

SENATE MEMBERS

Robert Stivers
President, LRC Co-Chair
David Givens
President Pro Tempore
Damon Thayer
Majority Floor Leader
Morgan McGarvey
Minority Floor Leader
Julie Raque Adams
Majority Caucus Chair
Reginald Thomas
Minority Caucus Chair
Mike Wilson
Majority Whip
Dennis Parrett
Minority Whip



LEGISLATIVE RESEARCH COMMISSION

State Capitol 700 Capital Avenue Frankfort KY 40601

502-564-8100

Capitol Fax 502-564-2922
Annex Fax 502-564-6543
legislature.ky.gov

Jay D. Hartz
Director

HOUSE MEMBERS

David W. Osborne
Speaker, LRC Co-Chair
David Meade
Speaker Pro Tempore
Steven Rudy
Majority Floor Leader
Joni L. Jenkins
Minority Floor Leader
Suzanne Miles
Majority Caucus Chair
Derrick Graham
Minority Caucus Chair
Chad McCoy
Majority Whip
Angie Hatton
Minority Whip

MEMORANDUM

TO: Gary Stephens, Assistant General Counsel, Department of Financial Institutions

FROM: Emily Caudill, Regulations Compiler

RE: Proposed Amendment or New Regulation – 808 KAR 001:170

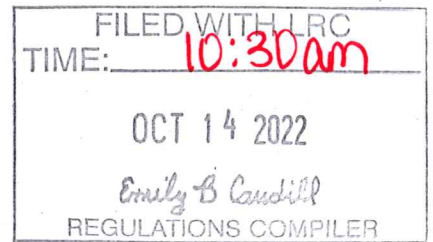
DATE: October 14, 2022

A copy of the administrative regulation listed above is enclosed for your files. This regulation is **tentatively** scheduled for review by the Administrative Regulation Review Subcommittee at its **JANUARY 2023** meeting. We will notify you of the date and time of this meeting once it has been scheduled.

Pursuant to KRS 13A.280, **if** comments are received during the public comment period, a Statement of Consideration or a one-month extension request for this regulation is due **by noon on January 15, 2023**. Please reference KRS 13A.270 and 13A.280 for other requirements relating to the public hearing and public comment period and Statements of Consideration.

If you have questions, please contact us at RegsCompiler@LRC.ky.gov or (502) 564-8100.

Enclosures



1 Kentucky Department of Financial Institutions
2 (Amendment)
3 808 KAR 1:170. Licensing and registration.
4 RELATES TO: KRS Chapter 286.4, 286.8-010, 286.8-020, 286.8-030(1), 286.8-032, 286.8-034,
5 286.8-036, 286.8-060, 286.8-070, 286.8-080, 286.8-090(1), 286.8-140(2)(b), 286.8-255, 286.8-
6 260, 286.8-290, 286.9-010, 286.9-020, 286.9-030, 286.9-040, 286.9-050, 286.9-060, 286.9-071,
7 286.9-073, 286.9-080
8 STATUTORY AUTHORITY: KRS 286.4-420, 286.4-425, 286.4-430, 286.4-440, 286.4-
9 450(1)(b), 286.4-480, 286.4-610(1), 286.8-032, 286.8-034, 286.8-100, 286.8-140(1), (4), 286.8-
10 255, 286.8-285, 286.9-050, 286.9-060, 286.9-070, 286.9-090(1), 286.9-107
11 NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.4-610(1) authorizes the
12 commissioner to promulgate administrative regulations for the proper conduct of the consumer
13 loan businesses licensed under KRS Chapter 286.4. KRS 286.4-430(1) authorizes the
14 commissioner to prescribe the form of the application for a license under KRS Chapter 286.4. KRS
15 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to
16 accomplish the basic purposes of KRS Chapter 286.8. KRS 286.9-090(1) authorizes the
17 commissioner to adopt reasonable administrative regulations for the enforcement of KRS Chapter
18 286.9. KRS 286.9-050 and 286.9-060 authorize the commissioner to prescribe the form and
19 materials required to apply for a license under KRS Chapter 286.9. This administrative regulation
20 establishes licensing and registration requirements for consumer loan companies, check cashing
21 and deferred deposit service businesses, mortgage loan companies, mortgage loan brokers.

1 mortgage loan branches, mortgage loan originators, and procedures for using the Nationwide
2 ~~mortgage~~ Multistate Licensing System (NMLS).

3 Section 1. Definitions.

4 (1) "Audited financial statement" means a financial statement prepared by a certified public
5 accountant in accordance with generally accepted accounting principles.

6 (2) "Nationwide Multistate Licensing System" is defined by KRS 286.8-010(20)

7 (3) "Surety bond" means a bond furnished by a surety company authorized to conduct business in
8 Kentucky.

9 Section 2. Consumer Loan Company Licensure. A person applying for licensure as a consumer
10 loan company shall submit:

11 (1) A completed NMLS Company Form available online at
12 <http://mortgage.nationwidelicensingsystem.org>;

13 (2) A completed NMLS Individual Form available online at
14 <http://mortgage.nationwidelicensingsystem.org>;

15 (3) A Form CL-4, State License Confirmation Form completed by each state or jurisdiction in
16 which the person is licensed or registered if the person applying for licensure as a consumer loan
17 company is licensed or registered in any other state or jurisdiction to operate a business making
18 loans of \$15,000 or less at the time of application;

19 (4) The nonrefundable application investigation fee established in KRS 286.4-440(1); and

20 (5) The annual license fee established in KRS 286.4-440(1).

21 Section 3. Check Cashing and Deferred Deposit Service Business Licensure.

22 (1) Initial Application. A person applying for an initial check cashing license shall submit:

23 (a) A completed NMLS Company Form available online at
24 <http://mortgage.nationwidelicensingsystem.org>;

- 1 (b) A completed NMLS Individual Form available online at
2 <http://mortgage.nationwidelicensingsystem.org> for each control person designated on the “direct
3 owners and executive officers” section of the NMLS Company Form;
- 4 (c) The nonrefundable investigation fee established in KRS 286.9-060(1);
- 5 (d) Form COMB-1, State License Confirmation Form for Check Cashing License or Deferred
6 Deposit Service Business License, incorporated by reference in 808 KAR 9:050, if the applicant
7 has a license, registration, or claim of exemption related to the financial services industry in any
8 other state;
- 9 (e) An audited financial statement, which includes a balance sheet, income statement, statement of
10 cash flows, and all relevant notes, dated as of the previous year end. If the applicant is a startup
11 company, an initial statement of condition and a proforma income statement shall be submitted
12 instead of the income statement and statement of cash flows;
- 13 (f) Evidence that the applicant has complied or will comply with all workers' compensation and
14 unemployment compensation laws of Kentucky; and
- 15 (g) One (1) of the following, which shall be deposited with and made payable to the commissioner:
- 16 1. An irrevocable letter of credit in an amount required by KRS 286.9-040(1)(a);
- 17 2. An Electronic Surety Bond, available online at <http://mortgage.nationwidelicensingsystem.org>,
18 in an amount required by KRS 286.9-040(1)(b). The name of the principal insured on the bond
19 shall match exactly the full legal name of the applicant; or
- 20 3. Form COMB-3, Escrow Agreement for Check Cashing License or Deferred Deposit Service
21 Business License, incorporated by reference in 808 KAR 9:050, accompanied by:
- 22 a. Evidence that the applicant has established an account in a federally insured financial institution
23 in Kentucky and has deposited money of the United States in an amount required by KRS 286.9-
24 040(1)(c); or

1 b. A savings certificate of a federally insured financial institution in Kentucky established by the
2 applicant that is not available for withdrawal except by direct order of the commissioner in an
3 amount required by KRS 286.9-040(1)(d).

4 (2) Renewal Application. A licensee applying for renewal of a check cashing license or deferred
5 deposit service business license pursuant to KRS 286.9-080(1) shall complete and submit the
6 following on or before December 31 of each year:

7 (a) The required updates and attestation ensuring the accuracy of all information in the person's
8 record maintained by the <http://mortgage.nationwidelicensingsystem.org>; and

9 (b) The nonrefundable license fee established in KRS 286.9-080(1).

10 (3) Reinstatement Application. A licensee applying for reinstatement of a check cashing license or
11 deferred deposit service business license pursuant to KRS 286.9-080(2) shall complete and submit
12 the following prior to January 31 of the year that the renewal application was due:

13 (a) The required updates and attestation ensuring the accuracy of all information in the person's
14 record maintained by the <http://mortgage.nationwidelicensingsystem.org>;

15 (b) The nonrefundable license fee established in KRS 286.9-080(1); and

16 (c) The nonrefundable late fee and reinstatement fee established in KRS 286.9-080(2).

17 Section 4. Licensure as a Mortgage Loan Company or Mortgage Loan Broker.

18 (1) Initial Application. A person applying for licensure as a mortgage loan company or mortgage
19 loan broker shall submit:

20 (a) A completed NMLS Company Form as available online at
21 <http://mortgage.nationwidelicensingsystem.org>;

22 (b) A completed NMLS Individual Form as available online at
23 <http://mortgage.nationwidelicensingsystem.org> for each control person designated on the "direct
24 owners and executive officers" section of the NMLS Company Form;

- 1 (c) An audited financial statement, which includes a balance sheet, income statement, statement of
2 cash flows, and all relevant notes, dated the previous year end to the date of submission of the
3 NMLS Company Form. If applicant is a startup company, an initial statement of condition and a
4 proforma income statement shall be submitted instead of the income statement and statement of
5 cash flows;
- 6 (d) An Electronic Surety Bond available online at <http://mortgage.nationwidelicensingsystem.org>
7 in an amount not less than the amount required by KRS 286.8-060(1). The name of the principal
8 insured on the bond shall match exactly the full legal name of applicant;[-]
- 9 (e) A certified copy of the following:
- 10 1. If a corporation, the Corporate Charter or Articles of Incorporation and Bylaws;
 - 11 2. If a limited liability company, the Articles of Organization and Operating Agreement; or
 - 12 3. If a partnership of any form, the Partnership Agreement;
- 13 (f) A Certificate of Authority or a Certificate of Good Standing issued by the Kentucky Secretary
14 of State dated not more than sixty (60) days prior to the submission of the NMLS Company Form;
- 15 (g) If applicant will be operating in Kentucky under a name other than its legal name, a file-
16 stamped copy of the Certificate of Assumed Business Name issued by the Kentucky Secretary of
17 State;
- 18 (h) If required to do so by KRS 286.8-032(6), documentation that a managing principal designated
19 by applicant has successfully completed the educational training set forth in KRS 286.8-032(6);
- 20 (i) If the principal office will be located in a residence, a completed Form ML-6, Disclosure of
21 Location at a Residence Form; and
- 22 (j) The fees set forth in KRS 286.8-034(1).
- 23 (2) Renewal Application.

1 (a) A person applying for renewal of a mortgage loan company or mortgage loan broker license
2 prior to December 1 shall submit:

3 1. The required updates and attestation ensuring that all information in the person's record
4 maintained by the [~~nationwide mortgage licensing system~~] NMLS operated by the State
5 Regulatory Registry, LLC is correct as available online at
6 <http://mortgage.nationwidelicencingsystem.org>; and

7 2. The fee set forth in KRS 286.8-034(3).

8 (b) A person applying for renewal of a mortgage loan company or mortgage loan broker license
9 through reinstatement shall submit all materials required by paragraph (a) of this subsection and
10 the reinstatement fee required by KRS 286.8-034(4)(6).

11 (c) The fee set forth in KRS 286.8-034(3) shall be calculated based on data filed by the licensee
12 on the Mortgage Call Report (MCR), which shall be submitted through the NMLS, for the twelve
13 (12) month period ending September 30. The licensee shall submit the MCR no later than
14 November 1st of each year. The Department shall apply the following criteria if the licensee has
15 not submitted four (4) quarters of data:

16 1. If a licensee has not held a license with the Department for twelve months, the fee shall be
17 based on the volume of loans originated and closed in Kentucky during the time frame the licensee
18 has held a license in Kentucky;

19 2. If a licensee does not file the third quarter MCR, which contains data as of September 30, on
20 or before November 1, the Department shall:

21 a. Estimate the 12-month loan volume based on previously filed MCR reports by annualizing the
22 loan volume contained in the prior three quarterly MCR report;

23 b. Recalculate the actual renewal fee owed once the third quarter MCR is filed; and

1 c. Send a subsequent fee bill to the licensee for any renewal fee owed based on the actual loan
2 volume reported on the MCR data versus the amount estimated by the Department using the
3 annualized loan volume in 2(a).

4 3. Pursuant to KRS 286.8-044, The Department may pursue an administrative action against
5 any licensee that fails to file a timely and accurate MCR. The Department may pursue
6 administrative action against any licensee for inaccurate filings of MCR reports resulting in
7 insufficient renewal fee payments.

8 (3) Change of address, name, control, or agent for service.

9 (a) A licensee changing its address, name, or agent for service of process shall notify the
10 commissioner:

11 1. At least ten (10) days prior to the change of address or name; and

12 2. Five (5) days prior to the change of agent for service of process.

13 (b) A licensee that wants to engage in a transaction resulting in a change of control shall notify the
14 commissioner at least thirty (30) days in advance with the information necessary for the
15 commissioner to determine whether the requirements of KRS Chapter 286.8 will be satisfied upon
16 the change of control. The commissioner shall notify the licensee whether the request is approved
17 or denied within thirty (30) days of a completed submission of the notice of change of control.

18 (c) A licensee changing its address, name, control, or agent for service of process shall update this
19 information in [~~Nationwide Mortgage Licensing System (NMLS)~~] NMLS within the same time
20 periods set forth in this section.

21 Section 5. Registration of a Mortgage Loan Company Branch.

22 (1) A mortgage loan company branch shall not be approved unless it is controlled, managed, and
23 supervised by the applicant's principal office.

24 (2) (a) A person applying for registration of a branch shall submit the following:

1 ~~1.[(a)]~~ A completed NMLS Branch Form as available online at
2 <http://mortgage.nationwidelicensingsystem.org>;

3 2.[(b)] A copy of the lease or deed for the branch;

4 ~~3.[(e)]~~ A completed Form ML-7, Branch Authorization Form; and

5 ~~4.[(d)]~~ If the branch will be located in a residence, a Form ML-6, Disclosure of Location
6 at a Residence Form.

7 (b) An additional fee for branch registration shall not be required by the Department.

8 (3) A person applying for renewal of a branch registration prior to December 1 shall submit all
9 materials required by Section 4(2)(a) of this administrative regulation.

10 (4) A person applying for renewal of a branch registration through reinstatement shall submit all
11 materials required by Section 4(2)(a) of this administrative regulation and the reinstatement fee
12 required by KRS 286.8-034(6).

13 Section 6. Registration of a Mortgage Loan Originator.

14 (1) Initial registration. A person applying for registration as a mortgage loan originator pursuant
15 to KRS 286.8-255(2) shall submit:

16 (a) A completed NMLS Individual Form as available online at
17 <http://mortgage.nationwidelicensingsystem.org>;

18 (b) A request to submit a Federal Bureau of Investigation background records check and a credit
19 report to the department;

20 (c) Certification that applicant has successfully completed all education and testing required by
21 KRS 286.8-255; and

22 (d) The fee set forth in KRS 286.8-255(2)(b).

23 (2) Renewal registration.

1 (a) A person applying for renewal of a mortgage loan originator registration pursuant to KRS
2 286.8-255(4) shall submit:

3 1. The required updates and attestation ensuring that all information in the person's record
4 maintained by the [~~nationwide mortgage licensing system~~] NMLS operated by the State
5 Regulatory Registry, LLC is correct as available online at
6 <http://mortgage.nationwidelicensingsystem.org>;

7 2. A request to submit a Federal Bureau of Investigation background records check and a credit
8 report to the department;

9 3. Certification that applicant has successfully completed all education and testing required by
10 KRS 286.8-255 and 286.8-260; and

11 4. The fee set forth in KRS 286.8-255(4).

12 (b) A person applying for renewal of a mortgage loan originator registration through reinstatement
13 shall submit all materials required by paragraph (a) of this subsection and the reinstatement fee
14 required by KRS 286.8-255(5).

15 (3) The cost of any Federal Bureau of Investigation background records check or credit report
16 required by this section shall be borne by the applicant.

17 Section 7. Mortgage Loan Originator Bond Requirements. In addition to the requirements set forth
18 in this administrative regulation, an applicant applying for registration, renewal, or renewal
19 through reinstatement as a mortgage loan originator shall provide proof that the mortgage loan
20 originator holds or is covered by a bond. If the mortgage loan originator is procuring his or her
21 own bond, the applicant shall submit an Electronic Surety Bond available online at
22 <http://mortgage.nationwidelicensingsystem.org> in an amount determined by annual loan
23 origination as follows:

1 (1) If the annual loan volume of the applicant is less than \$10,000,000, the surety bond shall be in
2 an amount not less than \$15,000; or

3 (2) If the annual loan volume of the applicant is \$10,000,000 or more, the surety bond shall be in
4 an amount not less than \$20,000.

5 Section 8. Factors Used to Determine Approval or Disapproval of an Application.

6 (1) A mortgage loan originator applicant seeking registration, renewal, or renewal through
7 reinstatement under KRS 286.8-255 shall demonstrate the financial responsibility, character, and
8 general fitness such as to command the confidence of the community and to warrant a
9 determination that the applicant will operate honestly, fairly, lawfully, and efficiently within the
10 purposes of the subtitle.

11 (2) An applicant shall authorize the commissioner to obtain a credit report containing a credit score
12 to aid in making this determination.

13 (3) The applicant shall have met the requirement of financial responsibility if he or she possessed
14 a credit score of 600 or higher at the time of application. If the applicant possesses a credit score
15 of less than 600, the commissioner may review the applicant's credit report for the following
16 information to make this determination:

17 (a) Any outstanding judgments, excluding judgments arising solely from medical expenses for the
18 applicant or an immediate family member;

19 (b) Any outstanding tax liens or other governmental liens;

20 (c) Any foreclosures occurring within five (5) years of the date of application or renewal;

21 (d) Any bankruptcies occurring within five (5) years of the date of application or renewal; and

22 (e) Any delinquent accounts occurring within five (5) years of the date of application or renewal.

1 (4) The factors of character and general fitness shall be determined by the commissioner after
2 review of all relevant information, including information shown on the applicant's credit report,
3 the applicant's criminal history, and any administrative or civil actions taken against the applicant.
4 Section 9. Electronic Submission of Filings and Fees through the [~~Nationwide Mortgage Licensing~~
5 ~~System~~] NMLS Operated by the State Regulatory Registry, LLC.

6 (1) A person applying for licensure, registration, renewal, or renewal through reinstatement
7 pursuant to Sections 2, 3, 4, 5, 6, and 7 of this administrative regulation shall electronically submit
8 the following with the State Regulatory Registry, LLC, at
9 <http://www.stateregulatoryregistry.org/NMLS>, as part of the [~~nationwide mortgage licensing~~
10 ~~system~~] NMLS:

11 (a) All forms, updates, attestations, and requests required by Sections 2, 3, 4, 5, 6, and 7 of this
12 administrative regulation, as applicable;

13 (b) Fingerprints and any other information or authorizations necessary to obtain the background
14 records checks and credit reports referenced in Section 6 of this administrative regulation; and

15 (c) All fees referenced in this administrative regulation.

16 (2) All forms, documentation, fees, or information that are not available for electronic submission
17 directly through the nationwide multistate licensing system operated by the State Regulatory
18 Registry, LLC shall be submitted directly to the department.

19 (3) Any fees assessed by the State Regulatory Registry, LLC, to process the electronic submissions
20 referenced in subsection (1) of this section shall be borne by the applicant.

21 Section 10. Abandoned Applications. If an applicant fails to provide or respond to a request for
22 additional information from the department within ninety (90) days [~~of submission to the~~
23 ~~department~~], the application shall be deemed incomplete and abandoned. An applicant seeking

1 licensing or registration after its application has been abandoned shall reapply and resubmit all
2 required information.

3 Section 11. Inactive Status for Members of the Armed Forces.

4 (1) A member of the Armed Forces who holds a license or registration in good standing under this
5 administrative regulation may request that the commissioner place the license or registration in
6 inactive status during the period of time that the member is mobilized or deployed, and for a period
7 of six (6) months following termination of the mobilization or deployment.

8 (2) To request inactive status for a license or registration, a person shall complete Form ML-8,
9 Request for Inactive Status Due to Military Service, and submit it along with proof of mobilization
10 or deployment to the commissioner for approval.

11 (3) A person whose license or registration has been placed in inactive status shall not engage in
12 the activity requiring the license or registration under KRS Chapter 286.8.

13 (4) The fee set forth in KRS 286.8-255(4) shall not accrue against a person whose license or
14 registration is in inactive status.

15 (5) A person may reactivate an inactive license or registration by submitting a written request to
16 the commissioner and attaching proof of compliance with KRS 286.8-255(10) and 286.8-260, if
17 applicable. Upon receipt of a written request and confirmation of compliance with KRS 286.8-
18 255(10) and 286.8-260, the commissioner shall issue an approval for reactivation.

19 Section 12. Incorporation by Reference.

20 (1) The following material is incorporated by reference:

21 (a) Form CL-4, "State License Confirmation Form", updated December 2019;

22 (b) Form ML-6, "Disclosure of Location at a Residence Form", updated December 2019;

23 (c) Form ML-7, "Branch Authorization Form", updated December 2019; and

24 (d) Form ML-8, "Request for Inactive Status Due to Military Service", updated December 2019.

1 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at
2 the Department of Financial Institutions, 500 Mero St 2SW19, Frankfort, Kentucky 40601,
3 Monday through Friday, 8 a.m. to 5 p.m. This material may also be obtained from the department's
4 Web site at <http://www.kfi.ky.gov>.

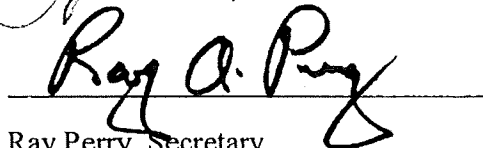
808 KAR 1:170

READ AND APPROVED BY

A large, stylized handwritten signature in black ink, appearing to be 'C. Vice', written over a horizontal line.

Charles Vice, Commissioner
Department of Financial Institutions

10/14/2022
DATE

A handwritten signature in black ink, appearing to be 'Ray A. Perry', written over a horizontal line.

Ray Perry, Secretary
Public Protection Cabinet

10/14/2022
DATE