject to the limitations contained in 4.2(2), and to the disclosure provisions contained in 4.2(3), issue certificates evidencing such fixed-rate, fixed-term accounts in such form as the board of directors of the institution may determine.

4.2(2) *Limitations.* In issuing certificates evidencing fixed-rate, fixed-term accounts pursuant to the approval contained in 4.2(1), no association shall:

a. Provide for any forfeiture for breach of condition on the part of any holder, other than loss of interest, partial loss of interest and principal or partial loss of principal for the term of the fixed-rate, fixed-term account or other specified time period; in any event no forfeiture imposed on any account holder by an insured association shall be greater than that specified by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation;

b. Issue any negotiable form of certificate that provides for membership in the association, or one subject to redemption, unless the association discloses to the saver all terms and conditions of the redemption;

c. Deny any member the opportunity to invest at the same rate offered to any other member at that time on the same classification of fixed-rate, fixed-term account;

d. Provide for withdrawal from any fixed-rate, fixed-term account prior to the expiration of the fixed-term, except as provided in 4.2(4); or

e. Issue any form of certificate evidencing a fixed-rate, fixed-term account unless the institution has first (1) obtained a written opinion by its legal counsel that such form of certificate complies with the requirements of applicable law and regulations and the institution’s articles of incorporation and bylaws, which opinion shall be retained by the institution so long as it continues to issue certificates in such form, and (2) submitted a copy of such form of certificate, together with a copy of such legal opinion, to the superintendent of savings and loan associations. Provided, that such legal opinion need not be obtained

if the institution uses a form of certificate which has already been approved by the Federal Savings and Loan Insurance Corporation for the use by state-chartered institutions.

4.2(3) Disclosure. Each certificate evidencing a fixed-rate, fixed-term account accepted pursuant to the approval contained in 4.2(1) shall include in its provisions and display in easily read type:

- a. The rate of interest to be paid and the dates or frequency at which interest is payable;
- b. The amount of the fixed-rate, fixed-term account;
- c. The term of the fixed-rate, fixed-term account;
- d. The penalty or penalties imposed for withdrawal prior to completion of the fixed term or renewal;
- e. Any provisions relating to renewal at the conclusion of the fixed term;
- f. Any provisions relating to the interest to be paid after the conclusion of a fixed term or renewal;
- g. A provision converting the fixed-rate, fixed-term account at the conclusion of a fixed term or renewal to the status of an account accepted for an indefinite period of time;
- h. The minimum balance requirement applicable to fixed-rate, fixed-term accounts.

4.2(4) Withdrawal prior to expiration of term. Each fixed-term certificate issued by an insured institution, which was entered into, renewed or extended between June 2, 1980, and September 30, 1983, and which was not renewed or extended on or after October 1, 1983, shall provide that, in the event of withdrawal of all or any portion of such account prior to the expiration of its term:

a. If the term of such account is less than one year, the account holder shall forfeit an amount equal to three months of interest or dividends, whether earned or not, on the amount withdrawn at the nominal (simple interest) rate being paid on the account, regardless of the length of time the funds withdrawn have remained in the account.

b. If the term of such account is one year or more the account holder shall forfeit an amount equal to six months of interest or dividends, whether earned or not, on the amount withdrawn, at the nominal (simple interest) rate being paid on the account, regardless of the length of time the funds withdrawn have remained in the account.

c. If the account is withdrawn prematurely by the account holder, and the account has been on deposit longer than three months (where the original term or renewal term is less than one year) or six months (where the original term or renewal term is greater than one year), notwithstanding "a" and "b" above, an association may provide in the certificate that the account holder forfeit all interest earned on the amount withdrawn, to the date of withdrawal.

d. Where a certificate has an original maturity of less than three months, the required penalty is to be an amount at least equal to the amount of interest or dividends that could have been earned on the amount withdrawn had the funds remained on deposit until maturity.

e. If any interest has been paid to the account holder prior to such withdrawal, a deduction shall be made from the amount withdrawn to adjust for the penalty applicable to such interest. In the case of early withdrawal of only a portion of such account, appropriate notation may be made on the certificate indicating the amount and date of such withdrawal and the remaining account balance; if the applicable minimum balance requirement ceases to be met the certificate may be canceled and a new certificate issued for the remaining portion of the account. A certificate issued by an insured institution for a fixed-term account may provide that the holder cannot withdraw any portion of such account prior to the expiration of its term except under such emergency circumstances as may be set forth therein.

4.2(5) Withdrawal penalty effective October 1, 1983. The following minimum early withdrawal penalties shall apply to time deposits (fixed-term savings accounts) entered into, renewed or extended on or after October 1, 1983:

a. Where a time deposit with an original maturity or required notice period of 7 to 31 days, or any portion thereof, is paid before maturity, a depositor shall forfeit an amount equal to the greater of (1) all interest earned on the amount withdrawn from the most recent of the date of deposit, date of maturity, or date on which notice was given, or (2) all interest that could have been earned on the amount withdrawn during a period equal to one-half the maturity period or the required notice period.

b. Where a time deposit with an original maturity or required notice period of 32 days to one year, or any portion thereof, is paid before maturity, a depositor shall forfeit an amount at least equal to

one month's interest earned, or that could have been earned, on the amount withdrawn at the nominal (simple) interest rate being paid on the deposit, regardless of the length of time the funds withdrawn have remained on deposit.

c. Where a time deposit with an original maturity or required notice period of more than one year, or any portion thereof, is paid before maturity, the depositor shall forfeit an amount at least equal to three months' interest earned, or that could have been earned, on the amount withdrawn at the nominal (simple) interest rate being paid on the deposit, regardless of the length of time the funds withdrawn have remained on deposit.

d. Notwithstanding subrule 4.2(4), where a time deposit of \$2,500 to less than \$100,000, with an original maturity of 91 days, that has been issued, renewed or extended before October 1, 1983, but not renewed or extended on or after that date, is paid before maturity, a depositor shall forfeit an amount equal to at least all interest earned on the amount withdrawn.

e. Notwithstanding subrule 4.2(4), where a nonnegotiable time deposit of \$2,500 or more, with an original maturity or required notice period of 7 to 31 days, that has been issued, renewed or extended before October 1, 1983, but not renewed or extended on or after that date, is paid before maturity, the depositor shall forfeit an amount equal to at least the greater of (1) all interest earned on the amount withdrawn from the most recent of the date of deposit, date of maturity, or date on which notice was given, or (2) all interest that could have been earned on the amount withdrawn during a period equal to one-half the maturity period or required notice period.

These rules are intended to implement Iowa Code section 534.209.

[Filed 8/12/69; amended 10/11/72]

[Filed 1/14/81, Notice 11/26/80—published 2/4/81, effective 3/11/81]

[Filed emergency after Notice 11/5/82, Notice 9/29/82—published 11/24/82,
effective 11/5/82]

[Filed emergency 9/23/83—published 10/12/83, effective 10/1/83]

[Filed emergency 3/10/87—published 3/25/87, effective 3/10/87]

CHAPTER 5
MORTGAGE LOAN DISCLOSURE AND REPORT
[Prior to 3/25/87, Auditor of State[130] Ch 5]

197—5.1(534) Real estate loan reporting and disclosure.

5.1(1) Each reporting financial institution shall file with the Iowa finance authority and the superintendent a report of all real estate loans made, by census tract, in form and substance as required by the superintendent or the superintendent's designee. If this information cannot be shown by census tract, then it shall be reported by county.

5.1(2) Every report filed shall disclose the following additional information:

- a. Name and address of the reporting financial institution.
- b. Name, address and telephone number of the officer or employee designated by the institution to file the report.
- c. Reporting period covered.

197—5.2(534) Reporting period and requirements.

5.2(1) Report format. Reporting financial institutions as defined in subrule 5.3(1) shall file a mortgage loan disclosure statement which complies with the Federal Home Mortgage Act of 1975, U.S.C. 2801 to 2809 and regulations promulgated under the Act.

5.2(2) Reporting period. The reporting period shall be 12 months in length and shall be the same as the calendar year first beginning on January 1, 1979, ending on December 31, 1979, and each December 31 thereafter.

5.2(3) Filing date. Reporting financial institutions as defined in subrule 5.3(1) shall file with the Iowa finance authority and the savings and loan division by January 15, 1980, and annually thereafter by March 31.

5.2(4) Record maintenance. All records, information and supporting material pertaining to the preparation, maintenance and filing of the appropriate disclosure statements required by Iowa Code section 535A.4 and these rules shall be maintained by reporting financial institutions for a period of not less than five years.

5.2(5) The disclosure reports required hereunder shall be filed on forms that conform in form and substance with the Federal Home Mortgage Disclosure Act.

5.2(6) Each institution filing this report shall also indicate in writing, along with the report, the total number of people requesting examination of the disclosure report using the same reporting period as described in subrule 5.2(2).

197—5.3(534) Definitions.

5.3(1) *Reporting financial institution.* Only those state-chartered savings and loan associations which are required to file a mortgage loan disclosure statement.

5.3(2) *Mortgage loan disclosure statement.* Means the statement required by the Federal Home Mortgage Disclosure Act, 12 U.S.C., Sections 2801 to 2809.

197—5.4(534) Written complaints. Any person who has reason to believe that a financial institution of the type described in these rules has failed to comply with the provisions of Iowa Code chapter 535A or these rules may file a written complaint with the superintendent or bring an action in the district court in accordance with section 535A.6. All written complaints should be addressed to the Superintendent of Savings and Loan Associations, Suite 390, 200 East Grand Avenue, Des Moines, Iowa 50309.

These rules are intended to implement Iowa Code sections 534.401(2), 535A.1, 535A.4(4) and 17A.5(1).

[Filed emergency 2/2/79—published 2/21/79, effective 2/2/79]

[Filed emergency after Notice 7/19/79, Notice 3/7/79—published 8/8/79, effective 7/31/79]

[Filed emergency 8/12/81—published 9/2/81, effective 8/14/81]

[Filed emergency 3/10/87—published 3/25/87, effective 3/10/87]

CHAPTER 6
CONVERSION FROM MUTUAL TO CAPITAL STOCK OWNERSHIP
[Prior to 3/25/87, Auditor of State[130] Ch 6]

197—6.1(534) Introduction. These rules shall govern the conversion of state-chartered savings and loan associations from mutual to stock form of ownership, pursuant to Iowa Code section 534.509, except as the superintendent of savings and loan associations may otherwise provide in supervisory cases.

197—6.2(534) Definitions.

“*Applicant*” means a mutual association which is applying to the superintendent to convert to a capital stock association.

“*Capital stock association*” means an association which has authority to issue capital stock.

“*FSLIC*” means the Federal Savings and Loan Insurance Corporation.

“*Mutual association*” means an association which is organized on a mutual ownership basis and does not have authority to issue capital stock.

“*Superintendent*” means the superintendent of savings and loan associations.

“*Supervisory case*” means a case in which the applicant’s operations and state of affairs are such that action is warranted by the superintendent pursuant to Iowa Code section 534.405.

197—6.3(534) Application to superintendent. An applicant shall file with the superintendent three copies of an “Application for Approval of Conversion,” with supporting exhibits, in the form required by the FSLIC, including forms AC, PS and OC. The applicant shall also furnish to the superintendent additional information as the superintendent may request which is not included in the applicant’s filing with the FSLIC.

197—6.4(534) Content of restated articles of incorporation and bylaws.

6.4(1) As part of the application, the applicant shall submit to the superintendent restated articles of incorporation and bylaws to operate as a capital stock association.

6.4(2) The restated articles of incorporation shall set forth:

- a. The name of the association;
- b. That the association is a capital stock association and became such by conversion from mutual to stock form in accordance with the Code of Iowa;
- c. That the association will operate under Iowa Code chapter 534;
- d. That the association will have perpetual duration;
- e. The designation by title of the officer or officers, authorized to sign instruments pertaining to real estate;
- f. Whether the association’s corporate seal must be affixed to instruments pertaining to real estate;
- g. The amount of authorized capital stock, the classes of stock and number of shares authorized for each class, with the par value and conditions of each class of the shares, and the time when and conditions under which it is to be paid in;
- h. Reference to the liquidation account established for the benefit of eligible savings account holders upon conversion;
- i. Whether holders of capital stock shall be entitled to preemptive rights with respect to any shares of the association which may be issued;
- j. The minimum number of directors;
- k. The manner in which the articles may be amended;
- l. The person to whom the certificate of incorporation should be mailed by the secretary of state after filing;
- m. The address of its registered office including street and number, if any, the name of the county in which the registered office is located, and the name of its registered agent or agents at the address;
- n. Any information applicable, as specified in Iowa Code section 496A.49, subsections 4, 5, 6 and 7;

o. Other provisions that are not inconsistent with these rules and the Iowa Code, and are approved by the superintendent.

197—6.5(534) Content of applicant's plan of conversion. The applicant's plan of conversion shall comply with the requirements of the FSLIC, pursuant to 12 CFR Part 563b, as amended through March 23, 1984. The plan of conversion shall include the determination of the eligibility record with respect to subscription rights to purchase the applicant's conversion stock, and shall state the effect of the conversion on each type of member of the converting association. The plan of conversion may also provide for employment contracts for the applicant's officers and employees upon conversion and for a stock option plan which shall be subject to approval by the superintendent. The superintendent may require provisions in an applicant's plan of conversion in addition to the requirements of the FSLIC if the superintendent determines that such additional provisions are necessary for an equitable conversion. An applicant shall attach to its plan of conversion, and incorporate by reference, the applicant's proposed restated articles of incorporation and proposed restated bylaws.

197—6.6(534) Approval of plan of conversion by superintendent. The plan of conversion must be submitted to the superintendent for approval. The superintendent will reject a plan of conversion if the superintendent finds that plan is inconsistent with applicable statutes or regulations, or does not contain all required information, or is inequitable to a class of members of the applicant. The superintendent will notify the applicant of the superintendent's decision, and the reasons for rejection if the plan is rejected. If the plan of conversion is approved, the superintendent will also give preliminary approval to the applicant's proposed restated articles of incorporation and bylaws. In addition to approval of the plan by the superintendent, the plan must also be approved by the FSLIC, a majority of the board of directors of the converting association and a majority vote of the members of the association present in person or by proxy at an annual meeting or a special meeting of the members.

197—6.7(534) Vote by applicant's members on plan of conversion.

6.7(1) No plan of conversion shall be implemented unless it is approved at a meeting of the voting members of an applicant called to consider such action, by a majority vote of the total number of votes present, in person or by proxy. The board of directors shall cause written notice of the meeting at which the members will be asked to vote on the proposal, to be mailed by first-class mail, postage prepaid to each member of the association not less than 30 days prior to the date of the meeting. The board shall also cause a copy of this notice to be posted in a conspicuous location in each of the association's offices from the date of mailing until the date of the meeting. The mailed notice may be included in an envelope containing a periodic statement of account to the member.

6.7(2) The notice required in subrule 6.7(1) shall contain the date, time and purpose of the meeting. In addition, the following statement shall also be included in the notice:

In the event that any member or members desire to communicate with other members of the association, with reference to this special meeting, they shall:

1. Request of the association a statement of the approximate number of members of the association;
2. Request of the association an estimate of the cost of forwarding the communication to the members;
3. Submit the communication to the superintendent for review;
4. If approved by the superintendent, make payment to the association of the expenses for the preparation and mailing of the communication.

6.7(3) The superintendent shall approve the communication if the superintendent finds it to be appropriate, truthful and in the best interests of the association and all its members. The superintendent may also request that the association substantiate the cost of forwarding the communication, if it appears excessive.

6.7(4) The superintendent may require that the date for the meeting of the members be postponed to a date certain, not more than 30 days after the date originally prescribed, if the superintendent determines

that additional time is necessary to enable members who have requested communication with other members, to properly exercise that right.

6.7(5) The applicant shall file with the superintendent promptly after the meeting of the applicant's voting members called to consider the plan of conversion, a certified copy of each resolution adopted at the meeting relating to the plan of conversion together with the following information:

- a. The total number of votes eligible to be cast;
- b. The total number of votes represented in person or by proxy at the meeting;
- c. The total number of votes cast in favor of and against each matter; and
- d. The percentage of votes present in person or by proxy cast in favor of and against each matter.

6.7(6) The applicant shall also file with the superintendent an opinion of counsel that the meeting was held in compliance with all applicable state and federal laws.

6.7(7) The certified copy of each resolution adopted at the meeting (being part of the minutes of the meeting), when filed, shall be presumptive evidence of the holding of the meeting and of the action taken.

197—6.8(534) Filing of offering circulars. The offering circulars for the applicant's subscription offering and any additional offering to the general public shall be prepared in compliance with regulations of the FSLIC and any additional requirements imposed by the superintendent. Three copies of each offering circular in preliminary form shall be filed with the superintendent, and no offering circular shall be distributed to the applicant's members or to the general public in final form unless it has first been declared effective by the superintendent.

197—6.9(534) Effective date of conversion. Subsequent to a meeting of the members, upon a finding by the superintendent that the procedures outlined in Iowa Code chapter 534 and these rules have been complied with, and prior to the execution of orders for the applicant's conversion stock, the superintendent shall issue to the applicant a certificate of conversion, which will include the name of the applicant before and after conversion and the effective date of conversion. The original of the certificate shall be filed by the superintendent with the secretary of state and the applicant's restated articles of incorporation and restated bylaws shall become effective. Concurrently, the applicant shall execute all orders received for its conversion stock.

197—6.10(534) Change of control.

6.10(1) Application. Any person or group of persons desiring to purchase or otherwise acquire outstanding shares of a (capital stock) association, which would result in control or a change of control of that association, shall include with their letter application to the superintendent the following items:

- 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 association.
- b. Terms of any financing to facilitate the purchase of the stock including the amount to be borrowed, rate of interest, term of the loan, collateral pledged to secure the indebtedness and any other pertinent information relating to the loan.
- c. Personal financial statement of the purchaser(s), plus a resumé of each individual purchaser which describes experience and affiliations covering at least the previous ten years.
- d. Pro forma statement of the purchaser's income and expenses during the term of the loan financing the purchase of the stock, 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 the statement of condition of the association to be purchased during the term of the association stock loan.
- f. Projections of income and expenses of the association to be purchased during the term of the association stock loan.
- g. A copy of a business plan for the association, plus any plans which the purchaser may have which would represent major changes in the present staff or policies of the association being acquired.

h. An affidavit signed by the purchaser stating that the majority interest in the association is not being acquired for the benefit of another person or company.

6.10(2) Investigation. The superintendent may conduct an investigation of the applicant as deemed necessary and proper to determine whether or not a certificate of approval for the proposed change of control should be issued.

6.10(3) Approval. The superintendent shall determine whether or not approval of an application for change in control should be granted.

6.10(4) Certificate of approval. If approval is granted, a certificate of approval will be issued by the superintendent. Upon receipt of this certificate, the applicant may proceed to close the purchase transaction, subject to any terms and conditions that the superintendent may impose.

These rules are intended to implement Iowa Code section 534.509.

[Filed emergency after Notice 8/27/82, Notice 7/21/82—published 9/15/82, effective 8/27/82]

[Filed 5/18/84, Notice 4/11/84—published 6/6/84, effective 7/11/84]

[Filed emergency 3/10/87—published 3/25/87, effective 3/10/87]

CHAPTER 7
CREDIT CARDS

[Prior to 3/25/87, Auditor of State[130] Ch 7]

197—7.1(534) Authorization.

7.1(1) Pursuant to authority granted under Iowa Code section 534.103, an association as defined in Iowa Code section 534.102(2) may issue credit cards, extend secured or unsecured credit in connection therewith, and otherwise engage in or participate in credit card operations.

7.1(2) This ability shall be extended to any service corporation organized pursuant to Iowa Code section 534.103(5).

7.1(3) The authority for this consumer service shall remain valid only during such times in which federal savings and loan associations, chartered by the Federal Home Loan Bank Board and operating in this state, have similar authority. Such authority was granted for federal associations pursuant to Public Law 96-221, 94 statute 161 (H.R. 4986) and became effective on July 10, 1980.

7.1(4) Extension of credit via credit cards shall be governed by the provisions of Iowa Code chapter 537 and any federal regulations that may be applicable for consumer loans.

This rule is intended to implement Iowa Code section 534.103.

[Filed 10/8/80, Notice 8/20/80—published 10/29/80, effective 12/3/80]

[Filed emergency 3/10/87—published 3/25/87, effective 3/10/87]

CHAPTER 8
NOW ACCOUNTS

[Prior to 3/25/87, Auditor of State[130] Ch 8]

197—8.1(534) Definitions.

8.1(1) A negotiable order of withdrawal account (NOW) is a share (savings) account on which dividends (interest) are paid, from which the owner may make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties. A NOW account must consist solely of funds in which the entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational, fraternal or other similar purposes and which is not operated for profit. Subject to restrictions contained in the Code of Iowa, a NOW account may also consist of deposits of public funds by an officer, employee or agent of the United States, and any county, municipality or political subdivision of the state of Iowa.

8.1(2) An association is the same as defined under Iowa Code section 534.102(2).

8.1(3) A share account is the same as defined in Iowa Code section 534.102(27).

8.1(4) A dividend is defined under Iowa Code section 534.102(6).

8.1(5) A commercial NOW account is the same as defined under Iowa Code section 534.209(6).

8.1(6) A demand account is a noninterest bearing savings account from which the owner may make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties.

197—8.2(534) Authorization.

8.2(1) An association may offer NOW accounts under which the account owners may order or authorize the withdrawal of a specified amount of the account by means of cash or a negotiable or nonnegotiable check or similar instrument payable to the account owner or to the third parties or their order for the benefit of the account owner.

8.2(2) Pursuant to this authority a NOW account holder, by nontransferable order or authorization, may periodically or otherwise, authorize payment to third parties from accounts and purchase traveler's checks and money orders from an association.

8.2(3) An association may offer commercial NOW accounts pursuant to Iowa Code section 534.209.

8.2(4) An association may offer demand accounts to (a) those persons or organizations that have a business, corporate, commercial or agricultural loan relationship with the association, and (b) commercial, corporate, business or agricultural entities for the sole purpose of effectuating payments thereto by a nonbusiness customer. To satisfy the intent of Iowa Code section 534.209, the issuance of demand accounts by an association shall be subject to the conditions and limitations imposed upon federal associations for similar activity. Pursuant to Public Law No. 97-320 94 Stat. 1469, Section 312, and Federal Home Loan Bank Board Resolution Number 82-730, dated November 4, 1982, federal associations were authorized to offer demand accounts effective October 15, 1982.

197—8.3(534) General provisions.

8.3(1) An association may extend secured or unsecured credit in the form of overdraft privileges specifically related to NOW accounts. This rule also applies to officers, directors and employees of an association, when such loans are secured by savings accounts maintained by these affiliated persons at the association and the initial extension of overdraft credit plus future increases or decreases is approved by the association. In addition, an association may extend similar overdraft privileges specifically related to commercial NOW accounts and demand deposits, but these overdraft loans must be aggregated with other commercial loans for purposes of the maximum investment limitation in commercial loans. Overdraft loans must be made pursuant to proper underwriting and with due regard for safety and soundness.

8.3(2) Associations are not required to issue account books or certificates evidencing ownership of NOW accounts, commercial NOW accounts or demand accounts.

8.3(3) An association may distribute dividends on NOW accounts as provided by its articles of incorporation or by resolution of its board of directors, all subject to Iowa Code section 534.307(1). A “mutual deposit” association shall pay interest in lieu of dividends pursuant to 197—Chapter 4.

8.3(4) An association, by resolution of its board of directors, and not in conflict with its articles of incorporation or Iowa Code section 534.308 may determine not to distribute dividends (interest) on any NOW account with less than a specified minimum amount.

8.3(5) An association may charge a service fee for making any payment or transfer or for maintaining a NOW account, commercial NOW account or demand account under these rules.

8.3(6) A NOW account, commercial NOW account or demand account issued by an association shall be afforded all of the various rights and privileges for share accounts pursuant to Iowa Code chapter 534, including the same priority as other savings accounts upon liquidation and voting membership rights.

These rules are intended to implement Iowa Code sections 534.111 and 534.209.

[Filed emergency after Notice 12/17/80, Notice 11/12/80—published 1/7/81, effective 12/31/80]

[Filed emergency after Notice 1/14/83, Notice 12/8/82—published 2/2/83, effective 1/14/83]

[Filed emergency 3/10/87—published 3/25/87, effective 3/10/87]

CHAPTER 9
CONSUMER LOANS AND CERTAIN SECURITIES
[Prior to 3/25/87, Auditor of State[130] Ch 9]

197—9.1(534) Authority.

9.1(1) An association may grant direct or indirect consumer loans pursuant to Iowa Code section 534.208. The authority to make open-end and closed-end consumer loans includes the ability to originate, purchase, sell, service and participate in such loans, provided that such loans shall conform to the provisions of these rules and the association's written underwriting standards.

9.1(2) An association may invest in, sell or hold commercial paper and corporate debt securities, including corporate debt securities convertible into stock. An investment under this section includes the investing in, redeeming or holding of shares in any open-end management investment company which is registered with the Securities and Exchange Commission under the Investment Act of 1940 and whose portfolio is restricted by such management company's investment policy, changeable only if authorized by shareholder vote, solely to the investments that an association is authorized to invest in under these rules and other regulations and statutes.

9.1(3) The lending and investment authority described under these rules shall be available only for periods of time when federally chartered savings and loan associations operating in this state are granted similar authority.

197—9.2(534) Definitions.

An "*association*" is the same as defined under Iowa Code section 534.102(2).

"*Commercial paper*" includes any note, draft or bill of exchange which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace. The maturity of any renewal thereof is likewise limited.

"*Consumer loan*" is the same as defined under Iowa Code section 537.1301(14). When granting consumer loans under these rules, it is intended that the association rely substantially upon such factors as the general credit standing of the borrower, guaranties or security other than the primary security for the loan. Appropriate evidence to demonstrate justification for such reliance should be retained in the association's files.

"*Corporate debt security*" is defined as a marketable obligation, evidencing the indebtedness of any corporation in the form of a bond, note or debenture which is commonly regarded as a debt security and is not predominantly speculative in nature. A security is marketable if it may be sold with reasonable promptness at a price which corresponds reasonably to its fair value.

A "*direct loan*" is one in which the association takes the application, evaluates the creditworthiness of the applicant, processes the application, prepares the loan documents and closes the loan.

An "*indirect loan*" is one in which the underwriting, processing, and closing is done by a third party, usually a dealer, who later sells or assigns the loan to the association.

"*Loan*" is the same as defined under Iowa Code section 537.1301(25).

197—9.3(534) General provisions.

9.3(1) The total combined investment which may be made by an association, in consumer loans and securities covered under these rules, shall not exceed 20 percent of its assets.

9.3(2) Indirect loans may not be made through a dealer unless the dealer is approved by the association's board of directors.

9.3(3) The total balances of all outstanding unsecured consumer loans that can be made under these rules to one borrower is limited to the lesser of one-fourth of 1 percent of the association's assets or 5 percent of its net worth. However, any association may make up to \$3,000 in unsecured loans to any one borrower and, beginning on January 1, 1982, and annually thereafter, such amount shall be adjusted by the dollar amount that reflects the percentage increase, if any, in the Consumer Price Index during the previous 12 months as shown in the Index.

9.3(4) If a loan that may be made under these rules is also authorized to be made under another rule or statute, which may have different percentage-of-assets and other limitations or requirements, an association shall have the option of choosing under which applicable rule or statute the loan shall be made.

9.3(5) As of the date of purchase of commercial paper or corporate debt securities, as shown by the most recently published rating made of such investments by at least one nationally recognized investment rating service, the commercial paper must be rated in either one of the two highest grades and the corporate debt securities must be rated in one of the four highest grades.

9.3(6) The commercial paper or corporate debt securities shall be denominated in dollars and the issuer shall be domiciled in the United States.

9.3(7) At any one time, an association's total investment in the commercial paper and corporate debt securities of any one issuer, or issued by any person or entity affiliated with such issuer, shall not exceed 1 percent of the association's assets. This provision shall not apply to investments in the shares of an open-end management investment company, in which cases an association's total investment in the shares of any one such company shall not exceed 5 percent of the association's assets.

9.3(8) Investments in corporate debt securities convertible into stock are subject to the following additional limitations:

- a.* Purchase of securities convertible into stock at the option of the issuer is prohibited;
- b.* At the time of purchase, the cost of such securities must be written down to an amount which represents the investment value of the securities considered independently of the conversion feature;
- c.* Such securities must be traded on a national securities exchange; and
- d.* Associations are prohibited from exercising the conversion feature.

9.3(9) At any one time, the average maturity of an association's portfolio of corporate debt securities may not exceed six years.

9.3(10) An association shall maintain information in its files adequate to demonstrate that it has exercised prudent judgment in making investments under this section.

These rules are intended to implement Iowa Code section 534.208.

[Filed emergency 12/12/80—published 1/7/81, effective 12/12/80]

[Filed 4/10/81, Notice 1/7/81—published 4/29/81, effective 6/3/81]

[Filed emergency 3/10/87—published 3/25/87, effective 3/10/87]

CHAPTER 10
TRUST POWERS

[Prior to 3/25/87, Auditor of State[130] Ch 10]

197—10.1(534) Definitions.

“*Account*” means the trust, estate or other fiduciary relationship which has been established with an association.

“*Custodian under a Uniform Gifts to Minors Act*” means an account established pursuant to a state law which is substantially similar to the Uniform Gifts to Minors Act as published by the American Law Institute and with respect to which the association operating such account has established to the satisfaction of the Secretary of the Treasury that it has duties and responsibilities similar to the duties and responsibilities of a trustee or guardian.

“*Fiduciary*” means an association undertaking to act alone, through an affiliate, or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes trustee, executor, administrator, guardian, receiver, managing agent, registrar of stocks and bonds, escrow, transfer, or paying agent, trustee or employee pension, welfare and profit-sharing trusts, and any other similar capacity.

“*Fiduciary records*” means all matters which are written, transcribed, recorded, received or otherwise come into the possession of an association and are necessary to preserve information concerning the actions and events relevant to the fiduciary activities of an association.

“*Guardian*” means the guardian, conservator, or committee by whatever name employed by local law, of the estate of an infant, an incompetent individual, an absent individual, or a competent individual over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.

“*Investment authority*” means the responsibility conferred by action of law or a provision of an appropriate governing instrument to make, select or change investments, review investment decisions made by others, or to provide investment advice or counsel to others.

“*Local law*” means the law of the state of Iowa or other jurisdiction governing the fiduciary relationship.

“*Managing agent*” means the fiduciary relationship assumed by an association upon the creation of an account which names the association as agent and confers investment discretion upon the association.

“*State-chartered corporate fiduciary*” means any state bank, trust company, or other corporation which comes into competition with associations and is permitted to act in a fiduciary capacity under the laws of the state of Iowa in which the association is located.

“*Trust department*” means that group or groups of officers and employees of an association or of an affiliate of an association to whom are assigned the performance of fiduciary services by the association.

“*Trust powers*” means the power to act in any fiduciary capacity authorized by Iowa Code section 534.103(6).

197—10.2(534) Authority.

10.2(1) An association is authorized to act, when not in contravention to local law, as trustee, executor, administrator, guardian, receiver, managing agent, registrar of stocks and bonds, escrow, transfer and paying agent, trustee of employee pension, welfare, and profit-sharing trusts, or in any other fiduciary capacity which state-chartered corporate fiduciaries exercise under local law. The granting to, and exercise of powers shall not be deemed to be in contravention of local law whenever the laws of Iowa authorize or permit the exercise of any or all of the foregoing powers by state banks, trust companies or other corporations which compete with savings and loan associations.

10.2(2) An association desiring to exercise fiduciary powers, either through a trust department or through an affiliate, shall file with the superintendent an application indicating which trust services it wishes to offer and providing the information necessary to make the determinations under this subrule. In passing upon an application to exercise trust powers, consideration will be given, but not limited to, the following:

- a. The financial condition of the association, provided that in no event shall trust powers be granted to an association if its financial condition is such that the association does not meet the financial standards required by state laws of state-chartered corporate fiduciaries;
- b. The needs of the community for fiduciary services and the probable volume of such fiduciary business available to the association;
- c. The general character and ability of the management of the association;
- d. The nature of the supervision to be given to the fiduciary activities, including the qualifications, experience and character of the proposed officer or officers of the trust department; and
- e. Whether the association has available legal counsel to advise and pass upon fiduciary matters wherever necessary.

10.2(3) Whenever local law requires corporations acting as fiduciary to deposit securities with state authorities for the protection of private or court trusts, associations authorized to exercise trust powers shall, before undertaking to act in any fiduciary capacity, make a similar deposit with the state of Iowa. If the state authorities refuse to accept a deposit, the securities shall be deposited with the Federal Home Loan Bank of Des Moines, and the securities shall be held for the protection of private or court trusts with like effect as though the securities had been deposited with the state of Iowa.

197—10.3(534) Administration of trust powers.

10.3(1) The board of directors is responsible for the proper exercise of fiduciary powers by the association. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the association in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of the associations' trust powers as it may consider proper to assign to the director(s), officer(s), employee(s), or committee(s) as it may designate.

10.3(2) No fiduciary account shall be accepted without the prior approval of the board, or of the director(s), officer(s), or committee(s) to whom the board may have assigned the performance of that responsibility. A written record shall be made of acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the association has investment responsibilities, a prompt review of the assets shall be made. The board shall also ensure that at least once during every calendar year thereafter, and within 15 months of the last review, all the assets held in or held for each fiduciary account for which the association has investment responsibilities are reviewed to determine the advisability of retaining or disposing of assets. The board of directors should act to ensure that all investments have been made in accordance with the terms and purposes of the governing instrument.

10.3(3) The trust department may utilize personnel and facilities of other departments of the association, and other departments of the association may utilize personnel and facilities of the trust department only to the extent not prohibited by law.

10.3(4) Every association exercising trust powers shall adopt written policies and procedures to ensure that the federal securities laws are complied with in connection with any decision or recommendation to purchase or sell any security. The policies and procedures, in particular, shall ensure that the associations' trust departments shall not use material inside information in connection with any decision or recommendation to purchase or sell any security.

10.3(5) Every association exercising fiduciary powers shall designate, employ, or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the association and its trust department.

10.3(6) In addition to the minimum bond coverage required by Iowa Code section 534.602, directors, officers and employees of an association engaged in the operation of a trust department shall acquire additional bond coverage as the superintendent may require.

197—10.4(534) Funds awaiting investment or distribution.

10.4(1) General. Funds held in a fiduciary capacity by an association awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account.

10.4(2) Use by association in regular business.

a. Funds held in trust by an association, including managing agency accounts, awaiting investment or distribution may, unless prohibited by the instrument creating the trust or by local law, be deposited in other departments of the association, provided that the association shall first set aside under control of the trust department as collateral security:

(1) Direct obligations of the United States, or other obligations fully guaranteed by the United States as to principal and interest;

(2) Readily marketable securities of the classes in which state-chartered corporate fiduciaries are authorized or permitted to invest trust funds under the laws of Iowa; or

(3) Other readily marketable securities as the superintendent may determine.

b. Collateral securities or securities substituted therefor as collateral shall at all times be at least equal in face value to the amount of trust funds so deposited, but the security shall not be required to the extent that the funds so deposited are insured by the Federal Savings and Loan Insurance Corporation. The requirements of this paragraph are met when qualifying assets of the association are pledged to secure a deposit in compliance with local law, and no duplicate pledge shall be required in such case.

c. Any funds held by an association as fiduciary awaiting investment or distribution and deposited in other departments of the association shall be made productive.

197—10.5(534) Investment of funds held as fiduciary.

10.5(1) Private trusts. Funds held by an association in a fiduciary capacity shall be invested in accordance with the instrument establishing the fiduciary relationship and local law. When such instrument does not specify the character or class of investments to be made and does not vest in the association, its directors, or its officers investment discretion in the matter, funds held pursuant to such instrument shall be invested in any investment in which state-chartered corporate fiduciaries may invest under local law.

10.5(2) Court trusts. If, under local law, corporate fiduciaries appointed by a court are permitted to exercise discretion in investments, or if an association acting as fiduciary under appointment by a court is vested with discretion in investments by an order of the court, funds of the accounts may be invested in any investments which are permitted by local law. Otherwise, an association acting as fiduciary under appointment by a court shall make all investments of funds in accounts under an order of that court. Orders in either case shall be preserved with the fiduciary records of the association.

10.5(3) Collective investment of trust funds. The collective investment of funds received or held by an association as fiduciary is governed by rule 10.9(534).

197—10.6(534) Self-dealing.

10.6(1) Purchase of obligations, etc., from association. Unless lawfully authorized by the instrument creating the relationship, or by court order or local law, funds held by an association as fiduciary shall not be invested in stock or obligations of, or property acquired from, the association or its directors, officers, or employees, or individuals with whom there exists such a connection, or organizations in which there exists such an interest, as might affect the exercise of the best judgment of the association in acquiring the property, or in stock or obligations of, or property acquired from, affiliates of the association or their directors, officers or employees.

10.6(2) Sale or transfer of trust assets to association. Property held by an association as fiduciary shall not be sold or transferred, by loan or otherwise, to the association or its directors, officers, or employees, or to individuals with whom there exists a connection, or organizations in which there exists an interest, as might affect the exercise of the best judgment of the association in selling or transferring such property, or to affiliates of the association or their directors, officers or employees, except:

- a. When lawfully authorized by the instrument creating the relationship or by court order or by local law;
- b. In cases in which the association has been advised by its counsel in writing that it has incurred as fiduciary a contingent or potential liability and desires to relieve itself from liability, in which case a sale or transfer may be made with the approval of the board of directors and the superintendent. In all cases the association, upon the consummation of the sale or transfer, shall make reimbursement in cash at no loss to the account;
- c. As provided in the laws and regulations governing collective investments; and
- d. When required by the superintendent.

10.6(3) *Investment in stock of association.* If associations operating under these rules have a stock type of ownership, except as provided by subrule 10.4(2), funds held by an association as fiduciary shall not be invested by the purchase of stock or obligations of the association or its affiliates unless authorized by the instrument creating the relationship or by court order or by local law. However, if the retention of stock or obligations of the association or its affiliates is authorized by the instrument creating the relationship or by court order or by local law, it may exercise rights to purchase its own stock or securities convertible into its own stock when offered pro rata to stockholders, unless such exercise is forbidden by local law. When the exercise of rights or receipt of a stock dividend results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so acquired. In elections of directors, an association's share held by the association as sole trustee, whether in its own name as trustee or in the name of its nominee, may not be voted by the registered owner unless, under the terms of the trust, the manner in which shares shall be voted may be determined by a donor or beneficiary of the trust and the donor or beneficiary actually directs how the shares will be voted.

10.6(4) *Transactions between accounts.*

- a. An association may sell assets held by it as fiduciary in one account to itself as fiduciary in another account if the transaction is fair to both accounts and if the transaction is not prohibited by the terms of any governing instrument or by local law.
- b. An association may make a loan to an account from the funds belonging to another account, when the making of the loans to a designated account is authorized by the instrument creating the account from which the loans are made, and is not prohibited by local law, and the terms of the transaction are fair to all accounts.
- c. An association may make a loan to an account and may take as security therefor assets of the account, provided the transaction is fair to the account and is not prohibited by law.

197—10.7(534) Custody of investments.

10.7(1) *Segregation of trust assets and joint custody.* The investments of each account shall be kept separate from the assets of the association, and shall be placed in the joint custody or control of not fewer than two of the officers or employees of the association designated for that purpose either by the board of directors of the association or by one or more officers designated by the board of directors of the association, and all officers and employees shall be adequately bonded. To the extent permitted by law, an association may permit the investments of fiduciary account to be deposited elsewhere.

10.7(2) *Segregation of accounts.* The investments of each account shall be either:

- a. Kept separate from those of all other accounts, except as provided in rule 197—10.9(534); or
- b. Adequately identified as the property of the relevant account.

197—10.8(534) Compensation.

10.8(1) *General.* If the amount of the compensation for acting in a fiduciary capacity is not regulated by local law or provided for in the instrument creating the fiduciary relationship or otherwise agreed to by the parties, an association acting in this capacity may charge or deduct a reasonable compensation for its services. When the association is acting in a fiduciary capacity under appointment by a court, it shall receive compensation as may be allowed or approved by that court or by local law.

10.8(2) *Officer or employee of association as cofiduciary.* No association shall, except with the specific approval of its board of directors, permit any of its officers or employees, while serving as such,

to retain any compensation for acting as a cofiduciary with the association in the administration of any account undertaken by it.

10.8(3) *Bequests or gifts to trust officers and employees.* No association shall permit an officer or employee engaged in the operation of its trust department to accept a bequest or gift of trust assets unless the bequest or gift is directed or made by a relative or is approved by the board of directors of the association.

197—10.9(534) Collective investment.

10.9(1) When not in contravention of local laws, funds held by an association as fiduciary may be held in:

a. A common trust fund maintained by the association exclusively for the collective investment and reinvestment of moneys contributed thereto by the association in its capacity as trustee, executor, administrator, guardian, or custodian under the Iowa Uniform Gifts to Minors Act, or

b. A fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts which are exempt from federal income taxation under the Internal Revenue Code.

10.9(2) Collective investments of funds or other property by an association under subrule 10.9(1) shall be administered in accordance with Comptroller of the Currency Regulation 9.18, 12 CFR 9.18, which specifies the rules regarding collective investments applicable to trust powers of national banks. Any documents required to be filed with the Comptroller of the Currency under that regulation shall also be filed with the superintendent, and the superintendent may review documents for compliance with those regulations and other laws.

10.9(3) As used in this subrule, the term “association” shall include two or more associations which are members of the same affiliated group with respect to any fund established pursuant to this subrule of which any of such affiliated associations is trustee, or of which two or more of the affiliated associations are cotrustees.

197—10.10(534) Books and accounts.

10.10(1) *General.* Every association exercising trust powers shall keep its fiduciary records separate and distinct from other records of the association. All fiduciary records shall be so kept and retained for such time as to enable the association to furnish information or reports with respect thereto as may be required by the superintendent. The fiduciary records shall contain full information relative to each account.

10.10(2) *Record of pending litigation.* Every association shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of trust powers.

197—10.11(534) Audit of trust department. At least once during each calendar year, the association’s trust department shall be audited by auditors in a manner consistent with Iowa Code section 534.401(3). A copy of the report of the audit shall be promptly filed with the superintendent. Trust department audits may be made as part of the annual audits required by Iowa Code section 534.41(3).

197—10.12(534) Surrender of trust powers.

10.12(1) Any association which has been granted the right to exercise trust powers and which desires to surrender such rights shall file with the superintendent a certified copy of the resolution of its board of directors signifying such desire.

10.12(2) Upon receipt of the resolution, the superintendent shall make an investigation and if it is satisfied that the association has been discharged from all fiduciary duties which it has undertaken, it shall issue a certificate to the association certifying that it is no longer authorized to exercise fiduciary powers.

10.12(3) Upon issuance of such a certificate by the superintendent an association:

a. Shall no longer be subject to the provisions of these rules,

b. Shall be entitled to have returned to it any securities which it may have deposited with state authorities or a Federal Home Loan Bank under subrule 10.2(3), and

c. Shall not exercise thereafter any of the powers granted by this rule without first applying for and obtaining new authorization to exercise such powers.

197—10.13(534) Effect on trust accounts of appointment of conservator or receiver or voluntary dissolution of association.

10.13(1) *Appointment of conservator or receiver.* Whenever a conservator or receiver is appointed for an association under Iowa Code section 534.405, such receiver or conservator shall, pursuant to the instructions of the superintendent and the orders of the court having jurisdiction, proceed to close the association's trust accounts as can be closed promptly and transfer all other accounts to substitute fiduciaries.

10.13(2) *Voluntary dissolution.* Whenever an association exercising trust powers is placed in voluntary dissolution, the liquidating agent shall, in accordance with local law, proceed at once to liquidate the affairs of the trust department as follows:

a. All trusts and estates over which a court is exercising jurisdiction shall be closed or disposed of as soon as practicable in accordance with the order of instructions of the court; and

b. All other accounts which can be closed promptly shall be closed as soon as practicable and final accounting made therefor, and all remaining accounts shall be transferred by appropriate legal proceedings to substitute fiduciaries.

197—10.14(534) Consolidation or merger of two or more associations. Where two or more associations consolidate or merge, and any one of such associations has, prior to such consolidation or merger, received a permit from the superintendent to exercise trust powers which permit is in force at the time of the consolidation or merger, the rights existing under this permit pass to the resulting association, and the resulting association may exercise trust powers in the same manner and to the same extent as the association to which the permit was originally issued. No new application to continue to exercise these powers is necessary. However, when the name of the resulting association differs from that of the association to which the right to exercise trust powers was originally granted, the superintendent will issue a certificate to that association showing its right to exercise the trust powers theretofore granted to any of the associations participating in the consolidation or merger.

197—10.15(534) Revocation of trust powers.

10.15(1) In addition to the other sanctions available, if, in the opinion of the superintendent, an association is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a period of five consecutive years to exercise, the powers granted by this rule or otherwise fails or has failed to comply with the requirements of this rule, the superintendent may issue and serve upon the association a notice of intent to revoke the authority of the association to exercise the powers granted by this rule. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise these powers should be issued against the association.

10.15(2) The hearing shall be conducted in accordance with the provisions of Iowa Code chapter 17A.

10.15(3) Unless the association so served shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent or if, upon the record made at any hearing, the superintendent shall find that any allegation specified in the notice of charges has been established, the superintendent may issue and serve upon the association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this rule except that the order shall permit the association to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

10.15(4) A revocation order shall become effective not earlier than the expiration of 30 days after service of the order upon the association so served (except in the case of a revocation order issued

upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to the extent as it is stayed, modified, terminated, or set aside by action of the superintendent or a reviewing court.

These rules are intended to implement Iowa Code section 534.103(6).

[Filed 2/12/82, Notice 12/9/81—published 3/3/82, effective 4/7/82]

[Filed emergency 3/10/87—published 3/25/87, effective 3/10/87]

CHAPTER 11
ADJUSTABLE MORTGAGE LOANS
[Prior to 3/25/87, Auditor of State[130] Ch 11]

197—11.1(534) Authorization.

11.1(1) A state-chartered savings and loan association may make, purchase or participate in adjustable mortgage loans which are described in these rules.

11.1(2) This Chapter 11 establishes rules for preparing a mortgage note with adjustable interest rates and payments which qualifies as an approved loan plan under Iowa Code section 534.21(1). Property improvement loans made under Iowa Code section 534.103 and loans of less than a first lien made pursuant to Iowa Code section 534.72 may also be made under this Chapter 11. Any loan which is a consumer loan as defined in Iowa Code section 537.1301(14) may be made under any loan plan consistent with the provisions of Iowa Code chapter 537.

197—11.2(534) Description.

11.2(1) An adjustable mortgage loan is a loan that permits adjustment of the interest rate. Adjustments to the interest rate may be implemented through changes in the payment amount, the outstanding principal loan balance, or the loan term, including any combination thereof.

11.2(2) The total term of any loan shall not exceed 40 years.

11.2(3) Adjustments to a loan granted pursuant to these rules shall reflect the movement of one of the indices authorized under subrule 11.3(3).

11.2(4) Adjustments to the principal loan balance are permissible only if the initial payment amount is sufficient to fully amortize the loan and if the payment amount is adjusted at least every five years to a level sufficient to amortize the loan at the then-existing interest rate and principal balance over the remaining term of the loan.

11.2(5) Loans granted pursuant to these rules are subject to other loan limitations as provided under Iowa Code section 534.21. However, if a loan had a permissible loan-to-value ratio when it was originally granted, it will be assumed to continue to meet those requirements throughout the term of the loan.

11.2(6) Prepayment in full or in part of the outstanding principal loan balance may be made as provided in Iowa Code section 534.21(10).

11.2(7) An association which has granted an adjustable mortgage loan shall obtain and retain in the loan application file a certification signed by the prospective borrower indicating that the borrower has received the disclosure materials specified in these rules before electing to take the adjustable mortgage loan.

11.2(8) For the purposes of these rules it is the intent that adjustments to the various loan terms shall not interrupt the underlying security interest of the lender. The lien on the security property shall continue in place until the debt is fully retired.

197—11.3(534) Index.

11.3(1) Adjustments to the interest rate of an adjustable mortgage loan shall correspond directly to the movement of an index authorized by subrule 11.3(3), subject to the rate-adjustment limitations, if any, that the loan contract may provide. The initial index value shall be the most recently available value of the index at, or within three months prior to, the date of the closing of the loan. The amount of rate adjustment shall reflect the difference between the initial index value and either the index value most recently available as of the date of the rate adjustment, if the payment is not simultaneously adjusted, or the index value most recently available as of the date of notification of the payment adjustment.

11.3(2) Where the movement of the index permits an adjustment rate increase, the association may decline to increase the interest rate by the indicated amount. The association may decrease the interest rate at any time during the loan term.

11.3(3) For the purpose of adjusting the interest rate, an association must use an interest rate index that is readily verifiable by the borrower and is beyond the control of the association. An association may use:

- a.* The national average mortgage contract rate for major lenders on the purchase of previously occupied homes, as computed by the Federal Home Loan Bank Board, published in the board's journal and made available in news releases;
- b.* The average cost of funds to FSLIC-insured savings and loan associations, either for all Federal Home Loan Bank Board districts or a particular district or districts, as computed semiannually by the Federal Home Loan Bank Board, published in the board's journal, and made available in news releases;
- c.* The monthly average of weekly auction rates on United States Treasury bills with a maturity of three months or six months, as published in the Federal Reserve Bulletin and made available by the Federal Reserve Board;
- d.* The monthly average yield on United States Treasury securities adjusted to a constant maturity of one, two, three or five years, as published in the Federal Reserve Bulletin and made available by the Federal Reserve Board;
- e.* Any other interest rate index that meets the requirements of this subrule and has been approved in writing by the superintendent of savings and loan associations.

197—11.4(534) Costs of fees.

11.4(1) The borrower may not be charged any costs or fees in connection with regularly scheduled adjustments to the interest rate, payment, outstanding principal loan balance or loan term.

11.4(2) Reserved.

197—11.5(534) Notification of payment adjustment.

11.5(1) At least 30 but not more than 45 days before the adjustment of the payment, the association shall send written notification to the borrower containing the following information:

- a.* The fact that the payment on the loan with the association, secured by a mortgage on property located at the appropriate address, is scheduled to be adjusted on a particular date;
- b.* The outstanding balance of the loan on the adjustment date, assuming timely payment of the remaining payments due by that date;
- c.* The interest rate on the loan as of the adjustment date, the index value on which the rate is based, the period of time for which that interest rate will be in effect, the next following payment adjustment date, the rate adjustment dates, if any, between the upcoming payment adjustment date and the next following payment adjustment date;
- d.* The payment amount as of the payment adjustment date;
- e.* The date(s), if any, on which the rate was adjusted since the last payment adjustment, the rates on each adjustment date, and the index values corresponding to each date;
- f.* The dates, if any, on which the outstanding principal loan balance was adjusted since the last payment adjustment, and the net change in the outstanding principal loan balance since the last payment adjustment;
- g.* The type of prepayment penalty which may be imposed if the borrower pays off the entire loan or a part of it, depending on the type of security property; and
- h.* The title and telephone number of an association employee who can answer questions about the notice.

11.5(2) Reserved.

197—11.6(534) Disclosure.

11.6(1) An applicant must be given, at the time of receipt of an application, or upon request, a disclosure notice in the following form:

IMPORTANT INFORMATION ABOUT THE ADJUSTABLE MORTGAGE LOAN
PLEASE READ CAREFULLY

You have received an application form for an adjustable mortgage loan ("AML"). The AML may differ from other mortgages with which you are familiar.

General Description of Adjustable Mortgage Loan

The adjustable mortgage loan is a flexible loan instrument. Its interest rate may be adjusted by the lender from time to time. Such adjustments will result in increases or decreases in your payment amount, in the outstanding principal loan balance, in the loan term, or in all three (see discussion below relating to these types of adjustments). State regulations place no limit on the amount by which the interest rate may be adjusted either at any one time or over the life of the loan, or on the frequency with which it may be adjusted. Adjustments to the interest rate must reflect the movement of a single, specified index (see discussion below). This does not mean that the particular loan agreement you sign must, by law, permit unlimited interest rate changes. It merely means that, if you desire to have certain rate adjustment limitations placed in your loan agreement, that is a matter you should negotiate with the lender. You may also want to make inquiries concerning the loan terms offered by other lenders on AMLs to compare the terms and conditions.

Another flexible feature of the AML is that the regular payment amount may be increased or decreased by the lender from time to time to reflect changes in the interest rate. Again, state regulations place no limitations on the amount by which the lender may adjust payments at any one time, or on the frequency of payment adjustments. If you wish to have particular provisions in your loan agreement regarding adjustments to the payment amount, you should negotiate such terms with the lender.

A third flexible feature of the AML is that the outstanding principal loan balance (the total amount you owe) may be increased or decreased from time to time when, because of adjustments to the interest rate, the payment amount is either too small to cover interest due on the loan, or larger than is necessary to pay off the loan over the remaining term of the loan.

The final flexible feature of the AML is that the loan term may be lengthened or shortened from time to time, corresponding to an increase or decrease in the interest rate. When the term is extended in connection with a rate increase, the payment amount does not have to be increased to the same extent as if the term had not been lengthened. In no case may the total term of the loan exceed 40 years.

The combination of these four basic features allows an association to offer a variety of mortgage loans. For example, one type of loan could permit rate adjustments with corresponding changes in the payment amount. Alternatively, a loan could permit rate adjustments to occur more frequently than payment adjustments, limit the amount by which the payment could be adjusted, or provide for corresponding adjustments to the principal loan balance.

Index

Adjustments to the interest rate of an AML must correspond directly to the movement of an index, subject to such rate-adjustment limitations as may be contained in the loan contract. If the index has moved down, the lender must reduce the interest rate by at least the decrease in the index. If the index has moved up, the lender has the right to increase the interest rate by that amount. Although taking such an increase is optional by the lender, you should be aware that the lender has this right and may become contractually obligated to exercise it.

[Name and description of index to be used for applicant's loan, initial index value (if known) or date of initial index value, a source or sources where the index may be readily obtained by the borrower, and the high and low index rates during the previous calendar year.]

Key Terms of Savings and Loan Association's Adjustable Mortgage Loan

Following is a summary of the basic terms on the type of AML to be offered to you. This summary is intended for reference purposes only. Important information relating specifically to your loan will be contained in the loan agreement.

[Provide summary of basic terms of the loan, including the loan term, the frequency of rate changes, the frequency of payment changes, the maximum rate change, if any, at one time, the maximum rate change, if any, over the life of the loan, the maximum payment change, if any, at one time, minimum increments, if any, of rate changes, and whether there will be adjustments to the principal loan balance, in the following format:

Loan term
Frequency of rate changes
Frequency of payment changes]

How Your Adjustable Mortgage Loan Would Work

Initial Interest Rate

The initial interest rate offered by _____ Savings and Loan Association on your AML will be established and disclosed to you on [commitment date, etc.] based on market conditions at the time.

[Insert a short description of each of the key terms of the type of AML to be offered to the borrower, using headings where appropriate.]

Notice of payment adjustments

_____ Savings and Loan Association will send you notice of an adjustment to the payment amount at least 30 but not more than 45 days before it becomes effective. [Describe what information the notice will contain.]

Prepayment penalty

You may prepay an AML in whole or in part without penalty at any time during the term of the loan, if you have mortgaged your single family dwelling or duplex, in which you reside, as security for the loan. If the security property is other than one of the above, a penalty may be assessed to you for early loan prepayment which is not greater than that as provided by law.

Fees

You will be charged fees by _____ Savings and Loan Association and by other persons in connection with the origination of your AML. The association will give you an estimate of these fees after receiving your loan application. However, you will not be charged any costs or fees in connection with any regularly-scheduled adjustment to the interest rate, the payment, the outstanding principal loan balance, or the loan term initiated by the lender.

Example of operation of your type of AML

[Set out an example of the operation of the type of AML to be offered to the borrower, including, where appropriate, the use of a table.]

11.6(2) Reserved.

These rules are intended to implement Iowa Code section 534.21(1).

[Filed emergency after Notice 7/2/81, Notice 5/27/81—published 7/22/81, effective 7/2/81]

[Filed emergency after Notice 2/12/82, Notice 12/9/81—published 3/3/82, effective 3/3/82]

[Filed emergency 3/10/87—published 3/25/87, effective 3/10/87]

CHAPTER 12

REAL ESTATE LOANS

[Prior to 3/25/87, Auditor of State[130] Ch 12]

197—12.1(534) General authority—definitions.

12.1(1) An association may, subject to Iowa Code chapter 534 and these rules, loan money, extend credit, discount, purchase or finance vendors' or vendees' interest in real estate contracts and discount or purchase other evidence of indebtedness and agreements for the payment of money.

12.1(2) Real estate loans may be secured or unsecured. If secured the association may hold a first or junior mortgage on the security property.

12.1(3) "*Association*" shall mean that as defined in Iowa Code chapter 534.

12.1(4) "*Superintendent*" shall mean that as defined in Iowa Code chapter 534.

12.1(5) "*First mortgage loan*" shall mean any loan secured by a first mortgage on real property. The loan may be granted to purchase real property, to refinance a contract of sale, to refinance a prior loan, to construct improvements on real property and to assume a prior loan. For the purposes of these rules, a first mortgage loan may include a loan on a leasehold interest, if the leasehold interest extends or is automatically renewable at the option of the holder, or at the option of the association, for a period of time at least ten years beyond the maturity of the loan.

12.1(6) "*Home loan*" shall mean a first mortgage loan secured by an owner-occupied, one- or two-family dwelling.

197—12.2(534) First mortgage loans—safety and soundness.

12.2(1) An association may make first mortgage loans in which the payment, the loan balance and the maturity may vary, subject to any limitations contained in Iowa Code chapter 534 or these rules.

12.2(2) First mortgage real estate loans may be granted based upon terms of repayment which are negotiated and agreed to between the association and borrower, subject to the limitations contained in subrules 12.3(534) and 12.4(534).

12.2(3) For the purposes of these rules, adjustments to the various terms of first mortgage loans shall not interrupt the underlying security interest of the lender. The mortgage on the security property shall continue in place until it is released by the association.

12.2(4) Each first mortgage loan shall be underwritten based upon the applicant's ability to pay and creditworthiness, and the security to be given as collateral for the loan.

12.2(5) When granting first mortgage loans, the following documentation shall be collected and retained by the association:

a. Loan application describing the name of the applicant(s), purpose of the loan and the location of the security property;

b. Statement of financial condition describing the applicant's financial ability to repay the credit applied for;

c. Credit report describing the applicant's history of repaying debt;

d. Proof that the proposed security property is covered by adequate hazard or liability insurance;

e. Legal opinion affirming the quality and validity of the institution's lien or claim on the security property;

f. All other requirements of the Iowa Code.

g. If the loan is insured by FHA or guaranteed by VA, loan documentation is subject to the requirements of those agencies.

12.2(6) Payments shall be applied first to the payment of interest on the unpaid balance of the loan and the remainder if any to the reduction of principal.

12.2(7) If the first mortgage loan is in default in any manner, payments may be applied by the lender in any manner agreed upon between the borrower and association.

12.2(8) A lender may require additional collateral on first mortgage loans, subject to prohibitions of the Iowa Code.

12.2(9) First mortgage loans may be made on a fully amortized basis, nonamortized basis or a partially amortized basis, subject to limitations contained within Iowa Code chapter 534. Amortized and partially amortized loans may be granted for a maximum term of 40 years. Nonamortized loans may be granted for a maximum term of 15 years. If made for the purpose of construction, a nonamortized loan may be combined with an amortized or partially amortized loan into one note, provided that the total term does not exceed 42 years. Except for insured or guaranteed loans, interest shall be payable at least semiannually on nonamortized loans.

12.2(10) First mortgage loans with principal and interest payments less frequently than monthly but at least annually may be made with the same terms as monthly amortized loans, if the loan is secured by a first mortgage on a farm residence or combination of farm residence and commercial farm real estate.

12.2(11) Unless insured or guaranteed, no mortgage loan shall be made to exceed 90 percent of the appraised value of the security property.

12.2(12) The documentation requirements of this rule are not required for junior mortgage loans, however, prudent lending practices may dictate their use.

197—12.3(534) Home loans.

12.3(1) Home loans shall be repayable in installments except that a loan authorized under 12.3(2) “c”(3) or a home loan under which an association purchases an annuity from an insurance company on behalf of a borrower need not require any payment until maturity.

12.3(2) Adjustments to rate, payment, balance or term. Subject to limitations on adjustment that are set forth in the loan contract, an association may adjust the interest rate, the payment, the loan balance or the term to maturity as follows:

a. Interest rate. Adjustments to the interest rate shall correspond directly to the movement of an interest-rate index or an index that measures the rate of inflation, or one that measures rate of change in consumer disposable income, which is readily available to and verifiable by the borrower and is beyond the control of the association. The interest rate may be decreased at any time.

b. Payment. The payment may be decreased to reflect a decrease in the interest rate or in the loan balance, and may be increased if:

- (1) The contract requires that increases be made pursuant to a formula or schedule set forth in the contract that specifies the percentage or dollar increase in the payment per adjustment;
- (2) The increase reflects an increase in the interest rate or the loan balance; or
- (3) The contract provides for payment increases tied to increases in a national or regional index that measures the rate of inflation or the rate of change in consumer disposable income, is readily available to and verifiable by the borrower, and is beyond the control of the association.

c. Loan balance (principal plus deferred, capitalized interest). The balance of a home loan may be increased or decreased if:

- (1) The contract provides for changes in the interest rate and payment;
- (2) The contract provides for the deferral and capitalization of interest;
- (3) The contract provides that changes in the loan balance shall be tied to changes in a national or regional index that measures the rate of inflation, is readily available to and verifiable by the borrower, and is beyond the control of the association;
- (4) The contract provides for lump-sum disbursement of the loan proceeds or for scheduled periodic disbursements to the borrower made directly by the association; or
- (5) The contract provides that a portion of the consideration to be received by the association in return for making the home loan shall be interest in the form of a percentage, fixed at or before the time of loan closing, of the amount by which the current market value of the property exceeds the original appraised value.

d. Term to maturity. The term of a home loan may be increased or decreased to reflect an increase or decrease in the interest rate, the payment or the loan balance.

12.3(3) Index—notice of adjustment. In making any of the adjustments described in this subrule, any combination of indices or a moving average of index values may be used as an index, and an association may use more than one index during the term of a home loan. The initial index to be used by the

association shall be one which was published within the six-month period immediately preceding the closing of the loan. Adjustments shall be based on the difference between

a. The index value identified by the association at time of loan commitment or loan closing, or, if one index is substituted for another during the loan term, the value most recently available as of the date of substitution, and

b. Its value as of the time of adjustment or as of the time within which notice of adjustment must be given. At least 30 but not more than 120 days prior to an adjustment of loan terms, and at least 90 but not more than 120 days prior to the expected maturity of a nonamortized, or partially amortized loan, an association shall provide the borrower with notice of the adjustment or maturity, respectively. However, where the contract provides that changes in the interest rate shall occur more frequently than changes in the payment, the association need not notify the borrower of changes in the rate, or of changes in the loan balance or term resulting from a rate change, until notice of a payment adjustment is given. In addition, where the loan contract sets out a schedule of adjustments to the payment, notice need not be given of each payment change made pursuant to that schedule.

12.3(4) Loan-to-value ratio.

a. A loan shall not at the time of origination exceed 90 percent of the value of the security property. If the loan is insured by the Federal Housing Administration or guaranteed by the Servicemen's Readjustment Act of 1944 (37 U.S.C., Sections 1801 to 1824), as amended, or is insured or guaranteed, in whole or in part, by any other duly constituted federal instrumentality or private mortgage insurer approved by the superintendent, or if the home loan is made to people with low or moderate income as a part of programs approved by the Iowa finance authority, it may be made regardless of the requirements for other home loans contained in this subrule.

b. During the term of the home loan, the loan-to-value ratio may increase above the maximum allowed in paragraph "a" of this subrule, if the increase results from a change authorized by subrule 12.3(2). Continued compliance with loan-to-value limitations will be assumed if the original ratio met the requirements of paragraph "a" of this subrule, but in no event may the loan balance exceed 100 percent of the original appraised value unless the loan is insured or guaranteed. If the loan balance has increased since the inception of the loan, the loan contract may provide that the payment be adjusted at least once each five years, beginning no later than the tenth year of the loan, to a level sufficient to amortize the loan at the then-existing interest rate and loan balance over the remaining term of the loan.

12.3(5) Loan on cooperatives.

a. Home loans may be made on the security of cooperative housing developments ("blanket" loans). The association shall require that the cooperative housing development maintain reserves at least equal to those required for comparable developments insured by the Federal Housing Administration.

b. Home loans may be made on individual cooperative units. These loans may be made on the security of

(1) A security interest in stock, a membership certificate, or other evidence of ownership issued to a stockholder or a member by a cooperative housing organization, and

(2) An assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by the organization.

12.3(6) The association shall pay the cost of any appraisal of the security property obtained by the association after loan closing but prior to maturity of a home loan unless the borrower specifically requests the appraisal or the appraisal is made pursuant to the borrower's request to modify or refinance the loan.

197—12.4(534) Disclosure. Prior to accepting an application for a home loan, an association must provide each loan applicant with a written disclosure describing in plain language the specific terms of the loan offered to the applicant. The purpose of the disclosure is to make a good faith attempt to explain to the applicant the operation of the loan being offered. The disclosure does not alone constitute a commitment on the part of an association to make a loan to a loan applicant. The disclosure shall contain the following information that is relevant to the type of loan being offered:

a. A general explanation of the fact that:

(1) The association and the applicant become bound by the terms of the loan contract upon signing it,

(2) Even though subsequently either party may request modification of the contract, neither party is bound to agree to such a request, and

(3) Since normally the contract and mortgage (or deed of trust) alone establish the rights of the borrower, the borrower should be familiar with and understand the provisions of the contract.

b. The term to maturity, and any provisions of the loan contract that would authorize the association to lengthen or shorten the term to maturity.

c. The initial interest rate and, if the contract provides for adjustment of either the interest rate, the payment, the loan balance or the term in accordance with changes in an index, the base index rate, or, if neither fact is known, the manner in which the initial interest rate and base index rate will be established.

d. The amount of the initial payment, if known, and an explanation of the amortization schedule for the loan, including how the association determines both the amount of each payment and what proportion of each payment is credited to interest.

e. The terms under which the association must offer to refinance a partially amortized (balloon) loan at the time the balloon payment is due (maturity).

f. A good faith example of how the interest rate, the payment, the loan balance, or the term to maturity may be adjusted (including identification of the index(es) to be used and how index values may be obtained by the borrower), and how the adjustment of one item may affect the others.

g. What information will be contained in each notice of an adjustment or, in the case of partially amortized or nonamortized loans, of maturity, and how far in advance of an adjustment or maturity each notice will be provided.

h. Whether the loan contract will provide for escrow payments, the purpose of requiring escrow payments, and how the amount of an escrow payment is established.

These rules are intended to implement Iowa Code section 534.204.

[Filed emergency after Notice 9/27/82, Notice 8/4/82—published 10/13/82, effective 9/27/82]

[Filed emergency 3/10/87—published 3/25/87, effective 3/10/87]

CHAPTER 13
LEASING OF PERSONAL PROPERTY

[Prior to 3/25/87, Auditor of State[130] Ch 13]

197—13.1(534) Authority. A savings and loan association may within the limitations of this rule:

1. Become the legal or beneficial owner and lessor of specific personal property or otherwise acquire such property at the request of a lessee who wishes to lease it from the association;
2. Become the owner and lessor of personal property by purchasing the property from another lessor in connection with its purchase of the related leases;
3. Incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property, if the lease is a net full-payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of that lease. At the expiration of the lease all interest in the property shall be either liquidated or released on a net basis as soon as practicable.
4. A lease of personal property shall be treated as a commercial loan if a loan to the lessee to acquire the property would have been a commercial loan.
5. A lease to a natural person, which meets the definition of consumer lease contained in Iowa Code section 537.1301(13), is subject to that chapter of the Code.

197—13.2(534) Definitions.

“Full-payout lease” is one from which the lessor can reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease. Recovery of investment by the lessor may be derived from:

1. Rentals;
2. Extended tax benefits;
3. The estimated residual value of the property at the expiration of the initial term of the lease.

The estimated residual value shall not exceed 25 percent of the acquisition cost of the property to the lessor unless it is guaranteed by the manufacturer, the lessee, or a third party not an affiliate of the association, and the association makes the determination that the guarantor has the resources to meet the guarantee. In all cases, however, both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances. Realization of the lessor’s full investment plus the cost of financing the property should primarily depend on the creditworthiness of lessee and any guarantor of the residual value, and not on the residual market value of the leased item.

“Lease” means a contract in the form of a lease or bailment for the use of personal property for a period of time exceeding four months, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease.

“Lessee” means the party who leases or is offered a lease.

“Lessor” means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a lease.

“Net lease” means a lease under which the association will not be, directly or indirectly, obligated to provide for:

1. The servicing, repair or maintenance of the leased property during the lease term;
2. The purchase of parts or accessories for the leased property: Provided, however, that improvements and additions may be leased to the lessee upon its request in accordance with the full payout requirements of subrule 13.2(6);
3. The loan or replacement of substitute property while the leased property is being serviced;
4. The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance;
5. The renewal of any license or registration for the property unless such action by the association is necessary to protect its interest as owner or financier of the property.

“*Personal property*” means any property which is not real property under the laws of Iowa at the time offered or otherwise made available for lease.

197—13.3(534) Salvage powers.

13.3(1) If in good faith an association believes that there has been an anticipated change in conditions which threatens its financial position by significantly increasing its exposure to loss, the provisions of rules 13.1(534) and 13.2(534) shall not prevent the association:

a. As the owner and lessor under a net, full-payout lease, from taking reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

b. As the assignee of a lessor’s interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable or appropriate action to salvage or protect the value of the property or the association’s interest under the lease.

13.3(2) Additional terms. The provisions of rules 13.1(534) and 13.2(534) do not prohibit an association from including any provisions in the lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in subrule 13.3(1).

This rule is intended to implement Iowa Code section 534.103.

[Filed 2/11/83, Notice 1/5/83—published 3/2/83, effective 4/6/83]

[Filed emergency 3/10/87—published 3/25/87, effective 3/10/87]

CHAPTER 14
ELECTRONIC TRANSFER OF FUNDS

197—14.1(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.

197—14.2(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.

197—14.3(527) Applications to operate a central routing unit.

14.3(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.

14.3(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.

14.3(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.

14.3(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.

197—14.4(527) Compliance examinations of a central routing unit.

14.4(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 14.3(527).

14.4(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.

(5) A transaction initiated by a cardholder at any satellite terminal located in this state may not be authorized or processed by a central routing unit if the transaction permits the cardholder to deposit funds into a customer asset account representing a liability of the cardholder financial institution if the business location of the cardholder financial institution where the original records pertaining to the cardholder's customer asset account are maintained is located outside the state of Iowa. All cardholder financial institutions shall ensure that access devices issued to cardholders maintaining a customer asset account at a business location of the cardholder financial institution located in this state electronically identify the particular business location where the customer asset account is maintained so that an approved central routing unit may verify whether a particular deposit transaction should be authorized or processed.

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 cardholders 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.

14.4(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 14.5(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.

197—14.5(527) Applications to establish a satellite terminal.

14.5(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.

14.5(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).

14.5(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.

14.5(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.

14.5(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.

14.5(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.

14.5(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).

197—14.6(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]

[Filed 10/4/06, Notice 8/30/06—published 10/25/06, effective 11/29/06]

CHAPTER 15
PETITIONS FOR RULE MAKING

197—15.1(17A) Petition for rule making. Any person may file a petition for rule making with the division at Savings and Loan Division, Attn: Rules Coordinator, 1918 S.E. Hulsizer, Ankeny, Iowa 50021. A petition is deemed filed when it is received by that office. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink and must substantially conform to the following form:

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

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the division’s authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner’s arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 15.4(17A).

15.1(1) The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative, and a statement indicating the person to whom communications concerning the petition should be directed.

15.1(2) The division may deny a petition because it does not substantially conform to the required form.

197—15.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The division may request a brief from the petitioner or from any other person concerning the substance of the petition.

197—15.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to Savings and Loan Division, Attn: Rules Coordinator, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

197—15.4(17A) Division consideration.

15.4(1) Within 14 days after the filing of a petition, the division must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the division must schedule a brief and informal meeting between the petitioner and the division, a member of the division, or a member of the staff of the division, to discuss the petition. The division may request the petitioner to submit additional information or argument concerning the petition. The division may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the division by any person.

15.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the division must, in writing, deny the petition and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the division mails or delivers the required notification to petitioner.

15.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the division's rejection of the petition.

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

[Filed 9/2/99, Notice 4/21/99—published 9/22/99, effective 10/27/99]

CHAPTER 16
DECLARATORY ORDERS

197—16.1(17A) Petition for declaratory order. Any person may file a petition with the savings and loan division for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the savings and loan division at Savings and Loan Division, Attn: Rules Coordinator, 1918 S.E. Hulsizer, Ankeny, Iowa 50021. A petition is deemed filed when it is received by that office. The division shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

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

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 16.7(17A).

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

197—16.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the division shall give notice of the petition to all persons not served by the petitioner pursuant to 16.6(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons.

197—16.3(17A) Intervention.

16.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 21 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

16.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the savings and loan division.

16.3(3) A petition for intervention shall be filed at Savings and Loan Division, Attn: Rules Coordinator, 1918 S.E. Hulsizer, Ankeny, Iowa 50021. Such a petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition

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

DEPARTMENT OF COMMERCE SAVINGS AND LOAN DIVISION	
Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	} PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

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

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

197—16.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The savings and loan division may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

197—16.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to Savings and Loan Division, Attn: Rules Coordinator, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

197—16.6(17A) Service and filing of petitions and other papers.

16.6(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

16.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Savings and Loan Division, Attn: Rules Coordinator, 1918 S.E. Hulsizer, Ankeny, Iowa 50021. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

16.6(3) Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by rule on contested cases 197—17.12(17A).

197—16.7(17A) Consideration. Upon request by petitioner, the savings and loan division must schedule a brief and informal meeting between the original petitioner, all intervenors, and a member of the staff of the savings and loan division to discuss the questions raised. The division may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the savings and loan division by any person.

197—16.8(17A) Action on petition.

16.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the superintendent or the superintendent's designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

16.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule on contested cases 197—17.12(17A).

197—16.9(17A) Refusal to issue order.

16.9(1) The division shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

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

16.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final division action on the petition.

16.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

197—16.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

197—16.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

197—16.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the savings and loan division, the petitioner, and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other

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

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

[Filed 9/2/99, Notice 4/21/99—published 9/22/99, effective 10/27/99]

CHAPTER 17
CONTESTED CASES

197—17.1(17A) Scope and applicability. Except when inconsistent with Iowa Code chapter 534, this chapter applies to contested case proceedings conducted by the savings and loan division.

197—17.2(17A) Definitions. Except where otherwise specifically defined by law:

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

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

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

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

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

197—17.3(17A) Time requirements.

17.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

17.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

197—17.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the division action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific division action which is disputed, and where the requester is represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

197—17.5(17A) Notice of hearing.

17.5(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

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

17.5(2) Contents. The notice of hearing shall contain the following information:

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

- g.* Reference to the procedural rules governing informal settlement;
- h.* Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., superintendent, superintendent's designee, administrative law judge from the department of inspections and appeals); and
- i.* Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 17.6(17A), that the presiding officer be an administrative law judge.

197—17.6(17A) Presiding officer.

17.6(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the division head or members of the division.

17.6(2) The superintendent may deny the request only upon a finding that one or more of the following apply:

- a.* Neither the division nor any officer of the division under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b.* There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c.* An administrative law judge with the qualifications identified in subrule 17.6(4) is unavailable to hear the case within a reasonable time.
- d.* The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- e.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- f.* Funds are unavailable to pay the costs of an administrative law judge and an interdivision appeal.
- g.* The request was not timely filed.
- h.* The request is not consistent with a specified statute.

17.6(3) The superintendent shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 17.6(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

17.6(4) An administrative law judge assigned to act as presiding officer shall have the following technical expertness unless waived by the division: The administrative law judge shall have had at least five years' experience as an executive officer in a savings and loan or in the regulation or examination of financial institutions.

17.6(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the superintendent. A party must seek any available intradivision appeal in order to exhaust adequate administrative remedies.

17.6(6) Unless otherwise provided by law, the superintendent, when reviewing a proposed decision upon intradivision appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

197—17.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the division in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

197—17.8(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

197—17.9(17A) Disqualification.

17.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

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

17.9(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other division functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 17.9(3) and 17.23(9).

17.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

17.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 17.9(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

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

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 17.25(17A) and seek a stay under rule 17.29(17A).

197—17.10(17A) Consolidation—severance.

17.10(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

17.10(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

197—17.11(17A) Pleadings.

17.11(1) Petition. A petition in a contested case proceeding shall state in separately numbered paragraphs the following:

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

17.11(2) Answer. An answer shall be filed within 20 days of service of a petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

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

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

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

17.11(3) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

197—17.12(17A) Service and filing of pleadings and other papers.

17.12(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the division, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

17.12(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

17.12(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with Savings and Loan Division, Attn: Contested Case Coordinator, 1918 S.E. Hulsizer, Ankeny, Iowa 50021. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the savings and loan division.

17.12(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the savings and loan division, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

17.12(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Savings and Loan Division, Attn: Contested Case Coordinator, 1918 S.E. Hulsizer, Ankeny, Iowa 50021, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

197—17.13(17A) Discovery.

17.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

17.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 17.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

17.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

197—17.14(17A) Subpoenas.

17.14(1) Issuance.

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

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

17.14(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

197—17.15(17A) Motions.

17.15(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

17.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the division or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

17.15(3) The presiding officer may schedule oral argument on any motion.

17.15(4) Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the division or an order of the presiding officer.

197—17.16(17A) Prehearing conference.

17.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

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

17.16(2) Each party shall bring to the prehearing conference:

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

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

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

17.16(3) In addition to the requirements of subrule 17.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

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

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

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

17.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

197—17.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

17.17(1) A written application for a continuance shall:

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

b. State the specific reasons for the request; and

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

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

17.17(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

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

h. The timeliness of the request; and

i. Other relevant factors.

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

197—17.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with division rules. Unless otherwise provided, a withdrawal shall be with prejudice.

197—17.19(17A) Intervention.

17.19(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall

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

17.19(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

17.19(3) *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

17.19(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

197—17.20(17A) Hearing procedures.

17.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

17.20(2) All objections shall be timely made and stated on the record.

17.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

17.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

17.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

17.20(6) Witnesses may be sequestered during the hearing.

17.20(7) The presiding officer shall conduct the hearing in the following manner:

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

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

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

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

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

197—17.21(17A) Evidence.

17.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

17.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

17.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

17.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

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

17.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

17.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

197—17.22(17A) Default.

17.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

17.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

17.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final division action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 17.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

17.22(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

17.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

17.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

17.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 17.25(17A).

17.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

17.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

17.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 17.29(17A).

197—17.23(17A) Ex parte communication.

17.23(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the division or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 17.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

17.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

17.23(3) Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

17.23(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 17.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

17.23(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

17.23(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 17.23(1).

17.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 17.17(17A).

17.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

17.23(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received

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

17.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the division. Violation of ex parte communication prohibitions by division personnel shall be reported to the superintendent for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

197—17.24(17A) Recording costs. Upon request, the division shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

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

197—17.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the superintendent may review an interlocutory order of the presiding officer. In determining whether to do so, the superintendent shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the division at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

197—17.26(17A) Final decision.

17.26(1) When the superintendent presides over the reception of evidence at the hearing, the superintendent's decision is a final decision.

17.26(2) When the superintendent does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the division without further proceedings unless there is an appeal to, or review on motion of, the superintendent within the time provided in rule 17.27(17A).

197—17.27(17A) Appeals and review.

17.27(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the superintendent within 30 days after issuance of the proposed decision.

17.27(2) Review. The superintendent may initiate review of a proposed decision on the superintendent's own motion at any time within 30 days following the issuance of such a decision.

17.27(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the savings and loan division. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

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

17.27(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The superintendent may remand

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

17.27(5) *Scheduling.* The division shall issue a schedule for consideration of the appeal.

17.27(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

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

197—17.28(17A) Applications for rehearing.

17.28(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

17.28(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the division decision on the existing record and whether, on the basis of the grounds enumerated in subrule 17.27(4), the applicant requests an opportunity to submit additional evidence.

17.28(3) *Time of filing.* The application shall be filed with the savings and loan division within 20 days after issuance of the final decision.

17.28(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the savings and loan division shall serve copies on all parties.

17.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the division grants the application within 20 days after its filing.

197—17.29(17A) Stays of division actions.

17.29(1) *When available.*

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

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

17.29(2) *When granted.* In determining whether to grant a stay, the presiding officer or superintendent shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

17.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the division or any other party.

197—17.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

197—17.31(17A) Emergency adjudicative proceedings.

17.31(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the superintendent may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the superintendent by emergency adjudicative order. Before issuing an emergency adjudicative order, the superintendent shall consider factors including, but not limited to, the following:

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

17.31(2) Issuance of order.

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

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

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

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

17.31(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the division shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

17.31(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the division shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

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

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

[Filed 9/2/99, Notice 4/21/99—published 9/22/99, effective 10/27/99]